THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No. 4771 OF 2016

O R D E R : ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

This Writ Petition is instituted challenging the order dated 31.09.2015 passed by the Chief Metropolitan Magistrate, Cyberabad at L.B. Nagar in Crl.M.P.No. 701 of 2015 moved by the 1st respondent Andhra Bank seeking the assistance of the said Magistrate for taking possession of the secured asset.

The writ petitioner claims that it is incorporated as a company under the provisions of the Indian Companies Act, 1956 and that it has hired the premises from the 2nd respondent by entering into a lease deed, the latest renewal of which has taken place on 27.07.2015. It is the case of the petitioner company that it has agreed to pay a sum of Rs.6,59,295/- per month @ Rs.35/- per square foot for the premises leased out and it is also agreed to pay maintenance charges in addition at the rate of Rs.6.50/- per square foot, totalling to Rs.1,22,440-50 Ps., but the petitioner company would assert that it has not committed any default in payment of either the lease amount or the maintenance charges to the 2nd respondent company. It is also their case that it has employed approximately 150 persons and has been rendering services in the Information Technology sector. It is also the case of the petitioner company that it has been serving global clientele and that it also provides to some of those clients round the clock services through out the year. Consequently, it requires to stay in the premises taken on lease by it.

However, on 07.11.2015, the learned Advocate-Commissioner appointed by the Chief Metropolitan Magistrate and the officials of the 1st respondent bank have delivered a notice to the writ petitioner company directing it to vacate the premises and hand over peaceful possession to the 1st respondent bank of the said premises on or before 23.11.2015. That notice triggered the present Writ Petition.

Heard Sri B. Chandrasen Reddy, learned counsel for the petitioner company and Ms. Dyumani, learned Standing Counsel for the 1st respondent Andhra Bank.

It would be appropriate to notice, at this stage, the contention canvassed by Ms. Dyumani first. It is brought to our notice that the 2nd respondent company has availed certain financial assistance from the 1st respondent bank and committed default in repayment of the said loan. As part of the exercise to realize the outstanding debt due, the 1st respondent bank has initiated measures for securitization, as provided for under Sections 13 and 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and it is in accordance with the provisions contained therein, when the 1st respondent bank has approached the Chief Metropolitan Magistrate, Hyderabad, the learned Magistrate entertained Crl.M.P.No. 701 of 2015 and passed appropriate orders on 31.09.2015 by authorizing the Advocate-Commissioner to take possession of the secured asset, so that the same can be handed over to the 1st respondent bank.

Sri Chandrasen Reddy would urge that the writ petitioner company has nothing to do with the transactions carried out by and between the 1st and the 2nd respondents. The petitioner company has obtained the premises in question under a proper registered lease deed and it has been enjoying the premises quietly and peacefully and in accordance with the terms and covenants contained in the said lease deed, which was renewed as lately as on 27.07.2015. The petitioner company has never committed any default in tendering monthly lease amount and the maintenance charges to the 2nd respondent and hence, Sri Chandrasen Reddy would urge that without the 1st respondent bank impleading the petitioner company as a party respondent to Crl.M.P.No. 701 of 2015 or in the alternative, bringing it to the notice of the Court that the writ petitioner company is a tenant/lessee of the premises in question, it could not have secured the impugned order *ex parte.*

We are not impressed in any manner with any of these contentions canvassed by Sri Chandrasen Reddy, for, the Parliament has enacted the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') for the purpose of regulating the securitization and reconstruction of financial assets and enforcement of security interests of the financial institutions. Various expressions, which are found mentioned in the Act, have been defined in sub-section (1) of Section 2 of the said Act and it will be appropriate for us to notice the expressions 'bank', 'borrower', 'debt', 'default', 'financial asset', 'property' and 'secured asset' as defined in clauses (c), (f), (ha), (j), (l), (t) and (zc) of sub-section (1) of Section 2. A careful analysis of the definitions noticed supra would clearly disclose that the secured asset is, in fact, the property on which the security interest is created. Therefore, if the 2nd respondent with or without the consent of the writ petitioner company has created any such security interest over the property, which included incidentally the leased out premises to the petitioner, the petitioner cannot raise any objection with regard to the rights liable to be exercised by the 1st respondent herein, which answers squarely the description of 'bank' as defined in clause (c) of sub-section (1) of Section 2. Under Section 13 of this enactment, right is conferred upon the secured creditor to enforce the security interest. Under sub-section (4) thereof, the right to take possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset is conferred upon the secured creditor.

In these set of circumstances, the contentions canvassed on behalf of the petitioner company do not carry much merit. Perhaps, it is for the petitioner to work out the rights, if any that flow to it pursuant to the terms of lease that are existing in between the petitioner company and the 2nd respondent company. Similarly, under Section 14 of this Act, the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction any such secured asset is situated, is required to render assistance to take possession of the secured asset by the secured creditor, upon any such application, in writing, made to the aforementioned authorities. Therefore, Section 14 has been contemplated and put in place as a step-in-aid to the financial institutions to take possession of the secured asset. This provision would obviously negate any possible claim from either the defaulting debtor or persons claiming through such debtor. It would also negate any possible objection that without recourse to law, the secured creditor is seeking to take possession of the secured asset. We have therefore, no hesitation whatsoever to hold that at the instance of the writ petitioner herein, the order passed by the learned Chief Metropolitan Magistrate in Crl.M.P.No. 701 of 2015 cannot be interdicted, particularly when, there is no material available on record that the present petitioner was shown as a tenant by the 2nd respondent when it created mortgage in favour of 1st respondent/Bank.

But that is not the end of the whole issue. The writ petitioner company is a service-providing company in the IT Sector. We have no reason to doubt the statement made by the petitioner company that it has been rendering good quality services to several clients not only located in India but even beyond the shores of India. We have also no doubt in our mind that it could be possibly providing services round the clock on 24 x 7 basis. In such circumstances, the claim made by the writ petitioner company that it requires considerable amount of time to scout for a suitable premises, particularly keeping in view the security concerns and the commuting facilities of its employees, is found to be a genuine one. It was also brought out by the writ petitioner company that even if it has obtained a new premises, in the meantime it has to carry on its operations simultaneously from the old premises as well as the new premises before the change of location of the premises of the petitioner company is effectively brought to the notice of its clientele. Any disruption in the services, which are being provided by the writ petitioner company can prove to visit the writ petitioner company with far greater consequences than, perhaps, a suit for damages could relieve the writ petitioner company. Keeping these factors in mind, when we have debated with the learned counsel appearing on both sides about the possibility of permitting the writ petitioner company stay in occupation of the premises for quite some time, today, the learned counsel for the writ petitioner company has filed an undertaking affidavit sworn to by the authorized signatory of the company namely Sri M.R. Sundeep. In paragraph 2 thereof, it has been set out as under:

> " I submit that the petitioner hereby undertakes to vacate the premises admeasuring 18,837 sq. ft. in bearing Plot No. 12, 4th floor, A & B Block and 5th floor Block-B side, Software Units Layout, Cyberabad, Hyderabad-500 081 on or before 30th of June 2016 and handover the vacant possession of the above premises to the 1st respondent. The petitioner is also willing to comply with the orders of the Hon'ble Court with regard to the payment of monthly rents, starting from March 2016, on or before 15th of the respective month."

We consider that this request of the writ petitioner company is fair, reasonable and liable to be accepted as it is a genuine one, but however, Ms. Dyumani, learned Standing Counsel for the 1st respondent bank is right in observing that the rents/lease amount payable by the writ petitioner company starting from the month of March 2016 shall, in fact, be delivered to the 1st respondent bank which will be brought to the books of loan account of the 2nd respondent. We accept the said suggestion and subject to the writ petitioner company depositing on or before 15th of each month the rent/lease amount payable for the premises under its occupation, directly to the 1st respondent and the 1st respondent bringing it to the books of loan account of the 2nd respondent, the writ petitioner company shall be permitted to quietly and peacefully stay in occupation up to 30.06.2016, as agreed and enjoy the premises in which it is carrying on operations as of now, under the registered lease deed executed by the 2nd respondent on 27.07.2015. However, the writ petitioner company shall deliver the monthly maintenance charges to the 2nd respondent as otherwise the 2nd respondent may not provide the necessary maintenance/services to the writ petitioner company.

It is needless for us to observe that the writ petitioner shall not cause any damage to the premises or the equipment lying therein and shall quietly vacate the premises and deliver vacant possession to one of the authorized officers of the 1st respondent bank, who, upon such delivery of possession, shall pass necessary receipt to the writ petitioner company.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

26th February 2016

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