

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.1830 of 2020

ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard Sri L. Ravichander, counsel appearing on behalf of P.V.L. Bhanu Prakash, counsel for petitioner, and Smt. K. Nandini *alias* K. Nandinireddy, counsel for 1st respondent.

2. This Writ Petition has been filed to declare the action of the Advocate-Commissioner appointed in CrI.M.P.No.78 of 2019 by the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad vide order dt.05.07.2019 in seizing premises bearing D.No.8-3-833/87/A, Plot No.87, Phase-I, Type-B, Kamalapuri Colony, Hyderabad (**for short, 'the premises'**).

3. The petitioner herein is occupant of II Floor of the above premises under a Lease Deed dt.11.07.2017 granted in his favour by the 2nd respondent herein.

4. A company by name M/s. Silvari Rashanaditya Infrastructure Private Limited, represented by the 2nd respondent, had taken a loan from the 1st respondent-Bank by mortgaging the above property. The said company had become a defaulter and its loan account was declared as 'Non-Performing Asset' (N.P.A.).

5. Statutory notice was issued under Section 13(2) on 17.11.2016 by the 1st respondent to the 2nd respondent and possession notice was issued on 21.01.2017 under Section 13(4) of the Act.

6. Thereafter, the 1st respondent invoked Section 15 of the Act by filing Crl.M.P.No.78 of 2019 before the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad and secured an order on 05.07.2019 to take physical possession of the II Floor of the above premises which is in occupation of the petitioner.

7. In the said application, filed by the 1st respondent, before the said Magistrate, the 1st respondent did not implead petitioner and did not disclose about the tenancy of the petitioner and the fact that the petitioner is in occupation of the II Floor of the subject property.

8. On the basis of the affidavit filed by the authorized officer of the 1st respondent, the Magistrate allowed the Crl.M.P.No.78 of 2019 on 05.07.2019, and appointed an Advocate-Commissioner to take physical possession of the property.

9. Assailing the same, the present Writ Petition is filed.

10. Sri L. Ravichander, counsel for petitioner, sought to contend that the 1st respondent cannot seek to dispossess the petitioner behind the back of the petitioner by securing an order from the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad and it violates Articles 14 and 300-A of the Constitution of India. He placed reliance on the decision of the Supreme Court in **Harshad**

Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others¹.

11. In **Harshad Govardhan Sondagar** (1 supra), the Supreme Court observed that in para no.25 that when a secured creditor moves the Chief Metropolitan Magistrate or the District Magistrate for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured asset is not in possession of a lessee under a valid lease made prior to creation of the mortgage by the borrower or made in accordance with Section 65-A of the Transfer of Property Act prior to receipt of a notice under sub-Section (2) of Section 13 of the SARFAESI Act by the borrower.

12. The Supreme Court went further and held that when a request is made by the secured creditor and the Chief Metropolitan Magistrate or the District Magistrate finds that the secured asset is in possession of a lessee but the lease under which the lessee claims to be in possession of the secured asset stands determined in accordance with Section 111 of the Transfer of Property Act, the Chief Metropolitan Magistrate or the District Magistrate may pass an order for delivery of possession of secured asset in favour of the secured creditor to enable the secured creditor to sell and transfer the same under the provisions of the SARFAESI Act.

13. The above principle was reiterated in **Vishal N. Kalsaria vs. Bank of India and others².**

¹ (2014) 6 SCC 1

² (2016) 3 S.C.C. 762

14. However, the counsel for 1st respondent had relied upon a recent decision of the Supreme Court in **Bajarang Shyamsunder Agarwal vs. Central Bank of India and another**³.

15. In **Bajarang Shyamsunder Agarwal** (3 supra), the appellant-tenant therein had preferred an application before the Chief Metropolitan Magistrate, Esplanade, Mumbai seeking to continue in the premises which is subject matter of proceedings under the SARFAESI Act, but the Chief Metropolitan Magistrate rejected his application and the same was allowed and confirmed by the High Court. The tenant then approached the Supreme Court. The Supreme Court confirmed the law laid down in **Harshad Govardhan Sondagar** (1 supra) as well as **Vishal N. Kalsaria** (2 supra), but on the facts of the said case, did not interfere with the orders passed against the tenant by the Courts below.

16. Therefore, the said decision in **Bajarang Shyamsunder Agarwal** (3 supra) cannot be of any assistance to the 1st respondent.

17. Though an explanation is offered by the counsel for 1st respondent why it has not impleaded petitioner as a party in CrI.M.P.No.78 of 2019 before the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad, we are unable to accept the said explanation since it was the duty of the 1st respondent to make enquiries as to whether there is any tenant in occupation of the mortgaged property or not before it initiates proceedings under Section 14 of the Act, and it is its duty to implead the said tenant like

³ 2019 LF (S.C.) 940

the petitioner and seek eviction of petitioner before the said Chief Metropolitan Magistrate after getting an adjudication from him about the validity of the Lease in favour of occupant like the petitioner.

18. Since the 1st respondent, in the instant case, has failed to do so, the Writ Petition is liable to be allowed.

19. Accordingly, the Writ Petition is allowed and the order dt.05.07.2019 passed in CrI.M.P.No.78 of 2019 by the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad is set aside. The 1st respondent-Bank is directed to open the seal affixed on the II Floor of the above premises in the occupation of petitioner forthwith and restore peaceful vacant possession of the said premises to the petitioner.

20. Liberty is given to 1st respondent to initiate fresh proceedings under Section 14 of the Act before the Chief Metropolitan Magistrate, City Criminal Court, Nampally, Hyderabad by impleading the petitioner and to secure appropriate orders in the said court.

21. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 11.02.2020
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