

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HONOURABLE SRI JUSTICE P. KESHA RAO**

**WRIT PETITION No.4683 OF 2019**

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

Challenging the conditions imposed by the Debts Recovery Tribunal (DRT) for the grant of stay of dispossession, a Company claiming to be a Lessee in respect of the secured asset has come up with the above writ petition.

2. Heard Mr. K. Kannan, learned counsel appearing on behalf of Mr. T. Sridhar, learned counsel for the petitioner. Mr. A. Satyanarayana, learned counsel takes notice for the 1<sup>st</sup> respondent - Asset Reconstruction Company.

3. Apparently and admittedly, the 2<sup>nd</sup> respondent availed credit facilities from the UCO Bank and mortgaged a property belonging to them. The account of the 2<sup>nd</sup> respondent became a Non-Performing Asset, forcing the bank to initiate measures under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002').

4. It appears that the UCO Bank assigned the debt in favour of the 1<sup>st</sup> respondent herein and the 1<sup>st</sup> respondent proceeded with the measures for recovery. The 1<sup>st</sup> respondent also secured an order from the Chief Metropolitan Magistrate, Cyberabad in Criminal M.P. No.765 of 2018 under Section 14 of the Act, 2002.

5. Upon coming to know of the same, the petitioner herein filed an application in S.A. No.84 of 2009 on the file of the DRT-II, Hyderabad under Section 17 of the Act, 2002. The petitioner also filed I.A. No.967 of 2019 for stay of dispossession.

6. On 27.02.2019, the DRT passed a conditional order directing the petitioner to deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs only) within a week with a further direction to deposit the monthly rent of Rs.7,50,000/- (Rupees seven lakhs and fifty thousand only) every month from March, 2019.

7. Aggrieved by the condition so imposed by the Tribunal, the petitioner has come up with the above writ petition contending that a direction to a Lessee to deposit a huge amount of Rs.50.00 lakhs is onerous and that such a condition was highly arbitrary.

8. But, at the outset it should be pointed out that the above writ petition is not maintainable for the simple reason that the impugned order was passed by the Tribunal on the basis of a memo filed by the counsel for the petitioner. It is stated in the impugned order as follows:

“The counsel for the petitioner filed a memo dated 27.02.2019 that the petitioner is ready to deposit a *lump sum* amount of Rs.50,00,000/- (Rupees fifty lakhs only) with the respondent within four (04) weeks from today.”

9. Once the counsel for the petitioner has invited an order on the basis of a memo filed by him, it is not open to the petitioner to challenge the order so passed. It is not even the case of the petitioner that their counsel did not have the authority to file such a memo. Even if the

petitioner disowns their counsel and challenges his authority, they can do so only before the Tribunal. But, in this case the petitioner is not even disowning his counsel and questioning his authority.

10. Though the petitioner had not filed the copy of the memo in the material papers originally filed with the writ petition, we directed the learned counsel for the petitioner to file the copy of the memo that was filed by them before the Tribunal. Accordingly, the learned counsel for the petitioner today produced a copy of the memo. The memo is hand-written by the counsel for the petitioner. It reads as follows:

“Memo

May be please your honour,

“It is humbly submitted that the above applicant is a tenant and filed the above S.A. challenging the advocate commissioner warrant. As per the instructions taken from the applicant, I hereby inform this Hon’ble Tribunal that the applicant is ready to deposit Rs.50,00,000/- (Fifty Lakh rupees only) with the bank within 4 weeks from today i.e., 27.02.2019 in the above said S.A.

Hence, this memo.”

Place: Hyderabad

Date: 27.02.2019.

Sd/-

Counsel for applicant”

11. Therefore, it is too much on the part of the petitioner to take exception to the condition imposed by the Tribunal for the grant of stay. A person, who invites an order on the basis of an undertaking, cannot later on turn around and challenge the very order.

12. However, the learned counsel for the petitioner contended that the Rule that a party is bound by the undertaking given by his client in a Court, is subject to “just exceptions”. Reliance is placed by the learned

counsel for the petitioner in this regard, on the judgment of the Supreme Court in **BSNL v. Subash Chandra Kanchan**<sup>1</sup>. It was held in paragraph No.16 of the said decision that a concession made by an advocate is binding on the party whom he represents and that they cannot at a later stage resile there-from, except under ‘just exceptions’.

13. But, what constitutes “just exceptions” is not spelt out in the decision. All that the Supreme Court has said in **Subash Chandra Kanchan**<sup>1</sup> is that a concession made by a counsel on a legal question, may not be binding on his client. In this case, what was agreed before the Tribunal was not even a concession but an offer made for the purpose of securing a stay of dispossession. Therefore, the case will neither fall under the category of “exception” nor under the category of “just exception”, but would fall only under the category of “unjust attempt” to wriggle out of an obligation.

14. The learned counsel for the petitioner also relied upon another judgment of the Supreme Court in **Niyaz Ahmad Khan v. Mahmood Rahmat Ullah Khan**<sup>2</sup>, for the purpose of contending that conditions cannot be prescribed arbitrarily by Courts. But, the said decision did not arise out of an offer made by the tenant. The said decision arose out of a condition imposed by a Court of its own accord directing the enhancement of rent by 48 times. A case where the Court imposes onerous conditions in an arbitrary manner would stand on a different footing than a case where a condition is imposed on the basis of an undertaking given by a party. Therefore, the above writ petition is not

---

<sup>1</sup>. (2006) 8 SCC 279

<sup>2</sup>. (2008) 7 SCC 539

maintainable, as it seeks to upset a conditional order passed by the Tribunal on the basis of an undertaking given by the petitioner themselves.

15. In any case, what is relied upon by the petitioner to show that they are a Lessee of the secured asset is a lease agreement typed on a stamp paper of the value of rupees one hundred. The lease agreement is dated 20.05.2015. The lease is of an immovable property. The term of the lease is stated to be 60 months from 01.06.2015 up to 31.05.2020. The monthly rent stipulated in the lease was Rs.5.00 lakhs per month for the period up to 31.12.2015 and a sum of Rs.6.00 lakhs per month for the period from January to May, 2016 and a sum of Rs.7.50 lakhs per month for the period from 31.05.2017. Therefore, the agreement required payment of a proper stamp duty and was also compulsorily registrable. But the lease agreement is insufficiently stamped and also unregistered and hence it is not even admissible in evidence in any Court. Despite this fact the Tribunal chose to grant a concession, allowing the petitioner to stay in the property subject to payment of an amount agreed to by the petitioner themselves. Therefore, the petitioner cannot make a big hue and cry.

16. One more point that stares at the face of the petitioner is that the lease agreement appears to have been entered into, after the issue of a demand notice under Section 13 (2) of the Act, 2002 dated 25.1.2014 and a possession notice under Section 13 (4) of the Act, 2002 dated 5-6-2014. Therefore, the transaction of lease is null and void in view of Section 13 (13) of the Act, 2002. Hence, the petitioner should

be happy with the conditional order of stay impugned in this writ petition and the present writ petition is completely devoid of merits and accordingly, it is dismissed. However, in the circumstances of the case, 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**

---

**P. KESHA VA RAO, J**

**March 18, 2019**

Mgr

