THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No. 34784 of 2017

ORDER: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

The relief sought for in this writ petition is to declare the notice issued under Sections 13 (2), 13 (4) and 14 (1 & 2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), for taking possession of the subject property without due process of law and pursuant to the order passed by the Chief Metropolitan Magistrate, Cyberabad at LB Nagar in Crl.M.P.No. 676 of 2017 dated 4.9.2017 under Section 14 (1 & 2) of the SARFAESI Act, as illegal, void, arbitrary and in contravention of the SARFAESI Act.

The petitioner claims to be the tenant of the second respondent who had mortgaged the subject property for obtaining a loan from the first respondent-bank. The petitioner relies on a rental deed said to have been executed on 30.12.2014 whereby the subject property was leased in his favour for a period of 11 months commencing from 1.1.2015 subject to further extension every 11 months, orally thereafter, for another such period. The petitioner claims to be in possession of the subject property ever since 30.12.2014. His grievance is that the impugned proceedings, under Sections 14 (1 & 2) of the SARFAESI Act, was passed by the Chief Metropolitan Magistrate without putting him on notice, and without giving him an opportunity of being heard.

It is not in dispute that the subject rental deed has not been registered. Accepting the petitioner's claim, that he has been in possession of the subject property ever since 30.12.2014, would mean that the lease has been continued for a period exceeding 33 months.

In *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd and others* [1] the Supreme Court observed:-

> "…………….. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are *bona fide* lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. **Section 107 of the Transfer of Property Act provides that a lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made 'only by a registered instrument' and all other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than an year from the date of instrument or from the date of delivery of possession in his favour by the landlord…………………..**"
> (emphasis supplied)

As noted hereinabove, the petitioner claims to be in possession of the secured asset for a term exceeding one year from the date the rental deed was executed in his favour. He was therefore obligated, in view of the judgment of the Supreme Court in *Harshad Govardhan*

[1] 2015 (2) ALT (Crl.) 306 (SC)

Sondagar, to produce a registered rental/lease deed in his favour; and it is only if he had produced such a registered instrument, was he entitled to resist an order being passed under Section 14 of the SARFAESI Act directing delivery of possession. In the present case the rental deed is not registered. The law declared by the Supreme Court, in *Harshad Govardhan Sondagar,* would not, therefore, require the Chief Metropolitan Magistrate to defer passing an order till the petitioner is heard in the matter.

Sri P. Ramachandran, learned counsel for the petitioner would, however, place reliance on the judgment of the Supreme Court in *Vishal N Kalsaria Vs. Bank of India and others* [2]. In the said judgment the Supreme Court observed:-

> "……**The decision of this Court rendered in the case of Harshad Govardhan Sondagar cannot be understood to have held that the provisions of the SARFAESI Act override the provisions of the Rent Control Act**, and that the Banks are at liberty to evict the tenants residing in the tenanted premises which have been offered as collateral securities for loans on which default has been done by the debtor/landlord.
>
> As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of ***Harshad Govardhan Sondagar***. We have not stated anything to the effect that the tenancy created after mortgaging the property must necessarily be registered under the provisions of the Registration Act and the Stamp Act………" (emphasis supplied)

The aforesaid observations, in *Vishal N Kalsaria,* were made in a case where protection under the Rent Control Act was claimed; and it is in this context that the Supreme Court observed that the law

[2] (2016) 3 SCC 762

declared in *Harshad Govardhan Sondagar* could not be understood as the provisions of the SARFAESI Act over-riding the provisions of the Rent Control Act. It is not even the case of the petitioner herein that he is protected under the provisions of the Rent Control Act. Reliance placed, on *Vishal N Kalsaria,* is therefore misplaced.

Sri P. Ramachandran, learned counsel for the petitioner, would request this Court to at least grant the petitioner time till 30.4.2018 to vacate the subject property contending that the petitioner's children are studying in nearby schools. Any such request for indulgence can only be addressed to the 1st respondent-bank, and would not justify interference by this Court in proceedings under Article 226 of the Constitution of India unless the provisions of the SARFAESI Act, or the Rules made thereunder, have been violated.

Leaving it open to the petitioner to approach the first respondent-bank requesting them not to evict him till 30.4.2018, the writ petition fails and is, accordingly, dismissed. Miscellaneous Petitions, if any pending, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

Dt.25.10.2017
Kr/Gsn