

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CONTEMPT CASE No.257 of 2017

JUDGMENT: (Per VRS,J)

The petitioner, who claimed to be a tenant in respect of the 5th floor of a premises, came up with the writ petition, W.P.No.32857 of 2016, challenging the order passed under Section 14 of the SARFAESI Act, 2002. The said writ petition was disposed of by this Bench on 08.12.2016.

Paragraphs 3 to 5 of the said order read as follows:

“The only ground on which the petitioner challenges the order under Section 14 of the Act is that even admittedly the fifth floor of the premises as well as the moveable properties lying thereon are not mortgaged or hypothecated to the bank. Learned counsel for the bank agrees that the fifth floor is not mortgaged to the bank and that the moveable properties are also not mortgaged.

Originally learned counsel for the bank took a stand that the moveable properties have been handed over. When we directed panchanama to be produced, learned counsel for the bank produced the panchanama and conceded the fact that the moveable properties have not been taken by the petitioner. Therefore, there is no dispute about the entitlement of the petitioner to have possession of the fifth floor of the premises and the moveable properties lying in the premises.

Hence, the writ petition is disposed of directing the first respondent bank to handover to the petitioner, the fifth floor which is admittedly not under mortgage and the moveable properties which are not under hypothecation to the bank. No costs. Miscellaneous petitions pending, if any, shall stand closed.”

2. Contending that the Bank failed to comply with the said order, the petitioner came up with the above contempt petition.

3. Heard Mr. Eswar, learned counsel for the petitioner and Mr. M. Narender Reddy, learned Senior Counsel appearing for the respondent-Bank.

4. After we ordered notice in the contempt case, the learned Senior Counsel for the Bank submitted that the petitioner can take away all the moveable properties from all the floors of the property in question.

Therefore, by an order dated 21.07.2017 we appointed an Advocate Commissioner. Under his supervision, all moveable properties have been removed.

5. What now remains is only a dispute with respect to the 5th floor. The Bank has taken a stand in the counter affidavit that after mortgaging the entire land to the Bank, an undivided share was alienated and 5th floor was created and that therefore Section 70 of the Transfer of Property Act, 1882 would deprive the petitioner from making any claim with respect to the 5th floor.

6. But admittedly, an application is pending before the Debts Recovery Tribunal. Therefore, it may be better if the dispute with regard to the 5th floor, is thrashed out before the Tribunal.

7. In view of the fact that all moveable properties have now been removed by the petitioner and in view of our observation as above, with respect to the 5th floor of the premises, no more enquiry is needed in this contempt case. Hence the Contempt Case is closed. It will be open to the parties to agitate before the Debts Recovery Tribunal as to whether the petitioner has any right, title or interest over any undivided share of the land or constructed portion of the 5th floor.

8. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

15th December, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CONTEMPT CASE No.257 of 2017



Date: 15-12-2017

Js.