

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

–
WRIT PETITION No.33055 OF 2015

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

This Writ Petition is filed seeking to declare the action of respondent No.1 in taking steps to dispossess the petitioner from the property i.e., Flat Nos.G-1 and G-2, admeasuring 2500 Square Feet, at Lacasa Apartments, bearing premises No.8-2-476/4/A/1 situated at Road No.5, Banjara Hills, Hyderabad, as illegal and arbitrary.

Petitioner claims to be in possession of the property in question as a tenant by paying rent to respondent No.2, who is its owner. The said property is mortgaged to respondent No.1 – Bank against the loan extended by it. In view of the default committed by the borrower in repaying the loan amount, the Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and has filed CrI.MP.No.4341 of 2014 before the Chief Metropolitan Magistrate, Hyderabad, for taking possession of the property in question and pursuant to the order passed in the said petition, warrant, dated 24.11.2014, was issued for taking possession.

In this Writ Petition, it is the claim of the petitioner that he is in possession of the property in question since 2007 by way of an unregistered lease deed. In this connection, it is relevant to refer to the judgment of the Honourable Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**, wherein it is 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 the light of the aforesaid judgment of the Honourable Supreme Court, the petitioner cannot claim any tenancy, in the absence of valid registered lease deed in respect of the property in question, and hence, we do not find any merit in this Writ Petition. However, as the petitioner claims that he requires some time to secure alternate accommodation, respondents are directed to maintain *status quo* with regard to possession of the property in question for a period of four weeks from today.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 07, 2015

MD