

**THE HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.2078 OF 2019

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioners have come up with the above Writ Petition challenging the order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002').

2. Heard Mr. Satyanarayana Prasad, learned senior counsel appearing for the petitioners and Mr. M. Srikanth Reddy, learned counsel appearing for the 1st respondent bank.

3. The 1st petitioner herein is the owner of a house property and admittedly he offered the said property to the 1st respondent bank as security for the various credit facilities offered by the bank to the 2nd respondent company. According to the 1st petitioner, the house property comprises of ground plus two floors and he is in occupation of the first and second floors while the ground floor is stated to be in occupation of the 2nd petitioner, by virtue of an unregistered lease agreement, dated 30.01.2018.

4. After the account of the 2nd respondent became a Non-Performing Asset, the bank initiated steps by first issuing a demand

notice under Section 13 (2) of the Act, 2002 followed by a possession notice under Section 13 (4) of the Act, 2002 on 20.09.2018. It is not known whether the 2nd respondent has challenged the possession notice before the Debts Recovery Tribunal (DRT).

5. However, contending that the 2nd respondent is negotiating with the bank for a one time settlement and also contending that there is a likelihood of the entire loan being settled, the 1st petitioner came up with the above writ petition challenging the order passed by the Chief Metropolitan Magistrate under Section 14 of the Act, 2002.

6. In the course of hearing of the writ petition, when it came up for orders as to admission, the learned senior counsel for the petitioners placed a reliance upon the unregistered lease agreement dated 30.01.2018. When it was pointed out that the said lease agreement typed on Non-judicial Stamp Paper of rupees hundred was inadmissible in evidence, the learned senior counsel stated that the only thing that the 1st petitioner wanted was some time, for the borrower to settle the dues and that if it did not materialise, the 1st petitioner cannot have any valid ground.

7. However, finding that the 2nd petitioner was in possession, even according to the 1st petitioner, we directed the 1st petitioner to bring on record the 2nd petitioner who is stated to be in possession of

the ground floor. Accordingly, I.A.No.2 of 2018 was filed for impleading the 2nd petitioner. The same was allowed by us today.

8. Thus, there are two petitioners before us, one claiming to be in possession of the first and second floor and another claiming to be in possession of the ground floor of the secured asset. The lease agreement relied upon by the petitioners, though dated 30.01.2018, seeks to create a lease for a period of two years w.e.f. 31.03.2018 up to 30.03.2020. Therefore, the same is inadmissible in evidence, as it is unregistered and is typed on stamp paper of just rupees hundred. The creation of the lease was obviously after the creation of the mortgage in favour of the bank.

9. Moreover, the monthly rent fixed there-under, even according to the 1st petitioner is Rs.50,000/- (Rupees fifty thousand only). Therefore, the 2nd petitioner is not a statutory tenant protected under the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Therefore, at the most, even if the lease is true and valid, the 2nd petitioner will be entitled only to a notice of fifteen (15) days, in terms of the provisions of Section 106 (1) of the Transfer of Property Act, 1882. Even if we look into the lease deed relied upon by the petitioners (despite the same being inadmissible in evidence), the lease was terminable under Clause - 15, by a notice of duration of sixty (60) days. Therefore, the 2nd petitioner can at the most have two months time to vacate and handover vacant possession.

If, in the meantime, the 2nd respondent settles the entire loan account, the petitioners may stand to benefit.

10. Therefore, the writ petition is disposed of granting time to the petitioners up to 30.04.2019 to quit and deliver vacant possession of the property to the bank. If the petitioners fail to do so, the warrant issued by the Chief Metropolitan Magistrate may be executed. Till then, the warrant issued by the Chief Metropolitan Magistrate to the Advocate Commissioner shall stand extended. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

DR. SHAMEEM AKTHER, J

February 18, 2019
Mgr