

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.10051 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner has invoked the jurisdiction of this Court, aggrieved by the order of the Debt Recovery Tribunal in I.A.No.2703 of 2014 in S.A.No.492 of 2014 dated 13.02.2015.

The facts, to the extent necessary, are that the petitioner entered into a possessory agreement with the 6th respondent on 08.01.2006. As against the total consideration payable of around Rs.2.15 crores, the petitioner claims to have paid a sum of Rs.1.80 crores. On the ground that the 6th respondent was not executing a sale deed in her favour, the petitioner filed a suit for specific performance in O.S.No.59 of 2007 before the XI Additional Chief Judge, City Civil Court, Hyderabad on 06.02.2007. The 6th respondent, represented by the 4th respondent as its Managing Director, filed O.S.No.41 of 2008 before the Chief Judge, City Civil Court, Hyderabad for recovery of possession and mesne profits. Sri V.S.Raju, learned counsel for the petitioner, would submit that both the suits were clubbed together, trial is completed, arguments have also been advanced, and judgment is reserved in both the suits.

It is the petitioner's case that, during the pendency of both the Suits, the 4th respondent, with a view to defeat the petitioner's rights and with a *mala fide* intention, had fraudulently transferred the scheduled property from the 6th respondent to himself and had thereafter, with the connivance of the 3rd respondent, availed a loan and had mortgaged the property to gain unlawfully at the cost of the petitioner; and the Bank is now taking coercive steps under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to dispossess her from the subject property. The petitioner invoked the jurisdiction of the Debt Recovery Tribunal by filing S.A.No.492 of 2014, and the Tribunal dismissed I.A.No.2703 of 2014 in S.A.No.492 of 2014 on the ground that a *prima facie* case was not made out.

Sri V.S.Raju, learned counsel for the petitioner, would contend that, as the suit filed by the petitioner is pending before the Civil Court and the subject property was mortgaged during the pendency of the suit,

any alienation, after the suit was instituted, would be subject to the result of the suit; and the petitioner, having paid a sum of Rs.1.8 crores, cannot be forcibly evicted from the subject property.

Sri S.Niranjan Reddy, learned counsel appearing on behalf of the 3rd respondent, would submit that the scope of enquiry by the Debt Recovery Tribunal, in proceedings instituted under the Act, is limited; the suit filed by the petitioner is still pending adjudication, and no decree has been passed in her favour; as the property was mortgaged by the 4th respondent, and as he failed to repay the debt, the 3rd respondent is entitled to initiate proceedings under the Act for recovery of the sum due; and the order of the Magistrate under Section 14 of the Act, directing delivery of possession, does not necessitate interference as the 4th respondent is due a sum of Rs.45,00,000/- as on 30.04.2014, with interest from that date till the date of realisation.

The petitioner's case, in short, is that the property was transferred by the 6th respondent, in favour of its Managing Director (i.e the 4th respondent) after the suit was instituted; both respondents 4 and 6 have played fraud on her ; they have resorted to this illegal and fraudulent process to defeat her rights; she is being forcibly dispossessed from the subject flat, which she has been in possession of ever since 07.09.2006; and, if no interim order is passed, she would be thrown out from the subject property for no fault of hers.

The submissions put forth by Sri V.S.Raju, learned counsel for the petitioner, and Sri S.Niranjan Reddy, learned counsel for the 3rd respondent, involve interpretation of the provision of the Act besides examination of factual allegations of fraud. The rival contentions can only be examined after a counter affidavit is filed by respondents 3,4 and 6. We were initially inclined to grant stay for a limited duration, and invite counter affidavits from respondents 3,4 and 6. Sri S.Niranjan Reddy, learned counsel for the 3rd respondent, would submit that, instead of an interim order being passed and the writ petition kept pending on the file of this Court, and as these issues can be examined by a competent civil court and are, ordinarily, not amenable to judicial review in proceedings under Article 226 of the Constitution of India, this Court could relegate the petitioner to the remedy of invoking the jurisdiction of the civil court within two weeks; and the 3rd respondent undertakes not to dispossess her till then.

. As the contentions urged in this writ petition would also involve adjudication of factual allegations of collusion and fraud, and as the petitioner's remedy in this regard is ordinarily by invoking the

jurisdiction of the competent civil court, ends of justice would be met if the 3rd respondent is restrained from dispossessing the petitioner for a period of one month from today, and the petitioner is relegated to her civil remedies. If the petitioner does not obtain any interim order from the civil court on or before 10.05.2015, it is open to the 3rd respondent to proceed and take action, in accordance with law, thereafter. It is made clear that this Court has not expressed any opinion on merits and the competent civil court, on its jurisdiction being invoked, shall adjudicate the dispute in accordance with law uninfluenced by any observations made in this order.

The writ petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

10th April 2015.

Note: Issue C.C. by 15.04.2015.

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Date: 10.04.2015

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