

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.2043 OF 2019

DATED :05.02.2019

Between :

Mohammed Arif Khan S/o.Late Mohammed Rehmath Khan,
Aged about 60 yrs, Occu : Business,
R/o.High B6, Santoshnagar Colony, Saidabad,
Hyderabad.

.. Petitioner

And

IDBI Bank Limited,
Rep., by its Authorized Signatory,
Retail Asset Centre,
Ground Floor, Mahavir House,
Near Police Commissioner Office,
Basheerbagh, Hyderabad & another.

.. Respondents

This court made the following :

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ORDER :

Heard learned counsel for the petitioner. None appeared for the respondents.

2. Petitioner claims to be the tenant of Plot No.69, Sy.No.59 Part, Ward No.8, Block No.6, Chaitanya Nagar, Hyderabad. The subject premises comprises of Ground + two upper floors. According to petitioner, 2nd respondent is the owner of premises and he entered into lease agreement with 2nd respondent on 15.02.2018. In terms thereof, lease was granted, possession was handed over and petitioner is in possession of the said property. The premises is being used for running hostel and students are already enrolled. According to petitioner, at this stage, a notice is affixed on the property displaying that the property is mortgaged to 1st respondent-Bank. Petitioner now alleges that the 1st respondent is threatening to evict the petitioner from the said premises.

3. The averments in the affidavit filed in support of the writ petition would disclose that lease agreement was entered into on 15.02.2018 and that petitioner filed O.S.No.2034 of 2018 on the file of II Senior Civil Judge, R.R.District at L.B.Nagar, to grant perpetual injunction against the 2nd respondent herein and injunction was granted by the trial Court on 12.10.2018. Petitioner now alleges that inspite of the injunction granted, he is sought to be evicted.

4. Learned counsel for the petitioner would submit that petitioner was not informed of mortgaging the property when the lease was entered into and the owner of property misled him. He further submits that after obtaining the lease he has developed property, enrolled the students, collected money from them and students have joined in the hostel. Therefore, at this stage, if the petitioner is evicted, grave prejudice would be caused to him and the students enrolled.

5. The averments are silent as to when the property was mortgaged. However, the notice affixed on the property itself would disclose that the said property was mortgaged. If the petitioner was not informed of mortgage of property by the owner of property, it is for the petitioner to work out his remedies. As a consequent to mortgaging the property, the first charge on the property vests on the 1st respondent and it is for the 1st respondent to enforce terms of mortgage. Further petitioner has an effective and efficacious remedy under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'the SARFAESI Act'). Without availing the remedy available under the Act, this writ petition is filed.

6. For the aforestated reasons the Writ Petition is dismissed, leaving it open to the petitioners to work out his remedies as available in law. Pending miscellaneous petitions shall stand closed.

05th February, 2019
Rds

P.NAVEEN RAO,J