

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HON'BLE SRI JUSTICE B.KRISHNA MOHAN

SECOND APPEAL No.28 OF 2021

Between:

Barigala Kotes, S/o. Peturu & another

... APPELLANTS

AND

Bandaru Yedukondalu, S/o. Venkateswarlu

... RESPONDENT

DATE OF JUDGMENT PRONOUNCED : 12.02.2021

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE B. KRISHNA MOHAN

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the order? Yes/No

JUSTICE B. KRISHNA MOHAN

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... RESPONDENT

! Counsel for appellants : Mr. G. Rama Chandra Reddy

^Counsel for Respondent : Mr. Phani Teja Cheruvu

<GIST :

>HEAD NOTE:

? Cases referred:

¹ Dt. 11.09.2019 in Criminal Appeal Nos.1371 of 2019

² Dt. 27.08.2020 in Civil Appeal Nos.2843-2844 of 2010

³ Dt. 21-01-2021 in SPECIAL LEAVE PETITION (C) Nos.15870 of 2020

⁴ Dt.06-05-2016 in CIVIL APPEAL Nos.4083-4084 of 2016

⁵ Dt. 25-11-2014 in CIVIL APPEAL No.10589 OF 2014

⁶ Dt. 17-07-2017 in CIVIL APPEAL No.9151 of 2017

⁷ Dt. 27-01-2021 in CIVIL APPEAL No.6744 of 2013

⁸ Dt.18.01.2016 in Civil Appeal No.167 of 2007

HON'BLE SRI JUSTICE B.KRISHNA MOHAN

SECOND APPEAL No.28 OF 2021

JUDGMENT:

This second appeal is filed against the Judgment and decree in A.S.No.82 of 2020 on the file of the V Additional District Judge, Guntur, FAC III Additional District Judge, Guntur, dated 21.12.2020 confirming the Judgment and decree in O.S.No.122 of 2016 on the file of the Senior Civil Judge, Mangalagiri, dated 05.05.2020 ordering the eviction of the appellants herein/tenants to deliver the vacant possession of the plaint schedule property to the respondent herein/landlord and comply with the other reliefs granted by the Courts below.

2. The appellants herein are the appellants in the first appeal and the defendants in the suit. The respondent herein is the respondent in the first appeal and the plaintiff in the suit.

3. Heard the learned counsel for the appellants and the learned counsel for the respondent.

4. The plaintiff initiated an action in O.S.No.122 of 2016 on the file of the Senior Civil Judge, Mangalagiri against the defendants for eviction and delivery of the vacant possession of the plaint schedule property, for the payment of arrears of Rs.4,25,700/- and damages for use and occupation unauthorisedly from 01.03.2016 to 31.05.2016

at the rate of Rs.20,000/- per month with interest at the rate of 24% per annum from the date of suit till the date of realisation and costs.

5. The plaintiff contends that he is the absolute owner of the plaint schedule property, the defendants herein took the said property/apartment/flat on 01.11.2011 for a monthly rent of Rs.8,000/- under an oral lease and the rent was enhanced to Rs.12,900/- per month with effect from 01.12.2012, in-spite of enjoying the possession of the said property as tenants, the defendants have committed default in payment of monthly rent with effect from 01.12.2012, due to which the plaintiff became a defaulter before the creditor bank of ICICI Bank, in those circumstances he filed a case in RCC No.4 of 2013 before the Rent Controller, Mangalagiri for eviction against the 1st defendant and the same was allowed and the appeal preferred by the 1st defendant/tenant in RCA was allowed setting aside the order in RCC on the point of jurisdiction, as such the defendants continued as tenants in the schedule premises without paying any rents with effect from December, 2012 and that apart the defendants filed a suit in O.S.No.291 of 2015 on the file of the Principal Junior Civil Judge, Mangalagiri for permanent injunction against the landlord/plaintiff herein which is being contested by the plaintiff herein. Subsequently the plaintiff got issued a statutory notice, dated 03.02.2016 to the defendants terminating the lease of the schedule property/apartment by the end of the month of February, 2016 calling upon them to vacate the plaint schedule property within 15 days from the date of receipt of the said notice by

paying the arrears of rent since December, 2012 till the date of vacation of the premises at the rate of Rs.12,900/- per month and payment of damages for the unauthorised occupation at the rate of Rs.20,000/- per month till the premises is vacated. Since the defendants did not comply with the said demand notice, the plaintiff was constrained to file the suit for eviction, for damages and recovery of arrears of rent since December, 2012 to till the date of eviction.

6. Then, the defendants filed a written statement denying the averments and contentions of the plaintiff contending further that the plaintiff purchased the plaint schedule property/the apartment under a valid registered sale deed obtaining loan from ICICI Bank, Bandar Road Branch, Vijaywada, became a defaulter in payment of loan installments and as such the plaintiff intended to sell the said property, then one Mr. Barigala Suresh, purchased the said property for an amount of Rs.18 lakhs by paying an advance amount of Rs.5 lakhs under an agreement of sale dated 13.10.2011, the said purchaser is none other than the brother of the 1st defendant, the plaintiff delivered the possession of the suit schedule property and the brother of the 1st defendant/the purchaser has let out the said property to the 1st defendant and as such, they have been in possession and enjoyment of the same on a rent of Rs.5,000/- per month and the 2nd defendant filed a complaint in crime No.159 of 2015, dated 29.06.2015 against the plaintiff and others under Sections 323, 427, 506, 509 r/w 34 of IPC, Section 3-1-1, 3-1-X SC, ST POA Act which is pending before the Mangalagiri Town police station.

7. Basing upon the above said rival averments and contentions, the trial Court framed the issues as follows :-

- (1) *Whether the plaintiff has got title over the plaint schedule property or not ?*
- (2) *Whether the defendants are tenants of plaintiff with regard to the plaint schedule property or not ?*
- (3) *Whether the defendants committed wilful default in payment of rent for the plaint schedule property or not ?*
- (4) *Whether the defendants are liable to pay the damages as prayed by the plaintiff or not ?*
- (5) *Whether the plaintiff is entitled for the eviction as sought for or not ?*
- (6) *To what relief ?*

8. During the course of trial on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A1 to A13 were marked. On behalf of the defendants, DW1 was examined and no document was marked.

9. The plaintiff in his deposition besides relying upon the averments of the plaint further stated that he became the chronic defaulter in repayment of loan due to non payment of rents by the defendants and as such the ICICI bank took symbolic possession of the plaint schedule property under SARFAESI Act on 18.09.2015 and the bank is trying to auction the same for realisation of their debt. In furtherance of the same, the bank has also filed O.A No.716 of 2016 before the Debt Recovery Tribunal, Visakhapatnam which is pending for trial.

10. After considering the evidence on record, the trial Court gave a finding that there is no proof to show that the plaint schedule property belongs to the said Barigala Suresh as contended by the defendants and they miserably failed in proving the said contention/transaction and the defendants have committed default in payment of rent and they are due for arrears of payment of rent and damages along with the vacation of the premises. Ultimately the suit is decreed with costs vide it's judgment dated 05.05.2020 directing the defendants to vacate and deliver the plaint schedule property, to pay the arrears of rent of Rs.4,25,700/-, to pay damages of Rs.20,000/- per month from 01.03.2016 to 31.05.2016 for an unauthorized occupation of the premises from the date of the suit till the date of realization and deliver the vacant possession to the plaintiff with interest thereupon at the rate of 6% per annum from the date of suit till the date of realisation.

11. Aggrieved by the same, the defendants therein/tenants preferred an appeal in A.S.No.82 of 2020 on the file of the III Additional District Judge, Guntur. While considering the same, the lower appellate Court framed the following points :

1. *Whether there is a landlord and tenant relationship existed between the plaintiff and defendants ?*
2. *Whether the defendants committed wilful default in payment of rents for the plaint schedule property ?*
3. *Whether the plaintiff is entitled for eviction of defendants as prayed for ?*

4. *Whether this appellate Court finds any reasons to interfere with the findings on the trial Court?*
5. *To what relief ?*

12. It has observed that the appellants therein/the tenants raised an additional plea that the civil Court has no jurisdiction as the SARFAESI proceedings were initiated by the bank and the bank has also filed O.A.No.716 of 2016 against their landlord/the respondent therein and service of summons was also marked as Ex.A13 before the trial Court. While considering the case on merits, the lower appellate Court gave a finding that in case of any grievance for the appellants as tenants they can approach the Debt Recovery Tribunal under the relevant provisions of the SARFAESI Act and with regard to the findings of the trial Court, the same was confirmed, dismissing the appeal vide its Judgment, dated 21.12.2020. Against the said confirming Judgments and decrees the appellants herein/the tenants filed the Second Appeal before this Court by framing a ground as “substantial question of law” to the effect that “the jurisdiction of the civil Court is barred and the proceedings under SARFAESI Act are alone available to proceed against the appellants herein/the tenants and the respondent herein/the landlord cannot continue the eviction proceedings against them and as such the Judgments of the Courts below are liable to be set aside on the ground of lack of jurisdiction.”

13. To substantiate the same, the learned counsel for the appellants refers to the following Sections of law under the provisions

of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Section 13 :

13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

1[Provided that—

(i) - - -

(ii) - - -

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

[(b) - - -

(c) - - -

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the

borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

17. ¹[Application against measures to recover secured debts].—*(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,²[may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*

¹*[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*

²*[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—*

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

¹*[(4A) Where—*

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

- (a) has expired or stood determined; or*
- (b) is contrary to section 65A of the Transfer of Property Act, 1882(4 of 1882); or*
- (c) is contrary to terms of mortgage; or*
- (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and*

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding

anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that - - -

34. Civil court not to have jurisdiction.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*

35. The provisions of this Act to override other laws.—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

37. Application of other laws not barred.—*The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956(42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.*

14. Per contra the learned counsel for the respondent refers to some of the decisions of the Hon'ble Supreme Court of India and the Hon'ble High Court - Jodhpur as follows :

01. *Criminal Appeal Nos.1371 of 2019, Dt.11.09.2019¹ on the file of Hon'ble THE SUPREME COURT OF INDIA, held in para No.20 of Page 14 as.,*

“While Section 13 (13) of SARFAESI prohibits a borrower from leasing out any of the secured assets after receipt of a notice under Section 13 (2) without the prior written consent of the secured creditor”.

02. *Civil Appeal Nos.2843-2844 of 2010, Dt. 27.08.2020² on the file of Hon'ble THE SUPREME COURT OF INDIA, held in para No.25 of Page 11 as.,*

“25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.”

03. *SPECIAL LEAVE PETITION (C) Nos.15870 of 2020³, Dt. 21-01-2021 on the file of Hon'ble THE SUPREME COURT OF INDIA, held in para No.18 OF Page 6 as.,*

“18. The Court must interpret a statute in a manner which is just, reasonable and sensible. If the grammatical construction leads to some absurdity or some repugnancy or inconsistency with the legislative intent, as may be deducted by reading the provisions of the statute as a whole, the grammatical construction may be departed from to avoid anomaly,

¹ Dt. 11.09.2019 in Criminal Appeal Nos.1371 of 2019

² Dt. 27.08.2020 in Civil Appeal Nos.2843-2844 of 2010

³ Dt. 21-01-2021 in SPECIAL LEAVE PETITION (C) Nos.15870 of 2020

absurdity or inconsistency. To quote Venkatarama Aiyar, J. In Tirath Singh v. Bachittar Singh. AIR 1955 SC 830 (at 833), “where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.” This view has been reiterated by this Court.”

04. CIVIL APPEAL Nos.4083-4084 of 2016, Dt.06-05-2016⁴ on the file of Hon’ble THE SUPREME COURT OF INDIA, held as in Para No.14 as.,

“The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppel are attracted.”

05. CIVIL APPEAL No.10589 OF 2014, Dt. 25-11-2014⁵ on the file of Hon’ble THE SUPREME COURT OF INDIA, held in para No.13 as.,

“13. In the present case, we find this statement of law would apply on all fours. The judgment of the Trial Court has been decided issue wise, on the merits, after hearing both parties. The suit has finally been decreed. Consequently this judgment cannot be reversed purely on technical grounds unless there is a failure of justice, which we have seen, is nobody’s case.”

06. CIVIL APPEAL No.9151 of 2017, Dt. 17-07-2017⁶ on the file of Hon’ble THE SUPREME COURT OF INDIA, held in Para No.48 as.,

“48)We sincerely feel that the eviction matters should be given priority in their disposal at all stages of

⁴ Dt.06-05-2016 in CIVIL APPEAL Nos.4083-4084 of 2016

⁵ Dt. 25-11-2014 in CIVIL APPEAL No.10589 OF 2014

⁶ Dt. 17-07-2017 in CIVIL APPEAL No.9151 of 2017

litigation and especially where the eviction is claimed on the ground of bona fide need of the landlord. We hope and trust that due attention would be paid by all courts to ensure speedy disposal of eviction cases.”

07. CIVIL APPEAL No.6744 of 2013, Dt. 27-01-2021⁷ on the file of Hon’ble THE SUPREME COURT OF INDIA, held in Para No.8 as.,

“The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court’s findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties.”

08. In Civil Appeal No.167 of 2007, Dt.18.01.2016⁸ on the file of Hon’ble THE SUPREME COURT OF INDIA, held in para Nos.22, 23, 24, as.,

“22) That apart, we find that the appellants were able to prove their ownership through their predecessor-in-title on the strength of sale deed (Ex.P.6/7) of the suit premises whereas the respondents failed to prove their defence. Indeed, the burden being on them, it was necessary for the respondents to prove that the sale in favour of the appellants’ predecessor-in-title of suit premises was a transaction of mortgage and not an outright sale. Since the respondents did not adduce any documentary or oral evidence to prove their defence, the first appellate Court was justified in allowing the eviction petition. In our view, the evidence adduced by the appellants to prove their title over the suit premises was sufficient to maintain eviction petition against the respondents and it was, therefore, rightly accepted by the first appellate Court.

⁷ Dt. 27-01-2021 in CIVIL APPEAL No.6744 of 2013

⁸ Dt.18.01.2016 in Civil Appeal No.167 of 2007

23) As observed supra, the first appellate Court having recorded categorical findings that the relationship of landlord-tenant was proved and secondly, the respondents had committed a wilful default in payment of monthly rent and its arrears from 01.06.1987, these findings were binding on the High Court while deciding the revision petition. It was more so when these findings did not suffer with any jurisdictional error which alone would have entitled the High Court to interfere.

24) Learned counsel for the respondents lastly argued that there was an encroachment made by the appellants on the suit premises and document (Ex-P-6) was inadmissible in evidence, hence the eviction petition was liable to be dismissed on these two grounds also. These submissions, in our considered view, deserve to be rejected at their threshold because the same were not raised in the written statement filed by the respondents before the Rent Controller and nor were urged at any stage of the proceedings. We cannot, therefore, allow such factual submissions to be raised for the first time in this appeal.”

09. The Hon’ble Rajasthan High Court - Jodhpur in I.C.I.C.I. Bank Limited Vs. Krishna Kumar & Others on 27 April, 2018 held as.,

“Before incorporation of sub-section (4-A) and substitution of sub-section (3) in Section 17 of the SARFAESI Act as above, there was no remedy available to a tenant who was being dispossessed (25 of 25) [CW-16965/2017] under the SARFAESI Act and hence, it was in those circumstances that the judgment in the case of Vishal N. Kalsaria (supra) was passed. The amended Act and incorporation of sub-section (4-A) in Section 17 of the SARFAESI Act as well as sub-section (3) of Section 17 of the SARFAESI Act sufficiently empowered the tenant to challenge

the proceedings qua his dispossession as a lessee or a tenant, in case, action is being initiated against him for dispossession under the SARFAESI Act.”

15. As stated supra, Section 13 (1) of the SARFAESI Act, 2002 speaks about the power of a secured creditor to enforce any security interest without interference of the Court or Tribunal.

Section 13 (2) of the said Act speaks about the power of the secured creditor to issue notice calling upon to discharge the full liability of the borrower within 60 days in case of default and declaration of the account as non-performing asset.

Section 13 (4) (a) empowers the creditor to recover the secured debt by taking possession of the secured assets of the borrower including the right of transfer by way of lease, assignment of sale etc., in the case of default and violation of Section 13 (2).

Section 13 (4) (d) empowers the secured creditor to issue a notice to any person who acquired the security asset to pay money to the creditor to satisfy the secured debt of the borrower. As per Section 13 (5) any payment made by such a person as per Section 13 (4) (d) to the secured creditor is a valid discharge.

As stated supra, Section 17 (1) enables to file an application by any person (including the borrower) to question the measures taken by the secured creditor under Section 13 (4) within 45 days from the date of such measures taken.

Under Section 17 (4A) the Debt Recovery Tribunal would go into the issues and examine the facts of the case with reference to the situations enshrined in sub clause (a) to (d) of Section 17 (4A) (i) provided either any tenant or lessee files an application under Section 17 (1).

Section 34 bars the jurisdiction of Civil Court to entertain any suit or proceedings in respect of the matters having jurisdiction of the Debt Recovery Tribunal or the Appellate Tribunal under the provisions of SARFAESI Act, 2002 and the RDBI Act, 1993 and no injunction can be granted for the action taken under the said Acts.

16. It is to be carefully seen that all the above said provisions of the SARFAESI Act do not come to the rescue of the appellants/tenants herein as none of the situations and circumstances are applicable to the facts and circumstances of the present case. The appellants herein/the tenants are neither the guarantors nor any person inducted into the possession of the secured asset/suit schedule property by way of a lease after notice under Section 13 (2) was given and default committed. Admittedly they have been inducted into the possession of the plaint schedule property on 01.11.2011 by virtue of an oral lease and they have committed default of payment of rent with effect from 01.12.2012 and the creditor bank took symbolic possession of the secured asset/plaint schedule property of the borrower/landlord on 18.09.2015 under the provisions of SARFAESI Act which was not injected by the Courts below. At least it is not the

case of the appellants/the tenants that they have made an application under Section 17 (1) seeking shelter under sub Clause (4A) of Section 17 of the SARFAESI Act. Obviously they could not do so, because they are not inducted into the suit schedule property subsequent to the notice issued under Section 13 (2) and symbolic possession taken under Section 13 (4). Hence they can't be termed as any person or tenant under the provisions of SARFAESI Act.

17. The present case which was dealt by the Courts below is totally falls outside the purview of the proceedings of the SARFAESI Act and the Judgments and decrees of the Courts below do not hit or inject the Debt Recovery Tribunal or any other Appellate Tribunal to function under the provisions of SARFAESI Act with reference to the very same plaint schedule property which is a secured asset mortgaged by the borrower/the landlord/the respondent herein. There is no conflict of orders passed by the Courts below with the orders that may be passed under SARFAESI Act and RDBI Act 1993. From the above said facts and circumstances and legal position, it is obvious and evident that the appellants' relationship is only with their landlord and they are nothing to do with the secured creditor/the banker who advanced housing loan to their landlord as a borrower. Just because their landlord has become the defaulter before the bank with reference to payment of equated monthly installments of a housing loan with respect to the plaint schedule property, the tenants cannot take undue advantage of the same and exploit by refraining to

make payments of rents flouting their oral lease and understanding between the parties.

18. In view of the forgoing reasons, the Second Appeal has to fail as there is no substantial question of law for interference of this Court under Section 100 C.P.C. and the appellants herein are directed to vacate the plaint schedule property within four (4) months from today by complying with the other terms of the decree of the trial Court as it is. It is needless to mention that the respondent shall bring it to the notice of the secured creditor and the learned Debt Recovery Tribunal in which the proceedings are pending about this Judgment of this Court enabling them to take necessary action and passing of orders suitably with respect to the secured asset of the respondent herein/borrower under the provisions of SARFAESI Act r/w RBI Act.

19. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in the Second Appeal, shall stand closed.

JUSTICE B. KRISHNA MOHAN

12th February, 2021.

Note:-
L.R. Copy to be marked.
(B/o)
Yvk