

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25634 OF 2017

ORDER:

This Writ Petition is filed questioning the action of the respondents in forcibly vacating the petitioner from the premises bearing Flat No.203, 2nd Floor, H.No.12-13-838, Plot No.32, Gokulnagar, Tarnaka, Secunderabad.

The brief facts are that the petitioner is the tenant of the subject property belonging to 4th respondent. The said property was mortgaged by the 4th respondent in favour of the 3rd respondent for borrowing money. As the amount was not paid by the 4th respondent, his account became non-performing asset. The asset was sold by the 3rd respondent-State Bank of India, Nampally, Hyderabad, in favour of the 2nd respondent-The Asset Reconstruction Company (India) Limited. These facts are not in dispute, as the petitioner being the tenant of the 4th respondent has limited interest. However, it is the contention of the petitioner that in terms of the judgment of the Supreme Court in **Vishal N Kalsaria v. Bank of India and others**¹, rendered on 20.01.2016, tenants rights are not impaired even when action is taken against original owner, who has mortgaged the property. In that view of the matter, learned counsel for the petitioner submits that the petitioner is entitled to continue in the property.

However, Sri S. Sainathan, learned counsel appearing for the 2nd respondent, submits that the tenancy in favour of the petitioner is month to month basis and there is no written lease or agreement in favour of the petitioner. In that view of the matter,

¹ Criminal Appeal No.52 of 2016

the same would be treated only as a lease of tenancy on month to month basis. It is further submitted that the 2nd respondent is willing to give reasonable time to the petitioner to vacate the premises and thereafter to put the mortgage of property to auction. It is also submitted that unless the property is vacant and offered it would not fetch the true value and it would jeopardise the interest of the 2nd respondent.

Learned counsel for the petitioner also submits that if reasonable time is granted petitioner himself would vacate the premises.

Considering the respective submissions and considering the specific request of the petitioner that if four months time is granted he would vacate the subject premises, on 02.08.2017 this Court directed the petitioner to file an affidavit to that affect. The petitioner had accordingly filed an affidavit stating that he would vacate the premises on or before 01.12.2017.

Making the affidavit filed by the petitioner before this Court as an undertaking, Writ Petition is disposed of with a caution that any violation of the undertaking, given before the court, would result in initiation of contempt proceedings and the petitioner would be liable for punishment under the Contempt of Courts Act, and the petitioner shall handover the vacant possession to the 2nd respondent on or before 01.12.2017.

Consequently, the miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Date:07.08.2017.

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