

HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.13462 of 2019

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

1. This Writ Petition was filed by one Smt K.Padmaja claiming to be a tenant in the premises of the property owned by respondent No.4, which was offered by him to the Union Bank of India, respondent No.1, as security for availing loan facilities.

2. Owing to the default committed by respondent No.4 in loan repayment, respondent No.1 bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). An order under Section 14 of the SARFAESI Act came to be passed by the learned Chief Metropolitan Magistrate, Hyderabad, on 16.11.2018 in CrI.M.P.No.6387 of 2018 authorising delivery of possession of the subject secured asset to the bank. Assailing the order dated 16.11.2018 (wrongly mentioned as 18.01.2019, which is the date on which the warrant of commission was returnable), the petitioner approached this Court.

3. This Writ Petition was listed for admission before this Court on 03.7.2019 and upon hearing the arguments of Sri C.B.Ramamohan Reddy, learned counsel for the petitioner, and Sri Maruti Jadhav, learned counsel representing M/s. Pearl Law Associates, learned counsel for respondent No.1 bank, this Court directed the petitioner to submit an undertaking that she would vacate the premises of the secured asset if given sufficient time. This undertaking was called

for taking note of the fact that the rental agreement dated 27.4.2009 under which the petitioner claimed leasehold rights was an unregistered one. Sri Maruti Jadhav, learned counsel for respondent No.1 bank, also pointed out that the lease itself was suspect as the said lease was for a period of 12 years commencing from 27.4.2009, but there was no escalation clause in the agreement with regard to enhancement of rents on periodic basis. This Court accordingly directed the matter to be listed on 05.7.2019 under the caption 'For Orders'.

4. The matter was listed before this Court on 05.7.2019 and an adjournment was sought on behalf of the petitioner. As no undertaking had been filed by the petitioner to the effect that she would vacate the premises of the secured asset if given sufficient time, the matter was adjourned. On 15.7.2019, Sri Maruti Jadhav, learned counsel, brought it to the notice of this Court that having filed this Writ Petition, the petitioner surreptitiously approached the Debts Recovery Tribunal-II, Hyderabad (for short 'the Tribunal'), by way of Securitization Application No.225 of 2019 so as to secure interim orders. He sought time to place the record relating thereto before this Court.

5. Today, Sri Maruti Jadhav, learned counsel, produced a copy of S.A.No.225 of 2019 filed by the petitioner before the Tribunal, wherein she assailed the order dated 16.11.2018 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.6387 of 2018, which was already subjected to challenge before this Court in the present Writ Petition. Learned counsel would

point out that in para 8 of the Securitization Application No.225 of 2019, the petitioner declared that the matter regarding which the application was filed was not pending before any Court of law. This was clearly a false statement inasmuch as the petitioner had already filed the present Writ Petition before this Court. Be it noted that the Writ Petition was filed before this Court on 02.7.2019, whereas the subject S.A. was filed on 10.7.2019. It appears that the Tribunal considered the interlocutory application filed by the petitioner in the said S.A., being I.A.No.3362 of 2019, and granted interim stay of dispossession of the petitioner subject to conditions.

6. The aforestated facts manifest and demonstrate clear abuse of process by the petitioner. Having approached this Court in the first instance and having failed to secure favourable orders, the petitioner deliberately chose to suppress the filing of this Writ Petition and clandestinely approached the jurisdictional Tribunal so that she could secure interim stay of dispossession.

7. It is not open to a litigant to approach a Court of law or a Tribunal with unclean hands. In such circumstances, we are of the opinion that the petitioner must be visited with exemplary costs for having resorted to such a practice.

8. The Writ Petition is accordingly dismissed with exemplary costs of Rs.10,000/- (Rupees Ten thousand only) which shall be paid to the Telangana State Legal Services Authority, Hyderabad, within one week from today. A copy of this order along with the proof of payment of costs shall be produced by the petitioner before the Tribunal. It is for the Tribunal to take note of these circumstances

when it takes up S.A.No.225 of 2019 for further hearing and act accordingly.

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

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

22nd July, 2019
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