

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 24389 of 2017

ORDER: (*per V. Ramasubramanian, J*)

1) Challenging an attempt made by the advocate-commissioner appointed 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 "the Securitization Act"), to take possession of a property, the borrowers have come up with the above writ petition.

2) Heard Dr.K.Lakshmi Narasimha, learned counsel for the petitioners and Mr.A.Krishnam Raju, learned counsel for the bank.

3) It appears that the petitioners availed credit facility from the respondent-bank and committed default. After the account became a non-performing asset, a demand notice under Section 13 (2) of the Securitization Act was issued on 30.07.2011 followed by a possession notice dated 09.12.2011 under Section 13 (4) of the Securitization Act.

4) The bank filed an application under Section 14 of the Securitization Act in CrI.M.P.No.1190 of 2017 in which an order was passed appointing an advocate-commissioner on 13.06.2017. Challenging the said order the petitioner filed S.A.No.252 of 2017 on the file of the Debts Recovery Tribunal, Hyderabad under

Section 17 of the Securitization Act. The Debts Recovery Tribunal passed a conditional order which reads as follows:

“Having regard to the facts and circumstances of the case and in the interest of justice, interim stay can be granted on certain conditions. Accordingly, there shall be an interim stay of all further proceedings by the Respondent Bank, including taking physical possession of the petition schedule property pursuant to the orders passed by the Ld.CMM, Hyderabad in CrI.M.P.No.1190/ 2017 and the Possession Notice dated 09.12.2011, subject to the petitioner depositing 25% of the total outstanding dues in two instalments – first instalment of 10% amount is directed to be deposited within one week from today and the second instalment of 15% amount within two weeks thereafter, directly with the respondent bank. In the event of failure of compliance of any of the aforesaid conditions, interim stay shall stand vacated and the respondent bank shall be at liberty to proceed further in accordance with law.”

5) It appears that after the advocate-commissioner failed to execute the warrant, the Chief Metropolitan Magistrate appointed another advocate-commissioner by order dated 14.07.2017. Challenging that order, the petitioner came up with the above writ petition.

6) On 24.07.2017, when the writ petition came up for orders as to admission, this Court passed an interim order which reads as follows:

“From the material placed on record, we find that the Magistrate, who entertained the application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was not even informed of the presence of tenants in portions of the secured asset and an order was passed straight away

directing the Advocate Commissioner to give 15 days time to execute the warrant against them. This procedure is contrary to the law laid down by the Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited* [(2014) 6 SCC 1]. It is also alleged that the Bank resorted to highhanded arbitrary action in seeking to secure possession of the secured asset despite the petitioners offer to tender a sum of Rs.6,00,000/- by way of Bankers Cheques.

The W.P.M.P. is accordingly ordered as prayed for. The first respondent Bank shall forthwith redeliver possession of the subject premises.

Bankers Cheques bearing Nos.087456 and 087457 drawn on State Bank of India, Shalivahananagar Branch, dated 15.07.2017 for a sum of Rs.3,00,000/- each are produced before this Court and the same are handed over to Sri A. Krishnam Raju, learned counsel for the first respondent Bank in open Court.

The petitioner shall however deposit 25% of the total outstanding dues in terms of the order passed by the Debts Recovery Tribunal, Hyderabad, within the time stipulated. Due credit shall be given to the sum of Rs.6,00,000/- which is now handed over by way of Bankers Cheques to the learned counsel for the first respondent Bank.”

7) Pursuant to the aforesaid order, the bank appears to have handed over possession back to the petitioners. Therefore at this stage, the question of adjudicating the correctness of the order of the Chief Metropolitan Magistrate in appointing a fresh advocate-commissioner does not arise. In any case the warrants issued to two different advocate-commissioners may be different, but the order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitization Act is only one. Therefore, the same can be

the subject matter of a dispute only before one forum and not before two forums.

8) Be that as it may, the petitioners have now complied with the conditional order passed by the Debts Recovery Tribunal and has also secured back the possession of the property from the advocate-commissioner pursuant to the interim order passed by this Court. Therefore, at this stage, the dismissal of the writ petition on any technical ground should not upset the apple cart.

9) But we cannot also omit to take note of the fact that the measures under Section 13 (4) of the Securitization Act were initiated way back in 2011. According to the learned Standing Counsel for the bank, the petitioners are very prompt in recovering the rents from the tenants, but preventing the bank in recovering their dues.

10) Therefore, the Writ Petition is disposed of directing the *status quo* to be maintained with respect to possession alone and also directing the Debts Recovery Tribunal to dispose of the S.A.No.252 of 2017 within a period of two months from the date of receipt of a copy of this order. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 6, 2019
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Date: 06.03.2019