

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION NO.37318 of 2017

ORDER: (per SK,J)

The petitioner claims leasehold rights in relation to the secured asset belonging to the borrower. His prayer in this writ petition reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus, directing the respondents more particularly the 1st respondent herein to permit the petitioner to run the function hall "Sri Anantha Laxmi Narasimha Gardens located at Sy.No.239/AA/1, admeasuring Ac.1.15 guntas at Venkateshwara Colony, Yenogonda Village till 5.3.2018 for the functions and marriages booked already without reference to Section 14 application filed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 order dated 10.10.2017 made in CRLMP.No.21 of 2017 on the file of the Chief Judicial Magistrate, Mahabubnagar in the interest of justice and consequently to take back the physical possession from 5.3.2018 and pass such other order or orders as are deemed fit and proper in the circumstances of the case.'

Sri P.Sri Harsha Reddy, learned counsel for M/s. Asset Reconstruction Company (India) Limited, Mumbai, the first respondent, the assignee of the secured creditor, the Karur Vyshya Bank, Hyderabad, would inform this Court that the demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), was issued to the borrower on 05.01.2016 but the borrower thereafter executed a lease in favour of the petitioner on 25.11.2016.

Section 13(13) of the SARFAESI Act states to the effect that no borrower shall, after receipt of the notice under Section 13(2) thereof, transfer by way of sale, lease or otherwise any of the secured assets referred to in the said notice, without prior written consent of the secured

creditor. The lease deed placed before this Court does not indicate that the consent of the secured creditor or the assignee was obtained prior to its creation.

In the light of the statutory bar under Section 13(13) of the SARFAESI Act, the very lease executed in favour of the petitioner is unlawful. The petitioner therefore cannot claim any legal rights thereunder.

The writ petition is devoid of merit and is accordingly dismissed.

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

No order as to costs.

Date:08.11.2017

GJ



SANJAY KUMAR,J

J.UMA DEVI,J