(2022) 08 TEL CK 0042

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 22130 Of 2020

Bura Padmaja Vinay		APPELLANT
	Vs	
Union Of India		RESPONDENT

Date of Decision: Aug. 3, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Security Interest (Enforcement) Rules, 2002 - Rule 8(5)
- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 17

Hon'ble Judges: P.Naveen Rao, J; Dr. G.Radha Rani, J

Bench: Division Bench

Advocate: Yellapragada Srinivasa Murthy, Namavarapu Rajeshwar Rao

Final Decision: Dismissed

Judgement

1. Heard learned counsel Sri Yellapragada Srinivasa Murthy for the petitioner, learned Assistant Solicitor General Sri Namavarapu Rajeshwar Rao for

respondent no.1, learned counsel Sri Podila Hari Prasad for respondent no.2-Bank and learned counsel Sri A.V.V.Badrinarayana for respondent no.3.

2. Petitioner claims to be the absolute owner and possessor of the property bearing Municipal No.8-2-335/2/A/1 with a built up area of about 12,700

square feet consisting of ground, first, second, and third floors, known as Ã¢â‚¬ËœPlatinum SquareÃ¢â‚¬â„¢ forming part of Sy.No.129, situated on Road No.5,

Banjara Hills, Hyderabad.

3. Facts on record disclose that the 3rd respondent availed credit facilities from the respondent-Bank to run hospital in the leased premises bearing

Municipal No.8-2-335/2/A/1 on the name and style of Ã¢â‚¬ËœRays Speciality Hospitals Private LimitedÃ¢â‚¬, and all equipment therein have been under

hypothecation of the respondent-Bank. At the time of security loan, the borrower-respondent no.3 submitted registered Lease Deed Doc.No.1322 of

2014 dated 24.03.2014 on the said premises. Thereafter, the borrower defaulted in payment of loan amount. The Bank filed recovery case in

O.A.No.1459 of 2017 (old O.A.No.1089/2016) on the file of Debts Recovery Tribunal-II at Hyderabad and obtained recovery certificate in

R.C.No.73/2018 dated 17.01.2018 for recovery of 5,67,72,339/-. Accordingly, the Recovery Officer-I, DRT-II at Hyderabad has initiated recovery

proceedings in R.P.No.73/2018 and issued Demand Notice dated 23.02.2018 calling upon the certificate debtor to deposit the amount as stipulated in

the Recovery Certificate. The borrower failed to comply the same. Consequently, Advocate Commissioner was appointed to execute the order of the

Tribunal to take physical possession of the schedule properties vide Warrant of Attachment of Movable Property dated 27.10.2020.

4. Petitioner claims that she has leased out the above premises to M/s. Rays Speciality Hospitals Private Limited (3rd respondent) under a Lease

Deed dated 21.05.2015. In the year 2019, 3rd respondent vacated the premises without even paying the rents. He has leased premises to the present

tenant M/s.Skycare Hospitals Private Limited on 07.06.2018.

5. According to petitioner, the respondent-Bank has given intimation to the present tenant M/s.Skycare Hospitals Pvt.Ltd. on 28.07.2020 advising them

to arrange for handing over the equipment of the 3rd respondent lying in the premises belonging to the petitioner. Immediately, petitioner contacted the

respondent-Bank and intimated them that arrears of rent are due to her from the 3rd respondent and her interests are also to be safeguarded while

exercising rights invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002

(for short, Ã¢â‚¬ËœAct, 2002Ã¢â‚¬â„¢), and the Rules made there under.

6. Alleging that the respondent-Bank is threatening to take away movables from the premises bearing Municipal No.8-2-335/2/A/1, this writ petition is

filed.

7. Learned senior counsel Sri Y.Srinivasa Murthy contended that 3rd respondent-borrower abruptly vacated the premises without clearing rental dues

and leaving the movable medical equipment in the premises. As rental arrears were not paid, the petitioner has lien over the movables and they cannot

be removed without clearing the rental dues. He also submitted that for all the subsequent months after vacating the premises by 3rd respondent, the

respondent-Bank has to pay the rents for keeping the movables in the premises.

8. Learned counsel Sri P.Hari Prasad for respondent-Bank submitted that M/s.Skycare Hospitals represented by its CEO addressed a letter dated

14.06.2019 to the respondent-Bank by submitting that as they have come to know recently that the equipment under their use have been under

hypothecation of Bank and same going to be sold by the Bank through Tribunal Order, requested the respondent-Bank to give time to settle the matter

by negotiating with defaulter or else they would vacate the premises within two months.

9. He would submit that in reply to the said letter of M/s.Skycare Hospitals, the respondent-Bank in their letter dated 14.06.2019 advised it to

handover the equipment hypothecated to the Bank immediately. Thereafter, said Skycare Hospitals furnished an Undertaking Letter dated 09.06.2020

to the Bank by submitting that they have taken over M/s.Rays Speciality Hospital and running the Unit now in the name of Ã¢â‚¬ËœSkycare Hospitals

Pvt.Ltd.Ã¢â‚¬, after entering into Lease Agreement of the building for 10 years and also requested the Bank to grant time up to 07.07.2020 to sort out the

issues with the land owner and get back to Bank and assurance was given by them to not to remove machinery/equipment from the site till such time.

10. He further contended that petitioner suppressed the material facts in the writ petition and filed the same on all false grounds by misrepresenting the

facts to mislead the HonÃ¢â‚¬â„¢ble Court. It is further pertinent to note that the petitioner cannot claim any lien or right over movable property under hypothecation of the Bank because the Bank has prior charge over said movable equipment as per law and more over said movables have been under

attachment of Court Order vide R.P.No.73/2018 in O.A.No.1459 of 2017 on the file of the Recovery Officer-I, DRT-II, Hyderabad.

11. According to the respondent-Bank, it has reliably learnt during its inspection on 21.01.2021 that after filing this writ petition, under guise of interim

orders of the HonÃ¢â‚¬â„¢ble Court, the petitioner and others have removed all hypothecated equipment of hospital to create third party interests over the

same to defeat the rights of the Bank, which made the Bank to file criminal complaint to take action against all culprits, whoever involved in damaging

or removing or destroying or misappropriating said hypothecated items.

12. In the counter-affidavit, respondent-Bank stoutly denies the ownership claim of petitioner and the relationship of petitioner with 3rd respondent on

granting lease, arrears of rent due, loss of rent and subsequent lease to another person. The Bank also denies assertions of petitioner that it has

intimated the Bank on non-payment of rents, her claim to lien on the movable properties.

13. Except two unregistered lease agreements, one dated 21.05.2015 with M/s.Rays Speciality Hospitals Pvt. Ltd., and another dated 07.06.2018 with

M/s.Skycare Hospitals Pvt. Ltd., claimed to have entered into, no other material is filed in support of ownership claim. Respondent-Bank doubted

ownership claim of petitioner. It has enclosed to the counter the Lease Deed dated 24.03.2014 executed by Syed Abdul Hameem, Syed Abdul

Azeem, Syed Amtul Lateef as owners and M/s.Rays Speciality Hospitals Pvt. Ltd., as lessee. This lease deed was presented to the Bank to secure

loan. The Bank also enclosed to the counter the Statement of Encumbrance of the property. This statement does not show petitioner as owner of the

property. No reply is filed to deny the assertions of the respondent-Bank.

14. Material placed on record by the Bank also show that M/s.Rays Speciality Hospitals Pvt.Ltd., filed W.P.No.5763 of 2019 challenging the

conditional order of Debts Recovery Tribunal, where under the DRT directed to pay 20% of the amount due. The Court reduced the same to 10%, but even the said amount was not paid. Recording the same, Writ Petition was dismissed.

15. W.P.No.4500 of 2019 is filed by M/s.Rays Speciality Hospitals Pvt.Ltd., challenging pre-sale notice under Rule 8(5) of the Security Interest

(Enforcement) Rules, 2002. Holding that petitioner has an effective and efficacious remedy under Section 17 of the Act, 2002, the writ petition was

dismissed.

16. Further, the averments in the counter-affidavit disclose that Recovery Certificate was issued by the DRT-II on 17.01.2018 for 5,67,72,339/- and

further steps were already taken by the Bank. None of these facts are disclosed by the petitioner. While petitioner averred that without prior

intimation owners of M/s.Rays Speciality Hospital Limited vacated the premises in the year 2019, petitioner filed the lease deed dated 07.06.2018

entered with M/s.Skycare Hospitals Pvt.Ltd., which clearly points out that petitioner was aware of vacation of premises by M/s.Rays Speciality

Hospital Limited and also vacation was not in the year 2019, but may be in the year 2018 or earlier. Further, the premises was never vacant and the

hypothecated equipments are being used by M/s.Skycare Hospitals Pvt.Ltd. It is pertinent to note that in clause-3 of internal page-2 of lease deed, it is

written that the lessee is allowed to continue his business, which would indicate that there was no change of ownership, but only name is changed.

17. It is not in dispute that M/s.Skycare Hospital is functioning in the same premises. It is appropriate to notice that in the letter dated 14.06.2019,

CEO of the hospital informs the Bank that the premises was taken on monthly rent from landlord, by name, Mr.Vinay, who is husband of the

petitioner. By this letter, the CEO requests two months time to negotiate with the borrower to utilize the time to repay the loan or find alternative place

to locate the hospital. In the letter dated 09.06.2020, the Director of M/s.Skycare Hospital informs the Bank, it has taken over the hospital from

M/s.Rays Speciality Hospital, obtained lease agreement for 10 years and running the hospital with the name M/s.Skycare Hospital. These aspects point out that the assertions made in the affidavit filed in support of the writ petition are not true and are misleading.

18. It is appropriate to note also that the loan account became NPA on 28.02.2015. The Bank filed O.A.No.1089 of 2016 (renumbered as

O.A.No.1459 of 2017) in DRT to recover the loan amount. The O.A. was allowed. The Bank has initiated recovery proceedings in R.P.No.73 of

2018. The DRT appointed Advocate-Commissioner to take possession of the medical equipment. These facts contradict the assertions of the

petitioner. The facts noted above also point out knowledge to the petitioner to all the developments on the dispute.

19. Remedy under Article 226 of the Constitution of India is an extraordinary remedy available to every aggrieved person. In exercise of this power,

writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. The remedy under Article 226 is

equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self imposed restraint. To exercise such extraordinary

remedy, the Court expects the person coming before it to be fair and frank in stating the facts which constitute cause of action to ventilate his

grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, the minimum that is required by petitioner, knocking

the doors of the High Court under Article 226 of the Constitution, is to state the true and correct facts and project the grievance.

20. Court would be disinclined to lien in favour of a petitioner to grant equitable relief who do not disclose the true facts, tries to mislead the Court or

suppress true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226

of the Constitution.

21. In K.D.Sharma vs. Steel Authority of India Limited and others (2008) 12 SCC 481, Supreme Court observed that the party invoking extraordinary

jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play Ã¢â‚¬Å“hide and seekÃ¢â‚¬ or to Ã¢â‚¬Å“pick and chooseÃ¢â‚¬ the facts he likes to disclose and to suppress (keep back) or not

to disclose (conceal) other factsÃ¢â‚¬â€‹ (paragraph 38).

21.1. It would be relevant to reproduce paragraphs 36 to 39 K.D.Sharma (supra), which read thus:

Ã¢â‚¬Å“36. Ã¢â‚¬Â¦.. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss

the action on that ground alone and may refuse to enter into the merits of the case by stating, Ã¢â‚¬Å“We will not listen to your application

because of what you have done.Ã¢â‚¬ The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process

of court by deceiving it.

37. In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (KB pp. 495-96)

Ã¢â‚¬Å“Ã¢â‚¬Â¦ Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the

affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the

Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any

further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring

conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they

are and as they have been stated in the applicantÃ¢â‚¬â„¢s affidavit, and everything will be heard that can be urged to influence the view of the Court

when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has

been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by

means of a misleading affidavit.Ã¢â‚¬â€‹

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39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts

and Ã¢â‚¬Å“clean breastÃ¢â‚¬ cannot hold a writ of the court with Ã¢â‚¬Å“soiled handsÃ¢â‚¬. Suppression or concealment of material facts is not an

advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative

jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the

court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with

the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an

applicant requires to be dealt with for contempt of court for abusing the process of the court.

(emphasis supplied)

21.2. In Prestige Lights Limited v. SBI (2007) 8 SCC 449 the Supreme Court observed thaÃ¢t â‚¬Å“in exercising power under Article 226 of the

Constitution of India the High Court is not just a Ã¢â‚¬ËœCourt of AppealÃ¢â‚¬â„¢, but it is also a Ã¢â‚¬ËœCourt of EquityÃ¢â‚¬â„¢ and a person who invokes

the High CourtÃ¢â‚¬â„¢s jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any

reservation. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is

suppression of material facts or if the facts are twisted.Ã¢â‚¬â€‹

21.3. In Dalip Singh vs. State of Uttar Pradesh and others (2010) 2 SCC 114, the HonÃ¢â‚¬â„¢ble Supreme Court observed,

Ã¢â‚¬Å“1. For many centuries Indian society cherished two basic values of life i.e. Ã¢â‚¬Å“satyaÃ¢â‚¬â„¢ (truth_ and Ã¢â‚¬Å“ahimsaÃ¢â‚¬ (non-violence), Mahavir,

Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justicedelivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the

consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos

and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation

and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They

shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of

litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream

of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.Ã¢â‚¬ (emphasis

supplied)

22. It is apparent from the facts noted in earlier paragraphs and the stand of respondent-Bank, the Management of M/s.Rays Speciality Hospital

Private Limited and Skycare Hospitals Private Limited and the petitioner are playing Ã¢â‚¬Ëœhide and seekÃ¢â‚¬â„¢ and Ã¢â‚¬Ëœpick and chooseÃ¢â‚¬â„¢ game,

cheating the respondent-Bank and frustrating the fruits of success by the respondent-Bank before DRT and to recover its dues. It appears as M/s.

Skycare Hospitals Private Limited was unsuccessful before this Court in the two Writ Petitions noted above, sets up petitioner to launch this round of

litigation and frustrate the efforts of the Bank to gain possession of mortgaged properties. She has become a willing partner to the machinations to

escape compliance of Orders of DRT.

23. Further, the Bank alleges that under the guise of interim orders granted by this Court, the medical equipments were removed from the premises

and transferred to M/s.Sudha Hospitals. Alleging that the actions of various persons with criminal intention caused huge loss to the Bank, the Bank lodged complaint to the Station House Officer, Banjara Hills Police Station on 02.02.2021.

24. Petitioner has not disclosed her locus to involve in the inter se dispute between the respondent-Bank and M/s.Rays Speciality Hospital Private

Limited. She has not disclosed when she became the owner of the concerned property. The writ is filed as if petitioner was not aware of

developments in the inter se dispute and filed by apprehending possible removal of medical equipment by the respondent-Bank. Claiming that the

equipment is in her custody, she has not disclosed that a hospital is being run in the same premises and the entire medical equipment is being used by

the said hospital. The premises was never vacant as sought to be urged. The writ Court is concerned with fairness, honesty and sincerity of litigant

coming before the Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. There is clear suppression of relevant

facts which have a bearing on fairness in availing this remedy. The Writ Petition is filed with a clear attempt to secure interlocutory order frustrating

the efforts of respondent-Bank to gain possession of medical equipment and later to remove them from subject premises. The petitioner was abusing

the process of the Court.

25. The Writ Petition is liable to be dismissed and accordingly dismissed with costs of 25,000/- (Rupees twenty five thousand only) to be paid to the

Telangana State Legal Services Authority. Pending miscellaneous petitions if any shall stand closed.