

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.426 OF 2015

Between:

Bethal Convent High School (Nur-X),
Badepally Village.

.. Petitioner

and

Andhra Pradesh Gramin Vikas Bank
and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: August 06, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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WRIT PETITION No.426 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed questioning the order, dated 23.12.2014, passed in CrI.MP.No.14 of 2014 by the Chief Judicial Magistrate, Mahabubnagar, in exercise of powers conferred under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act').

Respondent No.3 has obtained loan facility from respondent No.1 – Bank by mortgaging the property, which is the subject matter of CrI.MP.No.14 of 2014. In view of the default committed by respondent No.3 and respondent No.4, who is the husband of respondent No.3 and guarantor to the said loan, respondent No.1

has initiated proceedings under the Act and after issuing Demand Notice and Possession Notice, under Sections 13 (2) and 13 (4) of the Act, took symbolic possession of the property in question. It appears that as the petitioner is claiming possession by virtue of a lease deed, respondent No.1 – Bank has filed Crl.MP.No.14 of 2014 before the Chief Judicial Magistrate, Mahabubnagar, to give assistance for taking possession of the secured asset. In the said Crl.MP., the impugned order is passed.

In the affidavit filed in support of the petition, it is stated that the petitioner is the lawful tenant of respondent No.3 in view of the unregistered lease deed executed by respondent No.3 and the School is being run in the property in question since 1987.

Detailed counter affidavit is filed by the Authorised Officer of respondent No.1 – Bank. In the counter affidavit, while denying the various allegations made by the petitioner, it is stated that in view of the ratio laid down by the Honourable Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**, petitioner cannot claim any tenancy, in the absence of valid registered lease deed in respect of the premises in question. It is further stated that though the petitioner claims that the School is being run since 1987, it is to be noticed that respondent No.3 herself has purchased the property in question, in 1995 and 1999 and inasmuch as respondent No.3 was not the owner of the property in question prior to the aforesaid years, the question of obtaining lease by the petitioner from respondent No.3 and running the School since 1987, does not arise. It is further stated that the claim of tenancy is to be verified as to whether it is genuine or is made only to defeat the steps being taken under the Act for selling the property in question to realise the amount due to respondent No.1. It is further stated that the warrant issued pursuant to the impugned order was already executed and respondent No.1 was put in physical possession of the property in question by an Advocate Commissioner, who has also filed report before the Chief Judicial Magistrate stating that he has executed the warrant delivering

possession of the property in question to respondent No.1.

In this Writ Petition, it is not in dispute that the property in question was mortgaged in favour of respondent No.1 by respondent No.3 to secure loan and respondent No.4, who is the husband of respondent No.3, stood as guarantor to the said loan. Though petitioner claims to be in possession of the property in question since 1987, no registered lease deed is executed by respondent No.3 in favour of the petitioner. In the case of **Harshad Govardhan Sondagar's** case (supra), while dealing with identical issue, the Honourable Supreme Court has held as under:

“36. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made “only by a registered instrument” and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.”

In view of the aforesaid ratio laid down by the Honourable

Supreme Court, we are of the view that the petitioner is not entitled to claim possession of the property in question based on the unregistered lease deed. Further, it is stated in the counter affidavit filed by respondent No.1 – Bank that respondent No.3 has purchased the property in question in the years 1995 and 1999 and thereafter, developed it. Hence, the claim of the petitioner that the School is being run in the property in question since 1987, is without any basis. Further, the judgment of the Honourable Supreme Court in **Rana Vidya Bhushan Singh v. Ratiram** and the judgment of the High Court of Madras in **Indian Bank v. M/s. Nippon Enterprises South** (W.P.Nos.23850 & 27432 OF 2010) relied on by the learned counsel for petitioner are not helpful to her, having regard to the facts of the present case. It is also clear that after taking possession of the property in question, auction was already conducted on 08.07.2015. In any event, as much as the property in question was mortgaged to respondent No.1 – Bank, and only for giving assistance to take possession of the secured asset the impugned order is passed, we are of the view that the petitioner is not entitled to the relief as prayed for. Hence, we do not find any merit in this Writ Petition, so as to interfere with the impugned order.

Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

August 06, 2015

MD

