

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 13366 of 2017

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

This writ petition was filed assailing the order dated 17.03.2017 passed by the Debts Recovery Tribunal – II, Hyderabad, in S.A.No.687 of 2017. This Securitisation Application was filed by the petitioner company under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), in relation to the order dated 19.02.2017 passed by the learned Chief Judicial Magistrate, Nalgonda, in CrI.M.P.No.6 of 2016, in exercise of power under Section 14 of the SARFAESI Act.

Perusal of the order passed by the Tribunal, under challenge presently, reflects that the mortgage was created in favour of the State Bank of India, the first respondent herein, on 23.06.2011. The mortgagor, the third respondent herein, thereafter executed a registered lease deed on 17.03.2012 in favour of the petitioner company in respect of the mortgaged property. The Tribunal found that the said lease was not in conformity with Section 65-A of the Transfer of Property Act, 1882 (for short 'the Act of 1882'), and would therefore not bind the first respondent Bank. On this ground, the Securitisation Application filed by the petitioner company seeking to protect its possession was dismissed. Aggrieved thereby, the petitioner company is before this Court.

By order dated 12.06.2017, this Court granted interim stay of all further proceedings including attachment/taking physical possession of the property in question.

Sri M. Srikanth Reddy, learned counsel for the first respondent Bank, filed a counter affidavit contesting the writ petition.

Having heard Smt. S. Nanda, learned counsel for the petitioner, and Sri M. Srikanth Reddy, learned counsel for the first respondent Bank, we find that the lease created in favour of the petitioner company by the third respondent-mortgagor under the registered Lease Deed dated 17.03.2012 does not conform to the requirements of Section 65-A of the Act of 1882.

Admittedly, the lease was for a period of five years contrary to the statutory provision which permits the mortgagor to lease the mortgaged property for a period not exceeding three years. That apart, the lease created in favour of the petitioner company under the said lease deed expired due to efflux of time after five years. As on date, there is no lease deed in favour of the petitioner. In terms of the Registration Act, 1908, in so far as it applies to the State of Telangana, a lease even for a period less than one year cannot be created except by way of a registered lease document. The petitioner company can therefore be treated as only a tenant from month to month. If that is so, it would only be entitled to 15 days notice for determining the lease. As the petitioner company does not qualify as a lawful lessee in terms of the law laid down by the Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited*¹, we are of the opinion that it would not be entitled to protect its possession beyond the notice period as aforestated.

We accordingly dismiss the writ petition granting time to the petitioner company to vacate the premises of the secured asset on or

¹ (2014) 6 SCC 1

before 30.09.2017. In the event the petitioner fails to do so, it shall be open to the respondent company to initiate further measures in accordance with the due procedure to secure the possession of the secured asset pursuant to the order dated 19.02.2017 passed by the learned Chief Judicial Magistrate, Nalgonda, in CrI.M.P.No.6 of 2016.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

JUSTICE SANJAY KUMAR

Date: 25.07.2017

JUSTICE Dr. SHAMEEM AKTHER,

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