

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.28852 of 2015

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

This writ petition is filed for a Mandamus to declare the action of respondents 1 and 2 in initiating proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') as arbitrary, illegal and unconstitutional, with consequential direction to the respondents not to take any steps to dispossess the petitioner, who is claimed to be the lessee of the secured asset.

The 4th respondent – Society is the borrower of money from respondents 1 and 2 - Bank. In view of the default committed by the 4th respondent, respondents 1 and 2 have initiated proceedings under the Act. After issuing necessary demand notice under Section 13 (2) of the Act, possession notice was issued. When the possession notice was affixed in the premises of the petitioner, the petitioner has approached this Court alleging that there is interference with his possession in respect of the leased premises.

It is the main grievance of the petitioner that he was neither given any notice nor impleaded in the application filed by respondents 1 and 2, under Section 14 of the Act, before the 3rd respondent- District Magistrate-cum-Collector, East Godavari District.

Sri D.V. Seetha Ram Murthy, learned Senior Counsel appearing for the petitioner, submitted that the steps which are being taken by the respondents with regard to dispossession of petitioner from the secured asset are in contravention of the judgment of the Hon'ble Supreme Court in **Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others.**

On the other hand, it is submitted by learned counsel appearing for respondents 1 and 2 Bank that the lease which is projected by the petitioner is a collusive one between him and the borrower, being sister concerns, and only to defeat the rights of the Bank, such lease is created after mortgaging the property with the Bank for securing the loan. It is fairly submitted that an application is also filed before the 3rd respondent - District Magistrate as contemplated under Section 14 of the Act and that as the petitioner is claiming possession of the secured asset by virtue of the lease deed alleged to have been executed in his favour, necessary steps will be taken to implead the petitioner as party to the application filed under Section 14 of the Act before the 3rd respondent - District Magistrate, before obtaining orders therein.

Whether there is a registered lease deed in favour of the petitioner in respect of the secured asset, as claimed by the petitioner, and whether he is in possession of the secured asset by virtue of the alleged lease deed, are the questions to be considered in the application filed under Section 14 of the Act. As the petitioner is claiming possession by virtue of the lease deed, dated 24.08.2013, in view of the pendency of the application filed by respondents 1 and 2 under Section 14 of the Act before the 3rd respondent and having regard to the ratio laid down by the Hon'ble Supreme Court in the judgment referred supra, we are of the view that it is appropriate to dispose of the writ petition permitting respondents 1 and 2 to implead the petitioner as a party to the application filed under Section 14 of the Act. The claim of the petitioner with regard to possession is to be considered while disposing of the application by the 3rd respondent. The 3rd respondent shall consider the matter in the light of the judgment of the Hon'ble Supreme Court referred to above and pass appropriate orders as expeditiously as possible, preferably within a period of two months from the date of impleadment of the petitioner as a party respondent. Till adjudication is made on the claim of the petitioner, no coercive steps shall be taken to dispossess him from

the secured asset, which is claimed to be in his possession. It is made clear that after passing appropriate orders by the 3rd respondent, it is open to respondents 1 and 2 to take steps in accordance with law.

Subject to the above, the writ petition is disposed of. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

18.11.2015

v v