

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO.6108 OF 2016

DATED:20-07-2016

Between:

M/s. Fabulous & Beyond Enterprises Pvt. Ltd.,
Rep. by its Managing Director, M.G. Shahriq
D.No.16-2-705/8/9/A/2, Peace Campus
Akbarbagh, Malakpet
Hyderabad ... Petitioner

And

The Union of India
Rep. by its Secretary (Ministry of Finance)
New Delhi
and others ... Respondents

COUNSEL FOR THE PETITIONER: M/s. K.V. Bhanu Prasad

COUNSEL FOR THE RESPONDENTS: Smt. T. Vidya Rani

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ORDER: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This writ petition is filed for a mandamus to declare the action of respondent No.2 in trying to sell the property under lease in favour of the petitioner, as illegal and arbitrary.

The petitioner claims to be a lessee under registered lease deed 28.12.2014 allegedly executed by respondent No.3. It is an admitted case that respondent No.3 mortgaged the said property in favour of respondent No.2 in the year 2009. As respondent No.3 failed to repay the loan amount, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), was issued on 17.05.2013 to the said respondent, by respondent No.2. Much after receipt of the said notice, respondent No.3 has allegedly executed the registered lease deed in favour of the petitioner. When a sale notice was issued on 22.01.2016 by respondent No.2 to respondent No.3, the petitioner filed this writ petition on the ground that as a lessee, it is entitled to a notice, before the sale is effected.

The learned counsel for respondent No.2 submitted that on the admitted facts of the case respondent No.3 has not taken prior consent of respondent No.2 for entering into the purported lease in favour of the petitioner and that therefore the alleged lease, which is in contravention of sub-section (13) of Section 13 of the SARFAESI Act, is nonest in law and consequently the petitioner has not derived any rights from out of the said lease deed.

The fact that the alleged lease deed was executed by respondent No.3 in favour of the petitioner after the notice under Section 13(2) of the SARFAESI Act was issued, is not in dispute. The learned counsel for the petitioner, however, contended that there was an unregistered lease deed executed by respondent No.3 in favour of

the petitioner on 23.3.2013 and a copy of the same has been filed by the petitioner. In our opinion, as lease of an immovable property requires registration in law, any unregistered deed in this regard is not valid under Section 17(1)(d) of the Registration Act, 1908. Therefore, the purported lease deed dt.23.3.2013 cannot be looked into. Hence, there remains the registered lease deed dt.28.12.2014 which admittedly is much later in point of time than the notice issued under Section 13(2) of the SARFAESI Act. When a lease was entered into contrary to the specific statutory provision contained in sub-section (13) of Section 13 of the SARFAESI Act, the petitioner, who claims to be the lessee under such lease, has no legal right to resist any of the measures taken by the creditors under the provisions of the said Act.

In the light of the above discussion, we find no merit in the writ petition and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.7762 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

20-07-2016

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Note: LR copies to be marked.

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