

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

WRIT PETITION NO.24920 OF 2019

ORDER

(Per Honourable Sri Justice M.S.Ramachandra Rao)

Heard the learned counsel for the petitioner and Sri B.S.Prasad,
learned counsel for the 1st respondent.

2. In this Writ Petition, order dt.05.11.2019 of the Debts Recovery Tribunal-I at Hyderabad in S.A.No.5 of 2019 is impugned.

3. The petitioner herein is a lessee of the property owned by a guarantor/3rd respondent of the credit facilities granted by the 1st respondent to the 2nd respondent. He had created a mortgage in favour of the 1st respondent on 09.05.2014 in respect of the subject property.

4. Thereafter, the 3rd respondent entered into a lease with the petitioner on 31.01.2017 under a registered lease deed dt.03.05.2017 for 10 years.

5. Subsequent thereto, the account of the borrower was classified as NPA and notice dt.04.05.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act") was issued to the borrower.

6. Subsequently, notice under Section 13(4) of the SARFAESI Act was issued on 18.07.2018 by the 1st respondent bank intending to take possession of the property and the 1st respondent bank obtained an order on 16.11.2018 under Section 14 of the SARFAESI Act to take possession of the property from the Chief Metropolitan Magistrate, Hyderabad in Crl.M.P.No.6937 of 2018.

7. This was questioned by the petitioner in S.A.No.5 of 2019.

8. In the impugned order dt.05.11.2019, the Tribunal came to a finding that the lease granted in favour of the petitioner by the 3rd respondent is not in conformity with Section 65A of the Transfer of Property Act, 1882. But the Tribunal does not say which particular condition in Section 65A of the Transfer of Property, 1882 was not fulfilled by the petitioner and the 3rd respondent. When there are several conditions mentioned in Section 65A of the Transfer of Property Act, 1882, it was incumbent on the part of the Tribunal to mention which particular condition specified in Section 65A of the Transfer of Property Act, 1882 was not complied with by the lease deed entered into by the petitioner with the 3rd respondent.

9. That apart, it also came to the conclusion that the judgment of the Supreme Court in **Vishal N.Kalsaria Vs. Bank of India and others**¹ had been overruled in Criminal Appeal No.1371 of 2019 in **Bajarang**

¹ (2016) 3 SCC 762

Shyamsunder Agarwal Vs. Central Bank of India². But a reading of the latter judgment shows that only one particular portion of the judgment in **Vishal N.Kalsaria¹** dealing with the interpretation of the non obstante clause contained in Section 35 of the SARFAESI Act was set aside. But as regards tenancy which had come into existence after the creation of mortgage, the Supreme Court reiterated that if such tenancy was created prior to issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the Transfer of Property, 1882. Therefore, on this point, the Supreme Court in **Bajarang Shyamsunder Agarwal²** did not overrule the judgment in **Vishal N.Kalsaria¹**.

10. In this view of the matter, the impugned order is set aside and the matter is remitted back to the Debts Recovery Tribunal-I at Hyderabad for fresh consideration in order to record a finding as to how, according to the Tribunal, Section 65A of the Transfer of Property Act, 1882 was violated by the petitioner and the 3rd respondent, by executing the lease deed dt.31.01.2017 between them.

11. Accordingly, the Writ Petition is allowed; order dt.05.11.2019 in S.A.No.5 of 2019 of the Debts Recovery Tribunal-I at Hyderabad is set aside; the said S.A. is remitted to the said Tribunal for fresh consideration to decide the above point as expeditiously as possible, preferably within two months from the date of receipt of a copy of this

² 2019 LawSuit(SC) 1596

order; and pending disposal of the matter by the Tribunal afresh, the petitioner shall not be dispossessed from the subject property.

12. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

13th NOVEMBER, 2019

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