

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No. 1516 OF 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is a tenant in possession of the premises offered as security by the third respondent concern for availing loan facilities from the State Bank of India, the first respondent herein. His prayer in this writ petition reads as under:

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a writ or order or direction, more preferably in the nature of Writ of Mandamus, declaring the action of the 1st respondent in issuing possession notice dated 08-01-2018 to take possession of the premises known as Rithwik Enclave bearing Plot No.1, situated at Vedayapalem, Nellore immediately and forcing the petitioner to vacate the premises immediately, without giving any breathing time to the petitioner, as highly illegal, arbitrary and unconstitutional, being violative of Articles 14, 19(i)(g) and 21 of the Constitution of India and also violative of Principles of natural justice, principles of promissory estoppel and doctrine of legitimate expectation and consequently direct the respondent No.1 herein not to take any coercive steps to take possession of the complex known as Rithwik Enclave constructed on Plot No.1, situated at Vedayapalem, Nellore Town, Nellore District, housing M/s. Minerva Bar and Restaurant, in pursuance of the possession notice dated 08-01-2018 issued by the 1st respondent, without giving reasonable time to the petitioner to search for alternate accommodation, in the interest of justice and pass such further or other order or orders that may deem fit and proper in the circumstances of the case.”

Sri Paravasthu Krishna, learned counsel representing Sri B. Vijaya Bhasker, learned counsel for the petitioner, would contend that the possession notice dated 08.01.2018 issued by the State Bank of India under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') read with Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), notified the general public that the Bank took possession of the subject property. He would further submit that the legal notice dated 29.12.2017 issued by the Bank to the petitioner and others demonstrates that the Bank threatened to take possession of the subject property. He would therefore assail the possession notice dated 08.01.2018 on the ground that it represents

coercive measures sought to be taken by the Bank against the petitioner/tenant.

Sri Ambadipudi Satyanarayana, learned counsel for the State Bank of India, would however inform this Court that the Bank would follow the due procedure laid down by law as spelt out by the Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited*¹ and *Vishal N. Kalsaria v. Bank of India*². He would further state that the question of taking forcible possession pursuant to the impugned possession notice dated 08.01.2018 would not arise. He would also point out that even the legal notice dated 29.12.2017 issued by the Bank informed the petitioner and others that the Bank would be taking possession of the subject property as per law.

In the light of the stand put forth on behalf of the Bank, we find no grounds to entertain this writ petition. Mere issuance of a possession notice under Rule 8(1) of the Rules of 2002 would not empower the secured creditor to forcibly take possession of the secured asset in the event the person in possession thereof, be it the borrower or a tenant, being unwilling to voluntarily handover the possession. The secured creditor would necessarily have to take recourse to Section 14 of the SARFAESI Act in such a situation.

The writ petition is accordingly dismissed making it clear that the State Bank of India is bound to follow the due procedure laid down by law in the event it seeks to take further steps as against the subject property. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 22.01.2018

JUSTICE P. KESHAVA RAO

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¹ (2014) 6 Supreme Court Cases 1

² (2016) 3 Supreme Court Cases 762