

**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.19677 OF 2015

Between:

The Divine India (The Society of Divine Souls India)

.. Petitioner

and

The Chief Manager – cum – Authorised Officer,
Vijaya Bank and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: August 03,
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**

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |

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

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

WRIT PETITION No.19677 OF 2015

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

Heard Sri M. Ramalingeswara Reddy, learned counsel for the petitioner and Sri B.S.Prasad, learned Standing Counsel for respondent No.1 – Bank.

This Writ Petition is filed seeking to declare the action of respondent No.1 in taking steps to evict the petitioner – Society from the premises bearing H.No.26-3-1664 situated at 6th Street, Chandramouli Nagar, Nellore Town, as illegal and arbitrary.

Petitioner claims that originally the Society is lessee of vendor of respondent No.2 and was inducted into the property in question on 20.12.1996. The lessor of the petitioner sold the property in question to respondent No.2 by a registered sale deed. Respondent No.2, who is the owner of the property in question, has availed loan facility from respondent No.1 – Bank by giving the property in question as security by way of mortgage. As respondent No.2 committed default in repaying the loan amount, Bank has initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short, 'the Act'), and after issuing necessary Demand Notice, Possession Notice, under Section 13 (4) of the Act, was issued. When respondent No.1 was taking steps to evict the petitioner from the property in question, at that stage, this Writ Petition is filed.

It is contended by the learned counsel for petitioner that as the petitioner – Society is a *bona fide* lessee of the property in question from 20.12.1996 onwards, it cannot be evicted from the property in question otherwise than due process of law. It is further contended that even after purchase of the property in question by respondent No.2, fresh lease deed was entered into on 01.06.2011 with respondent No.2 and such lease is renewed from time to time and is valid up to 31.12.2015.

On the other hand, it is submitted by Sri B.S. Prasad, learned Standing Counsel for respondent No.1 – Bank, that though the petitioner is claiming continuous possession from 20.12.1996 onwards, no registered lease deed is entered into between the petitioner and respondent No.2 to claim possession. It is further submitted that the petitioner was inducted only to stall the proceedings initiated under the Act. In support of his contentions, learned counsel has also placed reliance on the judgment of Honourable Supreme Court in **Harshad Govardhan Sondagar v. International Assets**

Reconstruction Company Limited and others^[1] and on the Division Bench judgment of this Court in W.P.No.11097 of 2014, dated 22.07.2014.

While considering the identical question, the Honourable Supreme Court in **Harshad Govardhan's** case (1 supra) 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.”

Further, this Court in W.P.No.11097 of 2014 has also adopted the same view. Therefore, in the absence of any registered lease deed, petitioner is not entitled to claim possession of the property in question based on the renewal letter issued by respondent No.2, as the property in question was mortgaged to respondent No.1 – Bank. Therefore, the steps taken by respondent No.1 are in accordance with law.

For the aforesaid reasons, we do not find any merit in this Writ Petition so as to grant the relief as prayed for. However, as it is stated that so far notice of sale has not been issued, we direct the parties to maintain *status quo* as on today with regard to possession of the property in question for a period of two months from today. On expiry of such period, it is open to respondent No.1 – Bank to take possession of the property in question in accordance with law.

Subject to the above, 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 03, 2015
MD

[\[1\]](#) (2014) 6 SCC 1