HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.7810 of 2016

ORDER: (*per Hon'ble Dr. Justice B.Siva Sankara Rao*)

Petitioners 1 to 4 are claiming as tenants under the borrower of the 1st respondent. The 1st respondent-bank provided financial assistance to M/s Bhavani Industries, Koonaram Road, Peddapalli Village & Mandal, Karimnagar District and for the financial assistance provided to the entity, the persons, who stood as guarantors are, (1) Thakkallapalli Veenkatrao, (2) Kanaparthi Prabhakar Rao and (3) Smt. Kanaparthi Sujatha, they are within the meaning of borrowers under Section 2(1)(f) of the SARFAESI Act, 2002 (for short 'the Act'). The account is classified as non-performing asset from the default committed by the borrowers supra, the bank initiated securitization measures and having issued notice under Section 13(2) of the Act with 60 days time, demanding the borrowers supra, to liquidate the amount and that on their failure, issued possession notice under Section 13(4) of the Act on 12.07.2014 and notices also cause published in the vernacular (local) and English news papers on 19.07.2014.

2. It is the contention of the petitioners in maintaining the writ petition at this stage that the bank is going to take possession under Section 14 of the Act, through the proceedings of the 2nd respondent-District Collector-cum-District Magistrate, Karimnagar, who authorized the Tahsildar, Peddapalli Mandal, to handover physical possession to the bank and that, if they are allowed to dispossess them, they being the tenants continuing since 2011, will be sufferers and that the tenancy of them is continuing since prior to mortgage is created and thereby the tenancy rights are to be protected as per the expression of the apex Court in '***Vishal N.Kalsaria vs. Bank of India***[1]'.

3. Whereas, it is the contention of the 1st respondent bank that there is no registered tenancy as contemplated and as laid down in '***Harshad Govardhan Sondagar vs. International Assets Reconstruction Co.Ltd***.[2], that the later judgment in ***Vishal N.Kalsaria*** (supra) is only explaining at best of no registered lease is mandatory in dealing with a rent control claim under the Maharastra Rent Control Act, where the tenants are protected tenants and the petitioners are liable to be dispossessed to enable the bank to take physical possession of the security interest.

4. Now coming to the case on hand, the petitioners are not protected by any of the provisions of the Rent control Act statutorily. They are undisputedly governed by the provisions of the Transfer of Property Act in case of any proof of such lease as per the expression in ***Harshad Goverdhan Sondagar*** and ***Vishal N.Kalsaria*** (supra). So far as the lease claimed by the petitioners from the year 2011 is concerned, it is undisputedly not a registered lease, but they are claiming the lease was with effect from 01.08.2011. In the absence of registered written lease for one year and above such lease is not valid that what is laid down in ***Harshad Goverdhan Sondagar*** (supra). It is also clarified that once there is written lease, it must be compulsorily registered lease. It is also made clear that as per the A.P. Amendment to the Registration Act to Section 17 by Act 4 of 1999 with effect from 01.04.1999, every lease disregard to the length of time must be a compulsorily registerable one. Undisputedly, the alleged lease in 2011 is subsequent to that. When there is no registered lease to enforce the terms of the lease claimed of August 2011, but for any collateral purpose regarding nature of possession, if at all as a tenant, this must be construed for the non-agricultural purpose as a tenancy from month to month even from the provisions of the Transfer of Property Act that are being applicable to the lease on hand as per the expression in ***Harshad Goverdhan Sondagar*** (supra). Once such is the case and even from ***Vishal N.Kalsaria*** (supra) particularly, para 29 of the expression, it is

very clear that if it is after mortgagee created as a security interest in favour of the secured creditor/bank, the consent of the mortgagee is also required. The wording is as follows:

> "29.As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of ***Harshad Govardhan Sondagar*** (supra). We have not stated anything to the effect that the tenancy created after mortgaging the property must necessarily be registered under the provisions of the Registration Act and the Stamp Act."

5. Here, there is no consent of the mortgagee and there is no registered lease deed even as discussed supra. Once such is the case, even there is no protest by the landlord for the lessee to continue, the petitioners are no other than tenants by sufferance in the eye of law as trespassers. Once there is efflux of time, there is no protection within the provisions of the Transfer of Property Act, as no quit notice after efflux of time is necessary under Section 106 of the Transfer of Property Act. Once such is the case, the petitioners herein, prior to the mortgage even governed by any unregistered lease to be construed as tenancy of month to month, where there was efflux of time and for the subsequent lease after date of mortgage, which are even registered, there is no consent of the mortgagee that is secured creditor, thereby invalidates the lease, and as such the petitioners cannot claim as tenants within the Transfer of Property Act, even for their continuing which prevents the bank from taking further steps under the securitization measures for recovery of the secured debt by proceeding against the security interest.

6. Having regard to the above, there are no grounds to admit the writ petition much less to keep it pending.

7. However, at this stage, it is the request of the learned counsel for the petitioners that they are going to make alternative arrangements and considering hardship reasonable time may be granted.

8. Considering the request, though they are not otherwise entitled

to continue and for the proceedings of the bank for securitization measures cannot be stalled, while directing the bank to proceed further to bring the property to sale by auction and collect bid amount and confirm the sale, however, not to issue sale certificate for three months from today; the bank is enabled to take constructive possession while permitting the petitioners to continue under the bank from today by payment of amount for use and occupation for three months and thereafter handover physical possession to the bank and on their failure to handover physical possession, by virtue of this order, the bank is entitled to take physical possession by dislodge the petitions without any further necessity of taking other judicial recourse and without any further reference to this court.

9. Accordingly, the writ petition is disposed of. There is no order as to costs. Miscellaneous applications, if any, pending in this writ petition, stand closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

Date: 20.04.2016
BSS

HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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Writ Petition No.7810 of 2016
(per Hon'ble Dr. Justice B.Siva Sankara Rao)

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Date: 20.04.2016

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[1] AIR 2016 SC 530

[2] (2014) 6 SCC 1