

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.2129 of 2020

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

Heard the counsel for petitioner, and Sri C. Raghu, counsel for 1st respondent. The counsel for petitioner states that respondent nos.2 and 3 are not necessary parties in the Writ Petition.

2. The short point which arises for determination in this case is whether the Order dt.28.01.2020 passed in Criminal M.P.No.922 of 2019 by the Chief Metropolitan Magistrate, at L.B. Nagar is valid in law or not.

3. The petitioner is a tenant in occupation of the subject property pursuant to a registered Lease Deed executed on 01.01.2019 by respondent Nos.2 and 3 in his favour inducting the petitioner into possession thereof.

4. The respondent nos.1 and 2 had mortgaged the said property to the 1st respondent and obtained a loan.

5. Proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, (for short, 'the Act') were initiated against respondent nos.2 and 3 by the 1st respondent and a Notice under Section 13(4) of the Act was issued, and was affixed on the subject property on 17.05.2019.

6. This was questioned before the Debts Recovery Tribunal – II, at Abids, Hyderabad by the petitioner by way of S.A.No.189 of 2019, and an interim order was obtained on 07.06.2019 on condition of petitioner depositing the monthly rent before the Tribunal. But the stay of dispossession of petitioner was granted only for three (03) months.

7. On the expiry of the said period, without impleading the petitioner, the 1st respondent approached the Chief Metropolitan Magistrate, L.B. Nagar, Hyderabad invoking Section 14 of the Act, and an order was obtained behind the back of the petitioner on 28.01.2020 to evict the petitioner.

8. The 1st respondent does not deny that the petitioner was not impleaded in the case before the Debts Recovery Tribunal – II, Hyderabad and also the fact that there is no mention about the occupation of petitioner of the said property in the affidavit filed by the 1st respondent in the said Forum.

9. The counsel for 1st respondent sought to contend that papers in the Second Appeal were filed before the Chief Metropolitan Magistrate, and that this amounts to disclosure about the tenancy to the said Magistrate.

10. We do not accept the said contention because it is the duty of the 1st respondent to implead petitioner as a party before the 1st respondent.

11. Knowing fully well that 1st respondent is opposing dispossession from the subject property by filing S.A. before the Debts Recovery Tribunal – II, Hyderabad, it is not open to 1st respondent to clandestinely secure an order from the Debts Recovery Tribunal – II, Hyderabad by playing fraud on petitioner and dispossess him by virtue of the said order obtained by it on 28.01.2020 in Criminal M.P.No.922 of 2019.

12. In **Harshad Govardhan vs. International Assets Reconstruction Company Ltd.**¹, the Supreme Court has categorically held that the tenant in occupation of the property which is being proceeded with under the provisions of the SARFAESI Act ought to be impleaded in the proceedings under Section 14 of the Act, and that an adjudication must be obtained from the Chief Metropolitan Magistrate as to the validity of the tenancy.

13. This principle has also been reiterated in **Vishal N. Kalsaria vs. Bank of India and others**².

14. In this view of the matter, the Writ Petition is allowed. The order dt.28.01.2020 passed in Criminal M.P.No.922 of 2019 by the Chief Metropolitan Magistrate, at L.B. Nagar is set aside.

15. The Criminal M.P.No.922 of 2019 on the Chief Metropolitan Magistrate, at L.B. Nagar is remanded back to the said Magistrate and

¹ 2014 (6) S.C.C. Pg.1

² A.I.R. 2016 S.C. 530

the 1st respondent is directed to implead the petitioner as a party in the said application.

16. The petitioner shall be given an opportunity by the said Magistrate to file a counter-affidavit in the said application opposing his dispossession; and then the said Magistrate shall pass a reasoned order in accordance with law and communicate the said decision to the petitioner.

17. However, the 1st respondent shall forthwith restore possession of the subject premises to the petitioner and the possession of petitioner shall continue subject to the result of the fresh decision to be given by the Chief Metropolitan Magistrate, L.B. Nagar in Criminal M.P.No.922 of 2019.

18. The 1st respondent shall also pay costs of Rs.3,000/- to the petitioner.

19. Accordingly, the Writ Petition is allowed with the above directions.

20. 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: 17.02.2020

Ndr/*