

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Delivered on: 07-02-2019

Coram :

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHA RAO**

Writ Petition No.24400 of 2018

Between:

M/s. Seating World Extension, having its regd.
Office at 1st floor, M.J.Towers, 8-2-698, Road No.12,
Banjara Hills, Hyderabad, rep.by its proprietor
Sri Girish Manghanani S/o Kushaldas.

.. Petitioner

Vs.

1. The State Bank of India, Stressed Assets Management
Branch-II, 1st Floor, TSRTC, Kachiguda, Hyderabad.
2. M/s. Meena Jewellers and Diamonds Pvt. Ltd.,
rep.by its Managing Director - respondent No.3,
having its office at 5-9-58/1, shop No.201/A,
Babukhan Estate, Hyderabad
3. Umesh P. Jethwani S/o Purshottam Jethwani,
aged about 51 years, Occ: Business,
R/o 5-9-30/1, Chandan Bhavan, Basheerbagh, Hyd. .. Respondents

For Petitioner : Mr. Vedula Venkata Ramana,
Senior Counsel for
Mr. T.V. Kalyaan Singh,

For Respondent No.1 : Mr. M. Srikanth Reddy,
Learned counsel.

For Respondent Nos.2 & 3 : - -

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.24400 OF 2018

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

Questioning the correctness of an order passed by the Debts Recovery Tribunal (DRT), dismissing their application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002'), a person claiming to be a lessee of the secured asset has come up with the above Writ Petition.

2. Heard Sri Vedula Venkata Ramana, learned senior counsel appearing on behalf of Sri T.V. Kalyaan Singh, learned counsel for the petitioner and M. Srikanth Reddy, learned counsel appearing for the 1st respondent bank.

3. The 2nd respondent herein viz., M/s. Meena Jewellers and Diamonds Private Limited and two of its group companies availed credit facilities from the 1st respondent bank. They committed default in repayment of the loan outstandings and the 1st respondent bank filed three independent applications in O.A. Nos.399, 401 and 402 of 2017 for recovery of the dues from the 2nd respondent and its group companies. The amounts sought to be recovered from the 2nd respondent and two of its group companies, as on the date of filing of the original applications viz., 04.06.2017, were as follows:

1. M/s.Meena Jewellers Pvt. Ltd., .. Rs.77,33,73,472.67
2. M/s.Meena Jewellers Exclusive Pvt.Ltd., .. Rs.76,92,25,664.78
3. M/s.Meena Jewellers & Diamonds Pvt.Ltd. .. Rs.76,18,34,636.54

4. The 3rd respondent herein is the Managing Director of the 2nd respondent. The 3rd respondent and his wife were also sanctioned a term loan to the tune of Rs.4,64,00,000/- (Rupees four Crores and Sixty Four Lakhs only), under a loan sanction letter, dated 19.06.2010. As per the terms and conditions of the loan sanction letter, the term loan was to be repaid in 75 Equated Monthly Instalments (EMIs) commencing from July, 2010. The loan was to be secured by the mortgage of the property being a commercial complex comprising of two floors, admeasuring an extent of 15712 square feet in the building bearing Municipal Door No.8-2-698, Road No.12, Banjara Hills, Hyderabad. The loan sanction letter also contemplated that the property could be let out by the 3rd respondent and his wife under a Tripartite Agreement and that the rents received should be credited to the Lessors' account from which the EMIs were to be paid out.

5. In terms of the said loan sanction letter, dated 19.06.2010, the 3rd respondent and his wife entered into a Tripartite Agreement with a Lessee by name M/s. A.R. Fisheries Private Limited, on 19.06.2010. It appears that the said company A.R. Fisheries Pvt Ltd., already had a pre-existing lease with the 3rd respondent and his wife under a registered deed of lease from the year 2007. Therefore, the parties agreed that the lease arrangement that already existed between the 3rd respondent and his wife on the one hand and M/s. A.R. Fisheries Private Limited on the

other hand under the indenture of lease, dated 19.07.2007 and registered as document No.2581/2007 will become the tripartite arrangement. It is relevant to note that the registered lease was for a period of ten (10) years from 15.08.2007.

6. After the creation of the tripartite arrangement on 19.06.2010, the 3rd respondent and his wife also mortgaged the aforesaid property in favour of the bank by depositing the title deeds on 23.06.2010 with intent to create a mortgage. A Memorandum recording the creation of the mortgage was also executed on 24.06.2010.

7. The mortgage created by the 3rd respondent and his wife in respect of the aforesaid property was also extended to the loans and credit facilities advanced by the bank to the 2nd respondent and their group of companies.

8. The loan accounts of the 2nd respondent and one of their group companies became irregular and were classified as 'Non-Performing Assets' on 27.09.2016. The loan account of the third company was classified as a Non-Performing Asset on 28.10.2016. The term loan sanctioned on 19.06.2010 to the 3rd respondent and his wife under what came to be known as "Rent Plus Loan Account" was also classified as a Non-performing Asset on 28.02.2017.

9. Thereafter a demand notice under Section 13 (2) of the Act, 2002 was issued on 01.02.2017. Since the amounts demanded were not paid, the bank issued possession notice, dated 17.07.2017, under Section

13 (4) of the Act, 2002 and the possession notice was published in Newspapers on 18.07.2017.

10. Immediately upon the publication of the possession notice under Section 13 (4) of the Act, 2002, the writ petitioner herein filed an appeal in S.A. No.305 of 2017 before the DRT-I, Hyderabad under Section 17 of the Act, 2002 challenging the same. In their appeal, in S.A. No.305 of 2017, the petitioner herein claimed that they had taken the secured asset on lease in the year 2010-11 from the 3rd respondent and that the lease was extended from time to time and that under the present lease deed, dated 01.10.2017, the lease was for a period of fifteen (15) years with the monthly rent fixed at Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) per month. Therefore, the petitioner claimed in their appeal before the DRT that they became lessees in respect of the secured asset and that their rights are liable to be protected. The petitioner also claimed that the bank recognized their actual physical possession and even demanded the rent to be remitted directly to the bank. The petitioner claimed that in accordance with the demand made by the bank, they also remitted the rent for the months of July and August, 2017 into the bank. Therefore, the petitioner claimed in their appeal that they cannot be dispossessed.

11. In their appeal, S.A. No.305 of 2017, the petitioner herein placed reliance upon two lease deeds, dated 02.04.2011 and 01.01.2017. While the first agreement to lease, dated 02.04.2011, was intended to lease out the subject property for a period of nine (09) years

commencing from 02.04.2011 and expiring on 01.04.2020, the second lease deed, dated 01.01.2017, was for a period of fifteen (15) years commencing from 01.01.2017 and ending on 31.12.2031.

12. Both these lease deeds, dated 02.04.2011 and 01.01.2017, despite being lease deeds for periods exceeding twelve (12) months, were typed on Non-judicial Stamp Papers of Rs.100/- each. In other words, both the lease deeds were inadequately stamped and they were unregistered.

13. Both these lease deeds were obviously created for the purpose of defeating the rights of the bank. This is borne out by the following:

- (i) Immediately upon the sanction of the term loan, dated 19.06.2010, in favour of the 3rd respondent and his wife, both of them entered into a tripartite agreement on 19.06.2010 with the bank as well as a company, by name M/s. A.R. Fisheries Private Limited. Under this tripartite agreement, a registered deed of lease, dated 19.07.2017, that the 3rd respondent and his wife already had with the lessee M/s. A.R. Fisheries Private Limited became a tripartite arrangement w.e.f. 18.07.2010. The lease thereunder was to be for a period of ten (10) years from 15.08.2007 in favour of M/s. A.R. Fisheries Private Limited. Therefore, to the knowledge of the bank, M/s. A.R. Fisheries Private Limited was the only lawful occupant of the premises under the tripartite agreement and

under a registered lease deed. While so, we do not know how during the subsistence of the registered lease with M/s. A.R. Fisheries Private Limited, two lease deeds, dated 02.04.2011 and 01.01.2017, in favour of the writ petitioner herein came into existence.

- (ii) In any case, the agreement to lease, dated 02.04.2011, purported to confer lease-hold rights in favour of the writ petitioner for a period of ten (10) years commencing on 02.04.2011 and ending on 01.04.2020. Therefore, there was no necessity for the petitioner to have one more lease deed, dated 01.01.2017.
- iii) The lease deed, dated 01.01.2017, does not even make a whisper about the lease deed, dated 02.04.2011. Interestingly, the lease deed, dated 01.01.2017, fixes the date of commencement of lease as 01.01.2017, despite the fact that the lease deed dated 02.04.2011 fixes the date as something-else.
- iv) The lease deed dated 1-1-2017 is actually typed on a Non-Judicial stamp paper of the value of Rs.100. The stamp paper bears the date 2-1-2017 with the rubber stamp of the stamp vendor. But the preamble of the deed says that the document was executed on 1-1-2017. Therefore it is clear that the document was ante dated and created.

14. Therefore, it was obvious that the petitioner approached the DRT by way of an appeal in S.A. No.305 of 2017, on the basis of (i) two inadmissible documents; and (ii) documents that appeared on their face, to have been created for the purpose of the case.

15. Therefore, the Tribunal by an order, dated 10.07.2018, dismissed the appeal in S.A. No.305 of 2017, holding that the lease was created even admittedly after the creation of the mortgage and that therefore the failure of the petitioner and the Mortgagor to get the consent of the bank, vitiated the lease. The Tribunal relied upon the judgment of this Court in **P.V. Siva Prasad v. Asset Reconstruction Co. (India) Ltd., Mumbai**¹, which explained the decisions of the Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.**², and **Vishal N. Kalsaria v. Bank of India**³. Aggrieved by the dismissal of their appeal in S.A. No.305 of 2017, the petitioner has come up with the above writ petition.

16. Under the misapprehension that the petitioner was the lessee under the “Rent Plus Loan Agreement” entered into in June, 2010, this Court, while ordering notice in the writ petition, granted a small reprieve to the petitioner for a period of two months, by interim order, dated 17.07.2018. The interim order was continued subsequently and when the bank came up with an application for vacating the stay, the writ petition was taken up for disposal.

¹. 2017 (2) DRTC 317

². (2014) 6 SCC 1

³. (2016) 3 SCC 762

17. The main contention of Sri Vedula Venkata Ramana, learned senior counsel appearing for the petitioner is that the bank had already recognized the petitioner to be in lawful possession of the property under the “Rent Plus Loan Agreement” and also started receiving the monthly rents from the petitioner and that as a lessee lawfully in possession of the secured asset, the petitioner is entitled to protection under law. According to the learned senior counsel for the petitioner, any lessee, being a statutory tenant or otherwise, can be dispossessed only in accordance with due process of law and that the special procedure contemplated, under the Act, 2002, was available only as against the debtors and guarantors. The learned senior counsel placed reliance upon the letters of the bank, dated 20.07.2017 and 25.07.2017, advising the petitioner to deposit the rent into the bank account and the learned senior counsel also relied upon the opinion expressed by the Supreme Court in paragraph Nos.29, 30 and 36 of the decision in **Vishal N. Kalsaria**³. Placing reliance upon the decision of the Supreme Court in **B.L. Sreedhar v. K.M. Munireddy (dead)**⁴, the learned senior counsel also contended that having accepted the rent from the petitioner, the bank is estopped from questioning the right of the petitioner to continue to be in possession.

18. We have carefully considered the above submissions.

19. At the outset, it should be pointed out that a limited protection that was contemplated by the Supreme Court in **Vishal N. Kalsaria**³, is

⁴. AIR 2003 SC 578

available only in favour of the statutory tenants who are protected by the Tenancy Laws of the State, such as State Rent Control Acts. Even if the petitioner is presumed, for the sake of argument, to be a lessee lawfully in possession of the secured asset, they are not a protected tenant in terms of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The fact that the alleged tenancy in favour of the petitioner is not protected under the Rent Control Act is conceded by the petitioner.

20. On the basis of the very documents relied upon by the petitioner, it is doubtful if the petitioner is at least a lessee (if not a statutory tenant) lawfully in possession of the property. We have already highlighted the discrepancies in the two sale deeds, dated 02.04.2011 and 01.01.2017 relied upon by the petitioner. We have also pointed out that the “Rent Plus Loan Agreement” originally contemplated by the bank in June, 2010 by way of a tripartite agreement, was with another company by name M/s. A.R. Fisheries Private Limited, who had a registered indenture of lease executed in 2007 which was to be in force for 10 years. Therefore, the petitioner does not even appear to be a lessee who lawfully entered into the possession of the property.

21. The mere fact that the bank directed the petitioner to pay the monthly rents directly to the bank, will not confer the rights of a lessee upon the petitioner. In fact, the letters under which the bank directed the petitioner to deposit the monthly rent, are issued without prejudice to the rights of the bank. The law is well-settled that the receipt of a specified sum of money every month by the landlord even from a trespasser of a

property, will not confer lease-hold rights upon the occupier of the property. Therefore, the collection of rents by the bank will not create a lease or tenancy in favour of the petitioner.

22. On the basis of the observations contained in paragraph Nos.29, 30 and 36 of the decision in **Vishal N. Kalsaria**³, it was contended by the learned senior counsel for the petitioner that even in the absence of a written agreement or lease deed, a lease can be inferred from the circumstances. In the absence of any statutory requirement under the Transfer of Property Act, 1882, for the lease to be reduced into writing and registered, the status of a person in lawful possession with the consent of the landlord cannot be belittled, according to the learned senior counsel for the petitioner.

23. But the issue is not as simple as that. There are three different circumstances under which a person can come into possession of a property, with an obligation to pay a monthly sum of money. They are; (i) the creation of a tenancy protected by the Rent Control Act; (ii) the creation of a lease not covered by Rent Control Act; and (iii) the encroachment/trespass/permissive occupation of a property which may give rise to a claim for damages for use and occupation.

24. In cases covered by the first set of circumstances, there is an element of protection statutorily guaranteed under the Rent Control Act, as per the decision in **Vishal N. Kalsaria**³. In cases covered by the second set of circumstances, there is no statutory protection for a lawful

lessee, except a notice of termination of lease. The moment the lease is terminated after serving a notice as stipulated in Section 106 (1) of the Transfer of Property Act, 1882, the lessee is obliged to vacate and deliver vacant possession.

25. If a lessee continues to be in possession of the leased property after the expiry of the period of notice served upon him in terms of Section 106 (1) of the Transfer of Property Act, 1882, the landlord may have to go to the Civil Court to seek eviction/recovery of possession. Even in cases where the property is in the occupation of a trespasser or a permissive occupant, the remedy open to the landlord is to go to the Civil Court to recover possession.

26. The Securitisation Act, 2002 confers powers upon the banks and Financial Institutions to take possession of secured assets, without the intervention of the Court. In fact, the Act is an enlargement of what is contained in Section 69 (1) of the Transfer of the Property Act, 1882.

27. The moment it is conceded that by the Special Enactment viz., the Securitisation Act, 2002, the banks are conferred with the power to take recourse to a special procedure for taking possession of the secured assets, it follows as a corollary that the banks need not go to the Civil Court to recover possession. Therefore, irrespective of whether a person (other than a statutory tenant) is in possession under an oral agreement of lease or whether he is in possession under a duly stamped and

registered lease deed, the recourse available to the bank to take possession of the secured asset, is what is provided by the 2002 Act.

28. Therefore, the petitioner, who is admittedly not a statutory tenant and whose two lease deeds create any number of doubts on the manner in which they have come into existence, cannot resist the attempt of the bank to take physical possession under the 2002 Act. The question of estoppel does not arise in cases of this nature, as the acceptance of the monthly amounts would not create a lease in favour of the petitioner.

29. Therefore, we are of the considered view that the Tribunal rightly dismissed the appeal filed by the petitioner and we find no reason to interfere with the order of the Tribunal. Hence, the Writ Petition is liable to be dismissed 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 RAO, J

February 07, 2019
Mgr