

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT PETITION No. 19233 OF 2016

ORDER: (per the Hon'ble Sri Justice Sanjay Kumar)

The petitioner educational society assails the order dated 07.06.2016 passed by the District Magistrate (District Collector), East Godavari District, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). By the said order, the District Magistrate authorized the Tahsildar, Amalapuram, to take possession of the secured assets mentioned in the schedule annexed to the application filed by the Bank of Baroda under Section 14 of the SARFAESI Act, including the property covered by the registered lease deed dated 24.08.2013, whereunder the petitioner educational society claims leasehold rights. The District Magistrate further directed the Tahsildar, Amalapuram, to make over possession of such assets to the Bank of Baroda against proper acknowledgement.

By order dated 16.06.2016, this Court observed that pursuant to the impugned order dated 07.06.2016 passed by the District Magistrate, East Godavari District, the Bank of Baroda is deemed to be in possession, but directed it not to take over actual physical possession until further orders. The Bank was however permitted to take further steps in accordance with the SARFAESI Act. This Court also observed that the petitioner educational society should not claim any equities on the basis of its actual physical possession in consequence to the said order.

Heard Sri Kiran Tirumalashetty, learned counsel representing M/s. Pillix Law Firm, counsel for the petitioner educational society, and Sri Chituru Srinivas, learned counsel for the Bank of Baroda.

Perusal of the order dated 07.06.2016 passed by the District Magistrate, East Godavari, reflects that all aspects of the matter were examined thoroughly thereunder and by considering the legal position as set out by the Supreme Court in **Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others**¹. In the light of the provisions of Section 65-A of the Transfer of Property Act, 1882, the District Magistrate came to the conclusion that the petitioner educational society could not be treated as a lawful lessee entitled to the protection of its possession until determination of the lease in accordance with the due procedure laid down by law.

The leasehold rights in favour of the petitioner educational society were admittedly created after the mortgage of the property with the Bank of Baroda. In that view of the matter, the mortgagor's power to lease the mortgaged property necessarily has to be in consonance with the provisions of Section 65-A of the Act of 1882. Section 65-A(2)(e) thereof postulates in no uncertain terms that in case of lease of buildings, the duration of the lease shall in no case exceed three years. It is the admitted fact that the petitioner society's lease under the registered lease deed dated 24.08.2013 is for 30 years. That being so, the lease created by the mortgagor did not comply with the requirements laid down by law and would not vest the petitioner society with leasehold rights for the tenure fixed thereunder. At best, the petitioner society can be treated as a tenant from month to month and such a tenancy would be determinable with 15 days notice. As the petitioner society would have to make arrangements to shift its college to alternate premises, we are of the opinion that it can be granted time up to the end of September, 2017 to handover vacant physical possession of the secured assets.

The writ petition is accordingly dismissed granting time up to 30.09.2017 to the petitioner educational society to make alternate arrangements and deliver

¹ (2014) 6 SCC 1

vacant physical possession of the secured assets in its possession to the Bank of Baroda. In the event, the petitioner society fails to do so, it shall be open to the Bank of Baroda to seek intervention of the Tahsildar, Amalapuram, to handover vacant physical possession of the said secured assets to it pursuant to the order dated 07.06.2011 passed by the District Magistrate, East Godavari District. Interim order, dated 16.06.2016 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

Date: 26.07.2017
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