

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No. 27920 of 2016

ORDER:

Vide the present petition, petitioner seeks to declare the action of the 3rd respondent-Bank dated 11.08.2016 in dispossessing her from the suit schedule building by locking her residential house in which she is residing, as illegal and arbitrary, and to consequently direct the 3rd respondent-Bank to restore her possession of the property.

2. Notice was issued vide order dated 19.08.2016 and the same was effected on the respondents. Pursuant thereto, B. Krishna Mohan made appearance on behalf of respondent No.1. Despite service, none appeared for respondent No.2. However, keeping in view the issue raised in the instant petition, the Court has no option but to proceed with the matter.

3. As stated in the writ affidavit, V. Radhika is the absolute owner of the suit schedule property. For construction of ground floor, she availed a loan of Rs.5,50,000/- from State Bank of India, Kongareddypally Branch, on 10.10.2010 by mortgaging the property in favour of the Bank. With the said loan amount,

construction of ground floor has been completed and the same was informed to the Bank in the year 2011. She has been paying monthly instalments due to the bank. As she intended to go abroad in the year 2013, she executed a General Power of Attorney (GPA) on 20.05.2013 in favour of the petitioner-Leelavati to deal with all transactions in respect of the suit schedule property, including discharge of loan that was availed from the Bank and the said GPA Deed was registered with the District Registrar, Chittoor, vide Document No.3239/2013 dated 20.05.2013.

4. It is stated that Leelavati, the GPA holder of V. Radhika, is residing in the building in question, and has been paying monthly instalments for the said house which have been duly accepted by the Bank till now. While being so, on 11.08.2016, the 3rd respondent-Bank staff has called the petitioner over phone to come to the bank and accordingly she reached the Bank and learnt that the 3rd respondent Bank staff has locked the main gate leading to the ground floor and first floor and the terrace of the her building.

5. Counsel appearing on behalf of the petitioner submits that the petitioner has already paid all the amounts due to the Bank, but despite payment of the

amounts, the Bank has locked the building in question. Learned counsel further submits that if any amount is still due, the petitioner is ready to pay the same and to this effect the petitioner approached the Bank to settle the issue but the Bank has refused the same.

6. As argued by the learned counsel for the petitioner, no notice was ever issued to the petitioner regarding any amount due, and the petitioner has been paying the instalments of the loan and has paid the total amount due.

7. Though the action taken by the 3rd respondent-Bank is to be decided by the Debts Recovery Tribunal (DRT), however, as stated in this petition, the DRT has an appellate forum situated in Hyderabad but the same is not holding sittings and the same situation is prevailing in the DRT at Kolkata.

8. For the aforesaid reasons, I deem it appropriate to decide the present petition under Article 226 / 227 of the Constitution of India.

9. The petitioner has already paid the entire loan amount due to the 3rd respondent Bank and if any amount is still due, the 3rd respondent Bank ought to have issued

notice to the petitioner which the 3rd respondent Bank failed to do. Thus, it is a violation of Articles 14, 21 and 300-A of the Constitution of India. Further, the petitioner has not been heard by the Bank before taking the impugned action, and thus the Bank has violated the principles of natural justice.

10. In view of the above, the action of the 3rd respondent Bank, dated 11.08.2016 is illegal, and therefore, the 3rd respondent Bank is directed to restore possession of the subject premises to the petitioner within 24 hours after the receipt of this order.

11. Accordingly, the writ petition is allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

24th August, 2016

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THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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