

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: W.P.No.21386 OF 2015

Between:

Sree Matha Wines

.. Petitioner (s)

And

The IndianOverseas Bank and another

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 05.08.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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| 1. Whether Reporters of Local news papers
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 |

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

W.P.No.21386 OF 2015

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

This writ petition is filed seeking a direction by way of mandamus to declare the action of the 1st respondent in taking steps to dispossess the petitioner from shop H.No.12-5-127/1, consisting of G+3 floors of 800 sft each, situated at Moosapet X Road, Kukatpally Circle, Balanagar Mandal, Ranga Reddy District pursuant to the order dated 24.04.2015 in Crl.M.P.No.319 of 2015 passed by the Chief Metropolitan Magistrate, Cyberabad as illegal and arbitrary.

M/s Sunder Live Stocks & Farms Pvt. Ltd., a company registered under the Companies Act, 1956 has availed loan facility from the 1st respondent-Indian Overseas Bank and defaulted in repaying the said amount. The premises in question was given in security by the 2nd respondent as guarantee for the aforesaid loan. In view of the default committed by the principal borrower, the 1st respondent has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

and taken symbolic possession under Section 13(4) of the Act. As the premises in question is in occupation of the petitioner, the 1st respondent has approached the Chief Metropolitan Magistrate, Cyberabad under Section 14 of the Act by filing Crl.M.P.No.319 of 2015 and the same was ordered on 24.04.2015.

The Advocate Commissioner was appointed to take possession of the secured asset. In pursuance of order dated 24.04.2015 in Crl.M.P.No.319 of 2015, the Advocate Commissioner issued notice. It is to be noticed that on earlier occasion, the principal borrower also approached this Court by filing W.P.No.15252 of 2015 questioning the sale notice dated 05.05.2015 to sell the secured asset. The said writ petition was dismissed by order dated 08.06.2015. Subsequently, this writ petition is filed mainly on the ground that the petitioner is already licensed by the Excise authorities to sell liquor from the premises in question and in view of valid lease granted by the 2nd respondent, the respondents cannot take steps for eviction of the petitioner without conducting any enquiry and without issuing notice.

Detailed counter affidavit is filed denying the various allegations made by the petitioner.

In this case, it is not in dispute that the 2nd respondent herein is guarantor for the loan secured by M/s Sunder Live Stocks & Farms Pvt. Ltd. and the subject

matter of the property was mortgaged to the 1st respondent bank. Though the petitioner claims lease, the same is not supported by any registered document and his claim is only based on unregistered document for a period of 11 months. The proceedings under Section 14 of the Act provides that the application is to be filed by the secured creditor for taking possession of the secured assets. The petitioner, who claims possession through unregistered document, is not entitled for any notice. As much as the possession notice was already issued under Section 13(4) of the Act and consequently steps to sell the secured asset are also initiated by the 1st respondent, the petitioner cannot object for dispossession by seeking writ of mandamus. In the absence of any valid lease, the petitioner has no legal right to claim declaration by way of mandamus by filing this writ petition under Article 226 of the Constitution of India.

For the aforesaid reasons, the writ petition is dismissed. However, as it is not in dispute that there is valid license granted to the petitioner in the premises in question, we direct the respondents to maintain status quo for a period of four weeks from today as the petitioner undertakes to vacate the premises within aforesaid period.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

A.SHANKAR NARAYANA,J

05.08. 2015
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HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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