

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

Writ Petition No.13597 of 2016

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

The petitioner business entity is claiming as tenant of the premises covered by the second asset belongs to respondents 2 and 3 of the writ petition, who are the borrowers of the financial assistance availed from the 4th respondent-bank. Earlier the petitioner entity claiming the tenancy rights over the secured asset based on rental agreement of three years dated 01.09.2011, maintained S.A.No.342 of 2012 against the Respondents 1 to 3 herein impugning the securitization measures initiated by the secured creditor, after secured creditor bank issued possession notice under Section 13(4) of the SARFAESI Act, 2002 (for short 'the Act'), on 16.02.2012, against said borrowers (respondents 2 and 3 herein). The Debt Recovery Tribunal, vide order dated 15.10.2014, dismissed the S.A.No.342 of 2002. It is also for the reason that by the time the order supra was pronounced, the alleged lease period of three years was even expired. Once the lease period is expired and in between there is a mortgage of the property created known as security asset, as defined in Section 2(1)(zc) of the Act, by the borrowers, as defined under Section 2(1)(f) of the Act in favour of the secured creditor, as defined under Section 2(1)(zd) of the Act, and the bank is proceeding against the security interest, as defined in the Section 2(1)(zf) of the Act for recovery of the security debt, as defined under Section 2(1)(zc) of the Act, in the absence of consent of the mortgagee as required by the latest expression of the Apex Court in para 29 in '*Vishal N.Kalsaria vs. Bank of India*^[1]', referring to and relying upon but for explaining if at all of '*Harshad Govardhan Sondagar vs. International Assets Reconstruction Co.*

Ltd.,^[2] of what is stated of the lease must be registered one, in saying even unregistered or oral genuine lease can be considered, though that is under Maharashtra Rent Control Act, where tenant was a protected tenant as per statute, whereas herein it is only contractual tenancy governed by the Transfer of Property Act, even from the wording of Section 13(1) of the Act that is also explained by the Apex Court in **Harshad Govardhan Sondagar** (supra) and once under the provisions of the Transfer of Property Act after efflux of time besides no quit notice required for want of consent of the mortgagee (second creditor of the property) the petitioner is no other than trespasser in the eye of law and thereby not entitled to any protection to squat on the secured asset, much less to prevent the secured creditor from taking the securitization measures.

2. Having regard to the above, to sub-serve the ends of justice for no grounds to admit the writ petition or to stay the further proceedings for the securitization measures the bank as secured creditor is going to take, from what the learned counsel for the petitioner sought for time to make alternative arrangement by securing alternative accommodation, time is granted till 20.08.2016. It is made clear that the bank can take constructive possession while permitting the petitioner to continue under the bank and proceed further as per the provisions of the Act to bring the property to sale and confirm the sale after realization of the highest bid amount and issue sale certificate subject to the rights of the secured borrowers, to liquidate meanwhile, if any, and it is made clear that from now onwards, the petitioner shall pay to the bank till 20.08.2016, which date he has to vacate the premises in the possession of the bank at Rs.75,000/- (Rupees seventy five thousand only) per month as damages for use and occupation, so as to adjust towards the secured debt due as part payment. If the petitioner fails to pay the amount as damages and if he failed to vacate on or before 20.08.2016 also by virtue of the order, the

bank can take physical possession by dispossessing the petitioner without any further reference to the Court.

3. The writ petition is, accordingly, disposed of. There is no order as to costs. Miscellaneous petitions pending, if any, in this writ petition, stand closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

Date: 21.04.2016
BSS

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

63

Writ Petition No.13597 of 2016
(per Hon’ble Dr. Justice B.Siva Sankara Rao)

Date: 21.04.2016

BSS

[\[1\]](#) AIR 2016 SC 530

[2] (2014) 6 SCC 1