

* HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

+ WRIT PETITION Nos.34750, 34756 & 39825 OF 2015

AND

WRIT PETITION No.1232 OF 2016

(WRIT PETITION (S.R.) No.215389 of 2015)

% Date: 05-01-2016

Smt. P. Kiranmai

.. Petitioner

V.

\$ The Bank of Maharashtra, Bank Street,
Koti, Hyderabad & others

..

Respondents

! Counsel for the petitioner(s) : Sri C.B. Ram Mohan Reddy

in all the W.Ps. and W.P.(S.R.) : Sri C. Subba Rao

^ Counsel for respondent No.1-Bank

in all the W.Ps. and W.P.(S.R.) : Sri M.V.K. Viswanadham

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (2014) 6 SCC 1
2. (2000) 6 SCC 394
3. 1969 Law Suit (SC) 581
4. AIR 1979 SC 1745 (1)
5. AIR 2010 SC 2633
6. 1999 Law Suit (SC) 1475
7. (2005) 3 SCC 212
8. (1979) 3 SCC 431
9. (2009) 4 SCC 94
10. (2011) 3 SCC 1

11. (2011) 3 SCC 139
12. AIR 2004 SC 2371 (1)
13. AIR 2007 SC 712(1)
14. AIR 2015 MADRAS 175
15. AIR 2011 MADRAS 238
16. LAWS(KER)-2011-9-5 (High Court of Kerala)
17. 2006 Law Suit (Del) 1168
18. AIR 1978 DELHI 58
19. 1987 Law Suit (Del) 352
20. 2003 Law Suit (Cal) 308
21. (1988) 4 SCC 534
22. [2015 (1) D.R.T.C. 305 (S.C.)]

C/15

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION Nos.34750, 34756 & 39825 OF 2015

AND

WRIT PETITION No.1232 OF 2016

(WRIT PETITION (S.R.) No.215389 of 2015)

Between:

Smt. P. Kiranmai

.. Petitioner

AND

The Bank of Maharashtra, Bank Street,
Koti, Hyderabad & others

Respondents

..

DATE OF ORDER PRONOUNCED:

05-01-2016.

HON'BLE SRI JUSTICE R. SUBHASH REDDY

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be Marked to Law Reporters/Journals.
3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.34750, 34756 & 39825 OF 2015

AND

WRIT PETITION No.1232 OF 2016

(WRIT PETITION (S.R.) No.215389 of 2015)

COMMON ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

In the former two Writ Petitions i.e., W.P. Nos.34750 and 34756 of 2015, the petitioner (guarantor), who is one of the guarantors to respondent No.4 (borrower) for the loan availed by it from respondent No.1 viz., Bank of Maharashtra, Bank Street, Koti, Hyderabad, sought *Mandamus* to declare the vacation notice, dated 10.10.2015, issued by respondent No.3, respective Advocate-Commissioners, pursuant to the order, dated 21.09.2015, passed by the learned Chief Metropolitan

Magistrate, Nampally, Hyderabad, in Criminal M.P. No.2826 of 2013, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), as illegal, arbitrary and violative of principles of natural justice and consequently to direct to drop all further proceedings.

2. Latter Writ Petition and Writ Petition (S.R.) i.e., W.P. No.39825 of 2015 and W.P. (S.R.) No.215389 of 2015 are filed by the tenants of the petitioner in the former writ petitions by making her as respondent No.5, not only challenging the vacation notice, dated 10.10.2015, issued by the respective Advocate-Commissioners, but also the very order, dated 21-09-2015, passed by the learned Chief Metropolitan Magistrate, Nampally, Hyderabad, under Section 14 of the Act and also seeking consequential relief to direct respondent Nos.1 to 3 to drop all further proceedings including vacation of the premises.

3. For the sake of convenience, respondent Nos.1 and 2 viz., Bank of Maharashtra, Bank Street Branch, Koti, Hyderabad, and its Assistant General Manager respectively, are referred to as 'bank', respondent No.3, who are respective Advocate-Commissioners, is referred to as 'Advocate-Commissioner' and respondent No.4, which availed loans from the bank as 'borrower'; and the

petitioners, in

W.P. No.39825 of 2015 and W.P. (S.R.) No.215389 of 2015, who are tenants of the guarantor, are referred to as 'tenants'.

4. The case set out by the guarantor in W.P. No.34750 of 2015 is suffice to resolve the dispute between the parties in all the writ petitions including the writ petition (S.R.).

(a) Secured asset in W.P. No.34750 of 2015 consists of a building bearing Municipal No.3-4-510 with a cellar and five (5) floors built up area of 12,421 square feet in an area of 404.41 square yards, situated in Barkatpura, Hyderabad (hereinafter referred to as 'Secured Asset No.1'). In W.P. No.34756 of 2015, secured asset consists of a building bearing Shop Nos.11, 12 and 13 in the ground floor existing on plot Nos.267(P), 268, 269, 270, 271, 256, 257, 258, 259 and 260 (P) in Survey Nos.470, 471, and 472 with a built up area of 2,703 square yards titled 'VERTEX PEARL' Srinivasa Nagar Colony, Kapra Municipality, Keesara Mandal, Ranga Reddy District, Telangana (hereinafter referred to as 'Secured Asset No.2'). Both secured assets belong to the guarantor. She stood as guarantor to respondent No.4 for prompt repayment of the loan amount and mortgaged both the properties.

(b) The guarantor states that she leased out the first floor to 'Trinetra Super Market' under a lease deed, dated 10.11.2004, and presently 'More Super Market' is located therein. She has also leased out some area to M/s. Real Shoppey Private Limited under a lease deed, dated 04.09.2012 for a period of six (6) years, some portion to Dr. Kavitha Kulkarni, who is running a Poly Clinic, under a lease deed, dated 10.08.2005, some other area to M/s. PSI Soft (Private) Limited under a lease deed, dated 15.10.2007, and the pent house to one Y. Kamala Pathi under a registered lease deed, dated 05-11-2002, for a period of ten (10) years and the same was extended for a further period of ten years. Of course, total details are not forthcoming. It is, thus, according to her, the secured asset is in occupation of the tenants.

(c) She states that the borrower, which is a company registered under the Companies Act producing Kraft Paper, obtained two term loans. Petitioner states the details, thus:

“.....The 4th respondent obtained two term loans of Rs.5.3 crores and Rs.4 Crores, cash credit facility of Rs.4.00 Crores, and Rs.1 Crore of letter of credit from respondents 1 and 2.....”

The above facilities were accorded to the borrower on 10.01.2013 by the bank. She states that the borrower

while conducting trial production suffered various installation problems and later due to bifurcation of the State, it has stopped its production which resulted in borrower failing in paying the term loan installments and the bank classifying the borrower's account as 'Non Performing Asset' (NPA). The guarantor states that when the bank issued notice, dated 01.02.2014 under Section 13(2) of the Act to the borrower, borrower answered it requesting to restructure the loan account by conducting Techno Economic Viability (TEV) study. Accordingly, the bank appointed one N.V.V.N. Satyanarayana and Associates, Chartered Accountant Company, to conduct TEV study by letter, dated 16.04.2014. While the matter stood thus, the bank issued possession notice under Section 13(4) of the Act, dated 12.08.2014. On service of notice, the borrower made a request to restructure the loan account by mentioning reasons therefor.

(d) It is also stated that the bank filed Criminal M.P. No.2826 of 2013 on the file of learned Chief Metropolitan Magistrate, Nampally, Hyderabad, seeking the relief under Section 14 of the Act and pursuant to the orders passed therein for execution, Advocate-Commissioner issued notice, dated 10.10.2015, to vacate the secured asset within fifteen (15) days from the date of receipt of the notice. The said notice was served on the guarantor on 12.10.2015.

(e) It is according to the guarantor that the tenant has a right to be in possession of the secured asset as a lessor during subsistence of the lease and that right cannot be taken away save by the authority of law, and, therefore, when the secured creditor moves the Chief Metropolitan Magistrate for assistance to take possession of the secured asset, the secured creditor must make the tenant/lessee as a party and proceed in accordance with Section 65-A of the Transfer of Property Act (for short 'TP Act'). The guarantor has also stated that it is incumbent on the secured creditor to issue notice in accordance with Rule 8 of the Security Interest (Enforcement) Rules 2002 (for short 'Rules'), but, no such notice was issued to the tenant nor was heard before passing the orders under Section 14 of the Act and thus, the notice impugned is contrary to the decision of the Hon'ble Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**^[1] by referring to the prohibition contained in Sub-Section (3) of Section 14 of the Act. The guarantor sates that she approached this Court as notice prior to passing the impugned order was not served on her.

(f) In W.P. No.34756 of 2015, similar grievance is ventilated and, therefore, we are of the opinion that it is unnecessary to refer to the averments in detail except to

the extent that the guarantor has granted lease of the secured asset in favour of 'Just Bakery' under a registered lease deed, dated 05.11.2002, initially for a period of ten (10) years and later it was extended for a further period of ten (10) years.

(g) In W.P. No.39825 of 2015, the petitioners are tenants in the Secured Asset No.1 covered by W.P. No.34750 of 2015. Petitioner No.1 (tenant) claims that he obtained lease to run Super Market under a lease deed, dated 11.11.2014, from the guarantor. Petitioner No.2 (tenant) obtained lease on 01.08.2005 and running a clinic in the premises, whereas petitioner No.3 (tenant) obtained lease on 15.10.2007 and running a software company. They raised very same pleas agitated by the guarantor in the former two writ petitions.

(h) In W.P. (S.R.) No.215389 of 2015, petitioner (tenant) claims that it is a tenant of the guarantor, who is the petitioner in former two writ petitions, and running 'Just Bakery' in the secured asset. It also raised very same pleas as stated above stating that it obtained lease under registered lease deeds, dated 12.06.2002 and 13.06.2002 for a period of ten (10) years with a condition of further renewal for a further period of ten (10) years. Thus, the tenants sought identical reliefs challenging the order passed under Section 14 of the Act and the pursuant notice issued by the Advocate Commissioner for

vacation of the secured asset in their occupation.

5 (a) Respondent No.2 - Chief Manager / Authorised Officer of the Bank filed counter affidavit in W.P. No.34750 of 2015, dated 05.11.2015, on behalf of himself and respondent No.1 - bank. According to the bank, the guarantor mortgaged the secured asset to the loan facilities sanctioned to the borrower to a tune of Rs.14.12 crores on 10.01.2013. Further, it has issued letters of credit for Rs.1,30,76,851/- at the request of the borrower. The guarantor mortgaged the schedule property by depositing the original sale deeds with declaration for proposed equitable mortgage on 28.01.2013, specifically stating therein, thus:

"I further confirm that I am presently **in self occupation, possession and custody of the said immovable properties which are free from any** charge, mortgage, encumbrances, claim, demand, dispute, lis pendens, proceedings, injunction, litigation, attachment, pledge, **lease, sub-lease,** licence, trespass, **tenancy, sub-tenancy** or lien **and that I shall not hereafter create or allow or permit at any time any lease, sub-lease,** licence, **tenancy, sub-tenancy,** trespass, lien, pledge, charge, mortgage, encumbrance, litigation, attachment, injunction, claim demand or dispute over upon or into or shall not part with

possession, occupation or custody or shall not induct any person in possession, occupation or custody of the said immovable properties or any part thereof”.

The guarantor has also executed letter of confirmation on 30.01.2013. According to the bank, the leases mentioned by the guarantor have to be treated as unregistered lease deeds as it is not specifically mentioned that the said leases are registered instruments. Hence, the leases, dated 10.11.2004, 04.09.2012, 10.08.2005, and 15.10.2007 cannot be construed as valid leases and no protection can be sought under the provisions of the TP Act. The bank also states that the guarantor has not filed any objections against the demand notice issued under Section 13(2) of the Act. The bank states that since no remittance in the loan account were made from 19.12.2014, the account was classified as NPA on 31.03.2015.

(b) Concerning proposal made by the borrower for restructuring the account, the bank states that it's Head Office has not accepted for the same since the borrower has not paid the overdue in view of devolvement of letters of credit as promised by it.

The bank states that neither the borrower company nor its guarantor can demand restructuring, as a matter of right, and the bank would take into account all the

circumstances and if the proposal merits consideration, it will restructure the account wherever it is feasible and do not discriminate against anybody in that regard.

(c) In W.P. No.39285 of 2015, bank filed its counter which is almost replica of the counter filed in W.P. No.34750 of 2015 with the exception of referring to the observations made by this Division Bench in the case of **Dr. K. Venkatesh v. Indian Overseas Bank, Hyderabad** in W.P. No.16043 of 2015, dated 30.07.2015, and also observations of yet another Division Bench of this Court in an identical case claiming that the leases set up by the guarantor are unregistered and bogus one and that the tenants as well as the guarantors are to be prosecuted for creating false documents and filing them before the State's highest Court of Justice on the ground that they were not filed along with the writ petitions initially and some of the leases were filed only at a subsequent stage.

6. Admittedly, none of the petitioners (tenants) in these petitions did file any reply affidavit.

7. Heard C.B. Ram Mohan Reddy, learned counsel for the guarantor, Sri C. Subba Rao, learned counsel for the tenants, and Sri M.V.K. Viswanadham, learned standing counsel for the Bank.

8. Learned counsel for the guarantor would submit that Rule 8 of the Rules mandates the secured creditor to issue notice to the borrower and no such notice was issued either to the borrower or the tenant before passing the orders under Section 14 of the Act.

He would also submit that it is incumbent upon the secured creditor to make lessee as a party when intends to move the Chief Metropolitan Magistrate for assistance to take possession of the secured asset in accordance with Section 65-A of the Transfer of Property Act. Therefore, it is according to the learned counsel that the notices issued by the Advocate-Commissioner are contrary to the decision of the Hon'ble Supreme Court in **Harshad Goverdhan Sondagar's Case** (Supra 1). The learned counsel also would submit that in view of the prohibition contained in Section 3 of the Act that the order passed in accordance with the provisions of Section 14 of the Act shall become final and shall not be called in question in any Court or before any authority, the only remedy available is to invoke jurisdiction of this Court under Article 226 of the Constitution of India.

(c) Learned counsel also placed reliance on the decisions in **Anthony v. K.C. Ittoop & Sons and others**^[2], **Rana Vidya Bhushan Singh v. Ratiram**^[3], **V. Dhanapal Chettiar v. Yesodai Ammal**^[4], **Zameer**

Ahmed Latifur Rehman Sheikh v. State of Maharashtra and others^[5], Antony v. K.C. Ittoop and Sons and others^[6], Government of A.P. and another v. J.B. Educational Society and another^[7], M. Karunanidhi v. Union of India and another^[8], Central Bank of India v. State of Kerala and others^[9], Girnar Traders (3) v. State of Maharashtra and others^[10], Offshore Holdings Private Limited v. Bangalore Development Authority and others^[11], Mardia Chemicals Limited v. Union of India and others^[12] and M/s. Transcore v. Union of India and another^[13] of Hon'ble Supreme Court, Board of Trustees of V.O. Chidambaranar, Tuticorin v. M/s. PSA SICAL Terminals Limited, Chennai and others^[14] and Indian Bank v. M/s. Nippon Enterprises South, Chennai and others^[15] of Madras High Court, Pushpangadan v. Federal Bank Limited^[16] of Kerala High Court, Sanjeev Bansal v. Oman International Bank Saog^[17], Tara Chand and others v. Ganga Ram and others^[18], Puran Chand and Company v. Ganesh Lal Tara Chand^[19] of Delhi High Court, and Ratan Kumar Khaitan v. United Bank of

India^[20] of Calcutta High Court. Learned counsel also placed reliance on the decisions of the Hon'ble Supreme Court in **Bharat Singh and others v. State of Haryana and others**^[21] and **Keshavlal Khemchand and Sons & Others v. Union of India & Others**^[22].

9. (a) Learned counsel for the bank would submit that the guarantor has not filed alleged lease deeds along with the writ petition and even did not indicate whether the first four leases referred to in the first writ petition were registered or not and unless the leases are registered leases entered into prior to demand notice under Section 13(2) of the Act, either the guarantor or the so-called lessees have no right to question the order passed under Section 14 of the Act and the pursuant action of the Advocate-Commissioner in issuing notice to effect the secured asset and deliver possession thereof. The learned counsel also would submit that the request made by the borrower for restructuring the loan was not accepted by the Head Office of the bank, and, therefore, the request for restructuring was not pending when the order under Section 14 of the Act was passed. It is his submission that the account of the borrower was declared as NPA by following due procedure and then only measure under Section 14 of the Act was resorted to.

(b) His yet another submission is that the guarantor

has executed duly notarized mortgagor's declaration while confirming the equitable mortgage in favour of the bank and affirmed that the secured assets in both the petitions are under her self-occupation and possession and custody and are free from any charge, mortgage, encumbrances, claim, demand, dispute, lis pendens, proceedings, injunction, litigation, attachment, pledge, lease, sub-lease, licence, trespass, tenancy, sub-tenancy or lien and assured that she shall not thenceforth create or allow or permit at any time any lease, sub-lease etc., and, therefore, she is debarred from pleading that leases were executed way-back in 2004, 2005, 2007 and 2012 and that the tenants are in possession of the secured asset and consequently she has no right to seek any relief as the one sought for herein.

(c) Even learned counsel placed reliance on the decision in **Harshad Goverdhan Sondagar's Case** (Supra 1) in support of his argument that the notice prior to the order passed under Section 14 of the Act can only be issued where tenant is inducted into possession under a valid lease deed, in other words, under the registered lease deed.

10. Learned counsel for the tenants would submit that their possession is protected by the provisions of Section 65-A of the TP Act and, therefore, before passing

orders under Section 14 of the Act, notice ought to have been served in the proceedings to afford an opportunity to defend their possession.

11. We would now like to examine whether the leases referred to by the guarantor and the tenants are valid leases either to seek protection under Section 65-A of the TP Act or to agitate their rights in an application filed under Section 14 of the Act.

12. Admittedly, the borrower has availed term loans and credit facility from the bank on 10.01.2013. It is not in dispute that the guarantor herein has mortgaged the secured asset in favour of the bank for prompt clearance of the loans contracted by the borrower.

It is also not in dispute that the demand notice under Section 13(2) of the Act was issued by the bank on 06.03.2014. Further, admittedly, no-objections were filed by the guarantor as envisaged under Section 13(3A) of the Act for the demand notice issued under Section 13(2) of the Act.

13. The disputed question is, according to the guarantor and the tenants, the leases precede mortgage in favour of the bank, and, therefore, effecting notice in a petition filed under Section 14 of the Act is mandatory in view of the provisions of Section 65-A of the

TP Act, and, therefore, sought to quash the impugned notices issued by the Advocate-Commissioners as pleaded by the guarantor and to quash the very order passed by the learned Chief Metropolitan Magistrate under Section 14 of the Act and the consequential notice issued by the Advocate-Commissioner, dated 10.10.2015, and further to drop the said proceedings as pleaded by the tenants.

14. Initially, we intend to refer to the submission of the guarantor that on receipt of notice under Section 13(4) of the Act,

the borrower requested the bank to restructure the loan account and also sought for change in the management as the new strategic investors have agreed to bring in the required funds for the purpose of fulfilling the commitments and when such a request was pending consideration, the proceedings under Section 14 of the Act were initiated by the bank for the purpose of taking possession and control of the said secured asset by the secured creditor.

15. We are of the considered view that the guarantor having not availed of the opportunity afforded by the provisions of Section 13(3A) of the Act is not entitled to make a request for restructuring the loan account after it was declared as NPA. Further, even such a request was turned down by the bank which fact is

mentioned in the counter affidavit filed by the bank. The very fact that no reply is filed refuting the said fact is a circumstance, which disfavors the guarantor.

16. The guarantor, though, pleaded that leases were prior to execution of the mortgage in favour of the bank, she has not filed copies of the lease deeds for the reasons best known to her.

Only her tenants, when they filed W.P. No.39825 of 2015 in relation to secured asset No.1 and the tenant in relation to secured asset No.2 in W.P. (S.R.) No.215389 of 2015, filed copies of lease deeds/agreements which we intend to advert to at this stage itself.

17. Petitioner No.1 (tenant) in W.P. No.39825 of 2015 filed lease agreement, dated 11.11.2004, executed by the guarantor with the terms and conditions relating to the rental value etc. Admittedly, the said lease agreement is an unregistered one despite the fact that it specifically contains a covenant that duration would be for a period of fifteen (15) years. The tenant agreed to enhance the rent by 10% at the interval of every thirty six (36) months. Condition No.16 therein reads thus:

“This Lease Deed is drawn in duplicate on stamp paper of Rs.100; each party shall retain a copy thereof. The LESSEE and LESSOR shall bear the Stamp Duty and registration charges etc., equally for the registration of this Lease Agreement/ Deed.”

It is obvious that no registered lease deed was entered into pursuant to the aforesaid condition. Had it not been so, nothing prevented petitioner No.1 to file registered lease deed in place of the said lease agreement.

18. Concerning petitioner No.2 (tenant), it is also a lease agreement, dated 10.08.2005, for a period of ten (10) years and can be renewed at the option of lessor. The said lease agreement is an unregistered one.

19. Concerning petitioner No.3 (tenant), it has filed rent agreement dated 15.10.2007 for a period of ten (10) years with renewal clause at the option of lessor. It is also only an agreement and unregistered one. Thus, none of the petitioners have a valid lease deed in their favour from the guarantor. _

20. Concerning secured asset No.2, the tenant in W.P. (S.R.) No.215389 of 2015, though, entered into registered lease deed, dated 12.06.2002, concerning Shop Nos.11 and 12 respectively, duration was for a period of ten (10) years subject to further renewal for a further period of five (5) years at the option of tenant. It has also filed a lease deed, dated 04.05.2012 concerning both Shop Nos.11 and 12 in continuation of the earlier lease deeds, though, the duration being six years period, the same is an unregistered lease deed. Thus, it is clear,

though, valid lease deed existed way-back in 2002 concerning Shop Nos.11 and 12, but, when the leases were renewed in 2012, no registered lease deed was entered into indicating that the current lease is not a valid lease.

21. Now, we would like to refer to the decisions relied on by both sides to see whether by virtue of the aforesaid lease deeds/agreements, the guarantor and the tenants are entitled to question the order passed by the learned Chief Metropolitan Magistrate under Section 14 of the Act and the notices issued by the Advocate-Commissioners dated 10.10.2015.

22. Adverting to the decision on which reliance was placed by the learned counsel for the guarantor in **Anthony's Case** (Supra 2), **Rana Vidya Bhushan Singh's Case** (Supra 3), **V. Dhanapal Chettiar's Case** (Supra 4), **Zameer Ahmed Latifur Rehman Sheikh's Case** (Supra 5), **Puran Chand and Company's Case** (Supra 12), **Board of Trustees of V.O. Chidambaranar's Case** (Supra 14), **M/s. Nippon Enterprises South, Chennai's Case** (Supra 15), **Pushpangadan's Case** (Supra 16), , **Sanjeev Bansal's Case** (Supra 17), **Tara Chand's Case** (Supra 18), and **Ratan Kumar Khaitan's Case** (Supra 20), we are of the view, that they would not render any assistance to advance the case of the petitioners. Even the decisions in **J.B. Educational**

Society's Case (Supra 7),

M. Karunanidhi's Case (Supra 8), **Central Bank of India's Case** (Supra 9), **Girnar Trader (3)'s Case** (Supra 10) and **Offshore Holdings Private Limited's Case** (Supra 11) also, would not assist the guarantor in advancing her case as these decisions are rendered in the context of interpretation of statutes.

23. The other three decisions relied on by the learned counsel for the guarantor relate to the provisions of the Act. In **Mardia Chemicals Limited's Case** (Supra 12), the Hon'ble Supreme Court held that classification of debt as NPA is not at whims or fancies of the financial institutions and banks and they are required to follow the policy laid down by the Reserve Bank of India providing guidelines in the matter of declaring an asset to be a Non-Paying Asset known as "RBI's Prudential norms on income recognition, asset classification and provisioning - pertaining to advances", through a circular, dated 30.08.2001. The Hon'ble Supreme Court has also struck down

sub-section (2) of Section 17 then existing, holding that condition of pre-deposit of 75% was not only onerous and oppressive but also unreasonable and arbitrary and violative of Article 14 of the Constitution of India. It was further held that hearing cannot be demanded by a debtor at the stage when notice under Section 13(2) of the Act

was issued.

24. In **M/s. Transcore's Case** (Supra 13), the Hon'ble Supreme Court while dealing with the provisions of Section 13 of the Act held that the remedy under the NPA Act 2002 is unconditional remedy to the DRT Act 1993 and together they constitute one remedy and, therefore, doctrine of election does not apply. Thus, these two decisions relied on by the learned counsel for the guarantor also would not render any assistance.

25. Learned counsel for the guarantor/tenants drawn our attention to the observations of the Hon'ble Supreme Court in **Harshad Govardhan Sondagar's Case** (Supra 1) contained in paragraph Nos.15, 16, 17, 18 and 21 to the effect that the secured creditor cannot take over possession of the secured asset until possession of the tenant/lessee gets determined and Section 65-A of the TP Act empowers a mortgagor to make leases while lawfully in possession of the mortgaged property and such leases shall be binding on the mortgagee. It is, therefore, his submission that the provisions of the Act do not have the effect of terminating the leases made by the borrower or the mortgagor made in accordance with the provisions of the TP Act. We are of the considered view, that the power granted to the mortgagor to effect leases of the property lawfully in his possession, which was under mortgage, is subject to certain conditions mentioned in

sub-section (2) of Section 65-A of the TP Act.

Clause (c) of sub-section (2) mandates that no such lease shall contain a covenant for renewal. Further, such power vested in a mortgager is subject to further condition that the leases will have to be valid leases. Furthermore, there is infraction of Clause (e) of Sub-Section (2) of

Section 65-A of the TP Act. An embargo is enlaid through the said clause that in the case of lease of buildings, whether leased with or without the land on which they stand, duration of lease shall in no case exceed three (3) years and the lease shall contain a covenant for payment of rent and a condition of re-entry on the rent not being paid with a time therein specified. At this juncture itself we make it clear that we have no hesitation in observing that unless a lease is registered one, it cannot be construed as a valid lease. Therefore, the guarantor in the former two writ petitions cannot seek benefit of Section 65-A of the TP Act. Even in paragraph No.21, on which much emphasis has been laid by the learned counsel for the tenants, the Hon'ble Supreme Court used the expressions 'a valid lease and lawful possession.' Further, the lease deeds/agreements, except the lease deed concerning petitioner No.1 (tenant) in W.P. No.39825 of 2015, contain a covenant for renewal of lease which is contrary to the condition envisaged through Clause (c) of Sub-Section (2) of Section 65-A of the Act and also Clause (e) thereof in view of the fact that duration of leases is exceeding three

(3) years in all the instruments, and, therefore, no assistance can be sought by the tenants by recourse to Section 65-A of the Act. Therefore, this decision also would not aid the tenants to advance their case.

26. On the other hand, learned counsel for the bank laid emphasis on paragraph No.36 in the same decision [**Harshad Govardhan Sondagar's Case** (Supra 1)] to substantiate the stand of the bank that the tenants are entitled to possession of the secured asset for any term exceeding one year from the date of lease made in their favour, in case, they are able to prove that the leases are through registered instruments. The Hon'ble Supreme Court while adverting to the purport of Section 107 of TP Act in the context of the claim of the appellants therein that they were entitled to possession of a secured asset for any term exceeding one year from the date of lease made in their favour, they will have to produce proof of execution of registered instrument in their favour by the lessor, holding, thus:

“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 immoveable 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 immoveable 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.”

27. Turning to the leases filed by the tenants in W.P. No.29825 of 2015, none of them could produce registered lease deeds in their favour executed by the guarantor, and, therefore, the said leases have to be construed as invalid instruments and no rights would flow to resist the order passed by the learned Chief Metropolitan Magistrate under Section 14 of the Act and the consequential notices issued by the Advocate-commissioners dated 10.10.2015 requiring them to vacate secured asset No.1. The tenant in W.P. (S.R.) No.215389 of 2015 though filed registered

lease deed, dated 05.11.2002, concerning Shop Nos.11 and 12 respectively, but they got determined by the expiry of ten years period mentioned therein and the subsequent lease on renewal is only by way of an agreement and no registered lease deed is forthcoming as required by condition No.16 mentioned therein referred to herein before. Therefore, we have no hesitation in holding that the tenants have no right to question either the order passed under Section 14 of the Act or the notice issued by the Advocate-Commissioner, dated 10.10.2015. Equally so, in regard to the request made by the guarantor. We are, therefore, of the considered view, that all the writ petitions and writ petition (S.R.) are devoid of merit.

28. In the result, all the Writ Petitions and Writ Petition (S.R.) filed by the guarantor and the tenants/lessees stand dismissed.
There shall be no order as to costs.

29. As a sequel thereto, Miscellaneous Applications, if any, pending in the writ petitions as well as writ petition (S.R.) stand closed.

R. SUBHASH
REDDY, J

January 5, 2016.

PV

[1] (2014) 6 SCC 1
[2] (2000) 6 SCC 394
[3] 1969 Law Suit (SC) 581
[4] AIR 1979 SC 1745 (1)
[5] AIR 2010 SC 2633
[6] 1999 Law Suit (SC) 1475
[7] (2005) 3 SCC 212
[8] (1979) 3 SCC 431
[9] (2009) 4 SCC 94
[10] (2011) 3 SCC 1
[11] (2011) 3 SCC 139
[12] AIR 2004 SC 2371 (1)
[13] AIR 2007 SC 712(1)
[14] AIR 2015 MADRAS 175
[15] AIR 2011 MADRAS 238
[16] LAWS(KER)-2011-9-5 (High Court of Kerala)
[17] 2006 Law Suit (Del) 1168
[18] AIR 1978 DELHI 58
[19] 1987 Law Suit (Del) 352
[20] 2003 Law Suit (Cal) 308
[21] (1988) 4 SCC 534
[22] [2015 (1) D.R.T.C. 305 (S.C.)]