

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

WRIT PETITION No.7029 of 2016

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

The petitioners 1 and 2 herein are claiming as tenants under the 2nd respondent-borrower. The borrower availed financial assistance from the 1st respondent, the secured creditor, and from the default committed, the 1st respondent initiated securitization measures after issuing demand notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), by giving 60 days time to liquidate. On failure to reply, the 1st respondent also issued a notice under Section 13(4) of the Act to take possession of the secured asset and to proceed with the sale and further an application under Section 14 of the Act filed before the Chief Metropolitan Magistrate, Ranga Reddy District in CrI.M.P.No.950 of 2015, pursuant to the order of the Chief Metropolitan Magistrate appointing an Advocate Commissioner to take physical possession of the secured asset from the persons in possession i.e., of the borrower and any others on his behalf. According to the petitioners, they were served with notice on 21.12.2015 to take possession within 15 days.

2) In fact, at this stage, it is also necessary to mention that the borrower who is the 2nd respondent herein maintained a writ petition No.43112 of 2015 against the secured creditor who is the 1st respondent herein impugning the possession notice issued under Section 13(4) of the Act, and there was an order while disposing the writ petition, directing the borrower to pay Rs.10,00,000/- within a period of four weeks from the date of order i.e., 19.01.2016.

3) In the present writ petition, it was represented, before admission,

when came for hearing on 03.03.2016, by the counsel for 1st respondent secured creditor, that as per the order in W.P. No.43112 of 2015, Rs.10,00,000/- has to be deposited by the borrower and he wants to seek instructions regarding the compliance of the order or not and sought for time. In the meantime, there was an interim order passed on 03.03.2016 in the present writ petition lis of not to evict the petitioners herein (who claimed as tenants under the borrower-2nd respondent herein) from the premises.

4) Now, it is submitted for the secured creditor that there was no payment made for cheques issued were dishonoured. Once the borrower committed default including in compliance with the order of this Court (another bench) in W.P.No.43112 of 2015, so far as petitioners in the present writ petition concerned, there is nothing to show that there was any lease subsisting since prior to the creation of mortgage by the 2nd respondent in favour of the 1st respondent muchless by registered or written lease to claim any right. Once such is the case and it is not even the case of the petitioners including for placing reliance on the expression of the Apex Court in ***Vishal N.Kalsaria V. Bank of India***^[1], which referred and relied but for explained if any of the earlier expression of the apex Court in ***Harshad Govardhan Sondagar V. International Assets Reconstruction Co. Ltd***^[2], particularly from para No.29 that if it is any lease subsequent to the creation of mortgage, the consent of the mortgagee is mandatory to validate the lease. Here, once there is no such valid lease muchless with the consent of the mortgagee, the petitioners cannot claim any interest to interdict the securitization proceedings including enforcement of the order of the Chief Metropolitan Magistrate obtained under Section 14 of the Act to take physical possession. At this stage, the petitioners sought for time to vacate by making alternative arrangements.

5) Having regard to the above, the writ petition is disposed of for no any tenable claim of the petitioners to admit and keep it pending but for while asking the secured creditor-1st respondent to take constructive possession and permit the petitioners herein to continue till 31.05.2016 by virtue of this order to say for all purposes, the petitioners are continuing as licensees only under the 1st respondent-Bank as part of the securitization measures and in the case of their failure to hand over back the physical possession of the premises to the secured creditor, the secured creditor is entitled, by virtue of this order by execution of order under Section 14 of the Act of the learned Chief Metropolitan Magistrate supra to dislodge the petitioners without any further reference of this Court.

6) With the above observations, the writ petition is disposed of. No costs. Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

R.KANTHA RAO, J

Dr.B.SIVA SANKARA RAO, J

21-04-2016
ksh

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

[\[2\]](#) (2014)6 SCC 1