

(2007) 11 AP CK 0046
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12637 of 2005

Kapu China Veerabhadra Rao

APPELLANT

Vs

Authorised Officer, Special Asset. Management Section,
Punjab National Bank and G.V.V. Rajendra Prasad

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5
Constitution of India, 1950 — Article 12, 14, 21, 300A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(1), 13(2), 13(4), 14, 14(1)
Writ Proceedings Rules, 1977 — Rule 39

Citation : (2008) 1 ALD 754 : (2008) 3 BC 474

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : N. Vijay, for the Appellant; K. Suryanarayana, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri N. Yijay, learned Counsel representing the writ petitioner, and Sri K. Suryanarayana, learned Counsel representing the first respondent.

2. The writ petition is filed praying for issuance of a writ of Mandamus declaring the action of the first respondent in proposing to take physical possession of residential building bearing No. 48-48-25, Danavaipeta, Rajahmundry, as illegal, arbitrary, violative of Articles 14 and 21 of Constitution of India and the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security, Interest Act, 2002 (for short hereinafter called "the Securitisation Act", for the purpose of convenience) and consequently to restrain the first respondent from taking physical possession of the building in question, and to pass such other suitable order or orders in the circumstances of the case.

3. It is stated that the petitioner is a tenant of a residential building bearing No. 46-18-25 situated at Danavaipet, Rajahmundry, which consists of eight portions and is a double floor structure, and that an agreement was entered into between

him and the second respondent on 27.03.2003, whereunder he took the said premises on lease for a monthly rent of Rs. 6,500- and even he was permitted to sub-lease, and an amount of Rs. 2,00,000/- was given as advance to the second respondent. It appears that the said premises was given as security by the second respondent towards a loan to Punjab National Bank and upon default in repayment, a notice, dated 12.02.2005, u/s 13(2) of the Securitisation Act was issued to him. In spite of same, the second respondent appears to have not paid the amount due to the Bank. Hence the notice, dated 16.05.2005, was issued, wherein the first respondent requested assistance of Superintendent of Police, Kakinada, for taking possession of schedule premises and also requested him to request Station House Officer, I-Town Police Station, Rajahmundry, to depute sufficient police personnel, while taking possession of property, which is contrary to Section 14 of the Securitization Act.

4. Section 14 of the Securitization Act reads as follows:

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset:

(1) Where the possession of any secured asset is required to be taken by the secured creditor...if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him.

a) take possession of such asset and documents relating thereto; and

b) forward such asset and documents to the secured creditor.

2) For the purpose of securing compliance with the provisions of Sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion be necessary.

3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

5. It is also stated that though Section 13(4) of the Securitisation Act empowers the first respondent to take possession of the secured assets of a borrower, the same is silent with regard to tenancy rights under the A.P. Rent Control Act or Transfer of Property Act and there is no provision in the Securitisation Act annulling the tenancy rights of tenants of secured assets. In the absence of such a provision the tenant rights shall remain unaffected and possession of a tenant ought not to be disturbed by the first respondent.

6. The provisions of Section 31 of the Securitization Act, shall not apply to certain cases. Section 31(e) reads as follows:

The provisions of this Act not to apply in certain cases:

(a) ...

(b) ...

(c) ...

(d) ...

(e) Any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

7. It is therefore stated that in view of the above provision, it is clear that the Securitization Act shall not apply to a lease in which no security interest is created. Therefore, since in the lease entered into between petitioner and the second respondent, no security interest had been created in favour of the first respondent-bank, the Securitization Act is not applicable to the lease agreement of the petitioner, dated 27.03.2003. It is also stated that the petitioner is unable to approach the Debt Recovery Tribunal u/s 17 of the Act, as no notice u/s 13(4) was issued to him, and that though in the notice, dated 16.05.2005, the first respondent proposed to take possession of the premises on 01.06.2005, till date possession had not been taken from the petitioner and he is in possession of the premises as on today. Hence, the petitioner filed the present writ petition seeking the above relief.

8. This Court issued Rule nisi on 15.06.2005 and granted status quo in W.P.M.P. No. 16048 of 2005.

9. In the counter affidavit filed by the first respondent, it is averred that the petitioner's main grievance appears to be that as a tenant he is in possession of the building belonging to the second respondent, who is the owner of the said building and that the steps taken by the first respondent invoking the provisions of the Securitisation Act is illegal, arbitrary and violative of Constitution of India. It is stated that M/s. G.V.V. Chandra Sekhar & 5 others, as Borrowers, availed housing loan facility from Punjab National Bank, Rajahmundry, to the extent of Rs. 10 lakhs for construction of house at Door No. 46-18-25 at Danavaipeta, Rajahmundry. The second respondent, who is one among the six borrowers of

the loan, is presently residing and enjoying the above said property and also the income derived out of the rents from the house. When the borrowers failed to repay the loan, the Bank had no other option, except to recourse to the provisions of the Securitisation Act and the security asset sought to be enforced is the residential house bearing D. No. 46-18-25, Danavaipeta, Rajahmundry belonging to the borrowers, and is presently under Sole occupation and enjoyment of second respondent.

10. It is also averred that notice u/s 13(2) of the Securitisation Act for recovery of a sum of Rs. 10,79,646/- was issued to all the Borrowers on 12.02.2005 and despite receipt of the same the borrowers did not make any payment. Therefore, the Bank issued notice, dated 16.05.2005, intimating its intention to take possession of the above security asset and even for that also, there had been no response from the borrowers. The first respondent therefore sought help of M/s. Asset Recovery Management Yard (P) Ltd., the supporting agency, in taking possession of the above security asset and at that stage, the first respondent received notice of the present writ petition and the interim orders passed therein.

11. In the counter at para-6, the contention of the petitioner that he is a tenant of second respondent under an agreement entered into on 27.03.2003, whereunder he took the premises on lease for a monthly rent of Rs. 6,500/- and that the building consists of eight portions and is a double floor structure and that he was permitted sub-lease, is categorically denied. It is stated that the date of mortgage created by the borrowers in favour of the Bank in respect of the premises is 17.11.2000, whereas the alleged tenancy of the petitioner with the second respondent is dated 27.03.2003 i.e., long after creation of equitable mortgage by the borrowers in favour of the Bank. The petitioner also did not specify in his affidavit under which portion of the building he is residing and what portion of the building was let out by him under the alleged sub-lease granted/ permitted by the second respondent. It is stated that as admitted by the petitioner in paras-3 and 4 of the affidavit, he and the second respondent are aware of the notices issued u/s 13(2) of the Securitisation Act and also the failure on the part of the borrowers to effect repayment.

12. The contention of the petitioner in para-5 of the affidavit that Section 13(4) of the Securitisation Act is silent with regard to tenancy rights under the A.P. Rent Control Act or Transfer of Property Act and that there are no provisions in the Securitisation Act annulling the tenancy rights of tenants of secured assets and in the absence of such a provision, the tenancy rights shall remain unaffected and possession of tenant cannot be disturbed, is categorically denied. It is contended that the intention of the second respondent, as one of the Joint Borrowers of the Housing loan, is to defeat the very purpose of any action that may be contemplated by the first respondent, including invoking the provisions of Securitisation Act, by inducting the petitioner as tenant, subsequent to creation of equitable mortgage over the building in favour of the Bank. That being the position, when a secured interest has been created in the secured

asset; the tenant cannot be heard to say that the Securitisation Act is silent with regard to tenancy rights or that the tenant cannot be disturbed. It is stated that the petitioner's interpretation that Section 13(4) of the Securitisation Act being silent cannot annul the tenancy rights is not correct and on the other hand, it is misplaced and nothing prevents the tenant, if so desired, to continue to reside in the mortgaged premises by duly discharging the dues of his landlord to the Bank and avoid legal complications. It is further stated that even assuming without admitting that the alleged tenancy is true and subsisting, is subsequent to the mortgage created. The rights of the petitioner herein as mortgagee cannot be effected by that tenancy and therefore the petitioner's right to enforce the measures under the Securitisation Act should remain unaffected.

13. It is further averred that the contention of the petitioner that the notice, dated 16.05.2005 issued by the first respondent requesting assistance of Superintendent of Police, Kakinada, East Godavari District for taking possession of the premises is contrary to Section 14 of the Securitisation Act is factually incorrect. The first respondent marked a copy of the notice, dated 16.05.2005, to the Superintendent of Police requesting for deputing personnel for the purpose of maintaining law and order and to avoid breach of peace or untoward incident at the time of taking possession of the premises and it cannot under any circumstances be labeled as illegal, arbitrary or malafide exercise of power.

14. It is also averred that the contention of the petitioner that Section 31(e) of the Securitisation Act shall not apply to a lease in which no security interest is created and the lease between him and the second respondent does not create any security interest in favour of the first respondent-Bank and therefore the Securitisation Act is not applicable to the lease agreement, dated 27.03.2003, is absolutely false and untenable. It is stated that security interest is already in existence in the building by virtue of the equitable mortgage created over it on 17.11.2000, long prior to the alleged lease agreement, dated 27.03.2003. In view of the same, neither the petitioner nor the second respondent can be permitted to say that there is no security interest in the property.

15. It is therefore stated that the writ petition itself is misconceived and is not maintainable in law and the petitioner has no locus standi to challenge the action of the first respondent, which has invoked the provisions of the Securitisation Act to protect its interest. The interim orders granted by this Court on 15.06.2005 deserve to be vacated in the interest of justice and the writ petition deserves to be dismissed.

16. The learned Counsel representing the respective parties advanced elaborate submissions drawing the attention of this Court to different decisions on the Securitisation Act and also placed strong reliance on several decisions. Strong reliance was placed on the decision of the Supreme Court in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, . Submissions at length were made in relation to absence of material to establish the alleged tenancy rights of the writ petitioner. Further, the alternative remedies available to him under the

provisions of the Securitisation Act had also been argued in elaboration.

17. The Supreme Court in *Mardia Chemicals Limited's case* (1 *supra*), at paras-66 and 67 observed as follows.

On behalf of the petitioners one of the contentions which has been forcefully raised is that existing rights of private parties under a contract cannot be interfered With, More particularly putting one party in an advantageous position over the other. For example, in the present ease, in a matter of private contract between the borrower and the financing bank or institution through impugned legislation rights of the borrowers have been curtailed and enforcement of secured assets has been provided for without intervention of the Court and above all depriving them of the remedy available under .the law by approaching the Civil Court. Such a law, it is submitted, is not envisaged in any civilized society governed by rule of law. As discussed earlier as well, it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far-reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country. The two aspects are intertwined which are difficult to be separated. There have been many instances where existing rights of the individuals have been affected by legislative measures taken in public interest. Certain decisions which have been relied on behalf of the respondents, on the point are *V. Ramaswami Ayyangar and Others Vs. T.N.V. Kailasa Thevar*, . In that case by enacting the Madras Agriculturist's Relief Act, relief was given to the debtors who were agriculturists as a class, by scaling down their debts. The validity of the Act was upheld though it affected the individual interest of creditors. In *Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim*, , the tenants under the provisions of the Bombay Tenancy Act, 1939 were given protection against eviction arid they were granted the status of protected tenant, Who had cultivated the land personally six years prior to the prescribed date. It was found that the legislation was with the object of improving the economic condition of the peasants and for ensuring full and efficient use of land for agricultural purpose. By a statutory provision special benefit was conferred upon the tenants in Madras City where they had put up a building for residential or non-residential purposes and were saved from eviction, it did though affect the existing rights of the landlords. See also *Swami Motor Transport (P) Ltd. and Another Vs. Sri Sankaraswamigal Mutt and Another*, , and *Raval and Co. Vs. K.G. Ramachandran*

and Others, . Similarly it is also to be found that in Kanshi Ram and Another Vs. Lachhman (Dead) through Lrs. and Others, , the law granting relief to the debtors protecting their property was upheld. Also see Pathumma and Others Vs. State of Kerala and Others, ; Fatehchand Himmatlal and Others Vs. State of Maharashtra, and Ramdhandas and Another Vs. The State of Punjab, .

It is well known that in different States, Rent Control legislations were enacted providing safeguards to the sitting tenants as against the existing rights of the landlords, which before coming into force of such law were governed by contract between the private parties. Therefore, it is clear that it has always been held to be lawful, whenever it was necessary in the public interest to legislate irrespective of the fact that it may affect some individuals enjoying certain rights. In the present case we find that the unrealized dues of banking companies and financial institutions utilizing public money for advances were mounting and it was considered imperative in view of recommendations of experts committees to have such law which may provide speedier remedy before any major fiscal setback occurs and for improvement of general financial flow of money necessary for the economy of the country the impugned Act was enacted. Undoubtedly such a legislation would be in the public interest and the individual interest shall be subservient to it. Even if a few borrowers are affected here and there, that would not impinge upon the validity of the Act which otherwise serves the larger interest.

18. In V. Sriramulu Vs. Karur Vysya Bank Limited and Others, , a learned Judge of this Court at paras-10, 12 and 13 observed as follows:

As held by the Supreme Court, every legal entity of public character does not necessarily become an "authority" within the meaning of Article 12 of the Constitution. Even if a body or organization is a creature of statute, unless such body or organization is entrusted with governmental functions, fundamental to the life of people, the same cannot be treated as "authority" "instrumentality" and "agency" for the purpose of Article 12 of the Constitution. A person alleging an entity to be a State must satisfy the Court of brooding presence of Government or deep and pervasive control of the Government duly demonstrating the real source of governing power.

The Karur Vysya Bank no doubt obtained licence from the Reserve Bank of India. Nevertheless keeping in view the law laid down by the Supreme Court, it cannot be treated as a "State" for the purpose of Article 12 of Constitution and mandamus cannot be issued to it as the same does not perform any public duty.

The petitioner is given liberty to file appeal u/s 17 of the Act before the competent authority. As the Writ petition is not maintainable, this writ petition is misconceived and is accordingly dismissed. No costs.

19. In Neel Madhav Mining Pvt. Ltd. and Others Vs. Authorised Officer, Union of Bank of India and Others, , a Division Bench of this Court, at paras-15 and 18 said as under:

Coming to the main question - Whether the condition such as the one imposed by the impugned order is irrational one, we accept the submission made by the learned senior Counsel for the petitioners. The principal question in the appeal before the Debt Recovery Tribunal, which incidentally is also relevant for the purpose of deciding the interlocutory application as to whether the action of the respondent-bank in invoking Section 13(4)(a) of the Act and proposing to take possession of the land in dispute is legal and within the jurisdiction of the bank? No doubt, Section 13(4) of the Act authorises the creditor such as the respondent-bank to take possession of the secured assets of the borrowers. But by virtue of the declaration made u/s 31 of the Act, the provisions of the Act do not apply to "any security interest created in agricultural land". Therefore, the expression "secured assets" occurring u/s 13(4)(a) of the Act must necessarily be interpreted as an asset other than agricultural land. The question, of course, whether the land in question is an agricultural land or not, requires to be decided on the basis of appropriate evidence to be led in the appeal. But, at the stage of considering the interlocutory applications, the Tribunal, while deciding the question whether the creditor can be permitted to take possession of agricultural land or not, cannot totally ignore the plea of the debtor that the land is an agricultural land and impose a condition such as the one imposed in the impugned order. In our view, such a condition tantamounts to placing a premium on the constitutional right of the petitioners under Article 300-A of the Constitution. Any person, who is not in a position to comply with such an onerous condition would, in effect, be deprived of his right to the enjoyment of the property i.e. agricultural land, a consequence which is not intended under the Scheme of the Act. In the circumstances, we are of the opinion that the order under appeal insofar as it granted interim stay of taking of possession of the property in dispute on condition the petitioners deposit an amount of Rs. 20.00 lakhs, is an order passed in exercise of the discretion, no doubt, vested in the Tribunal, but we must conclude that such a discretion was exercised irrationally.

The object of authorising the creditors to take possession of the assets of the debtors appears to be to safeguard the interests of the creditors in the event of successful culmination of the proceedings under the Act or under the proceedings before the Debts Recovery Tribunal. The object could still be achieved by injuncting the petitioners from alienating the property in dispute or from creating any encumbrance in the property or altering its nature or by ordering both particularly when the dispute is whether the asset is amenable to the jurisdiction u/s 13(4) of the Act or not.

20. A Division Bench of this Court in Branch Manager, State Bank of India, Commercial Branch and Another Vs. Chinigepalli Lathangi and Others, held as under:

From a careful reading of the above provisions of the Act, the Scheme of the Act, broadly, appears to be that the Financial Institutions shall not be unnecessarily subjected to lengthy and arduous procedure for the recovery of monies lent by

them to the borrowers. In fact, there are several other Statutes, covering different financial Institutions (e.g., State Financial Corporation Act) for expeditious recovery of debts. The reasons, perhaps, are mainly two-fold—firstly, the borrowers may be trying to delay or evade repayment of the amounts borrowed from the Financial Institutions/Banks. Monies of the Financial Institutions/Banks is the money of the public. Therefore, while dealing with public money, particularly for the purpose of recovering the monies lent by such financial institutions/banks, stringent measures have to be permitted and for that purpose statutory sanctions have been accorded to such institutions. Precisely that is the reason why the procedural law under the Civil Procedure Code, i.e., filing of a suit in a civil court was expressly barred under the Act. The impact and seriousness of such step is more visible from the language employed in Section 34 of the Act while debarring the ordinary civil courts from granting any orders of injunction. Obviously, this is intended only to Safeguard the public monies, despite which, it is common knowledge that the Banking Institutions are unable to effect recoveries of the monies lent to borrowers at the expected rate and pace.

Secondly, despite various other laws being enacted and enforced, an imperative necessity had been felt by the Legislature, in its wisdom, to enact another statute in the present fashion, viz., The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

From a conjoint reading of the provisions of the Act, extracted above, and the observations of the apex Court in *Mardia Chemicals*" case (supra) noticed above, it is obvious that having taken away the jurisdiction of the civil court, the Legislature did not fail in their duty to accord necessary safeguards to the aggrieved parties/persons, such as the plaintiffs in this case, by way of approaching the Debt Recovery Tribunal, in which event, the Tribunal is couched with the duty under Sub-section (3) of Section 17 of the Act whereby the Tribunal is authorized to pass any interim orders as deemed fit and proper.

Therefore, when a notification had been issued by the Bank (defendants 5 and 6), exercising their jurisdiction u/s 13(4) of the Act, the only course open to the aggrieved persons, including the borrowers, the guarantors or any person/persons aggrieved thereof, is to proceed u/s 17 of the Act.

21. A Division Bench of Karnataka High Court in *Punjab National Bank v. Anwar Sheriff* AIR 2007 Karnataka 9 at para-10 observed as follows:

In the light of the above legal position, let us now advert to the merits of this appeal. It has to be stated at the outset that the impugned interim order passed by the learned single Judge is a non-speaking order inasmuch as it does not indicate as to what weighed with the Court to pass such an interim order. It is an one line order without indicating any reasons for passing such an order. It is not in dispute that the interim prayer sought for by the respondent - writ petitioner was strongly resisted or opposed by the appellant - bank by filing detailed

objections. It is equally not in dispute that after the appellant - bank filed its objections, the matter was heard by the learned single Judge on the question of issue Of an interim order. It is only thereafter, the interim order came to be issued. That being so, the impugned interim order passed by the learned single Judge should have reflected the contentions that were urged before him and the reasons which weighed with the learned single Judge to pass such an interim order. In the absence of all this, the impugned order made by the learned single Judge is nothing but a non-speaking order which on the face of it is not maintainable. It has been repeatedly held by the Hon"ble Supreme Court that a non-speaking order is improper. Therefore on this ground alone, the impugned interim order made by the learned single Judge is liable to be set aside. That apart, we find that in the instant case if at all the respondent - borrower was aggrieved by any of the measures taken by the appellant - bank under the provisions of the Securitisation Act, he ought to have challenged the same by filing an appeal under Section-17 of the said Act. Be it noted that the Hon"ble Supreme Court in the above referred decision has clearly and categorically observed that the next safeguard available to a secured borrower within the framework of the Securitisation Act is to approach the Debt Recovery Tribunal under Section-17 of the Said Act. Such a right accrues only after measures are taken under Sub-section (1) of Section 13 of the Act. That means, the remedy provided to a secured borrower under Section-17 of the Act is one of the important safeguards available to him under the statute even after observing or complying with the fairness to keep the borrower informed of the developments immediately before taking measures u/s 13(4) of the said Act. Thus the secured borrower had been provided with several safeguards under the statute itself including the one provided u/s 17 of the Act. But admittedly, the respondent - borrower did not do so. That would imply that he was not at all aggrieved by the measures taken by the appellant - bank under the provisions of the Securitisation Act. Instead of availing the safeguards provided under the Securitisation Act, including the one under Section-17 thereof, the respondent - borrower filed an application u/s 22 of the DRT Act before the Debt Recovery Tribunal in O.A. No. 589/2000 for a direction to the appellant - bank not to take further steps pursuant to the letter dated 19.1.2005 addressed by the authorized officer of the appellant - bank, which was totally misconceived. If really, the respondent - borrower was aggrieved by the measures taken by the appellant - bank under the provisions of the Securitisation Act, he ought to have challenged the same by preferring an appeal under Section-17 of the Securitisation Act. But strangely, the respondent - borrower did not seek to challenge the measures taken by the appellant - bank under the Securitisation Act by filing an appeal and instead he approached the Debt Recovery Tribunal in O.A. No. 589/2000 by filing an application under Section-22 of the DRT Act, which was totally misconceived and impermissible in law. Section 22 of the DRT Act only deals with the procedure and powers of the Tribunal and the appellate Tribunal which has nothing to do with the relief sought for by the respondent - borrower before the Debt Recovery Tribunal. The prayer made before the Debt Recovery Tribunal

itself was improper and misconceived. The appropriate remedy for the respondent - borrower would have been to prefer an appeal u/s 17 of the Securitisation Act. Admittedly, the respondent - borrower did not do this. Though he did not think of challenging the measures taken by the appellant - bank under the provisions of the Securitisation Act by preferring an appeal u/s 17 of the said Act, but when he approached this Court by preferring a writ petition, the Wisdom dawned upon him to seek to challenge the proceedings initiated by the appellant - bank under the provisions of the Securitisation Act. It may be stated even at the east of repetition that any person (including borrower) who is aggrieved by the measures taken by the secured creditor or his authorized officer under this chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within a specified time. The respondent borrower does not dispute that such a remedy was open to him. But admittedly, he did not choose to avail the alternate and efficacious remedy that was available to him under the statute. Then in the circumstances, it is not free from doubt whether the respondent borrower could have maintained a writ petition. In this connection, a reference may be made to a decision of the Hon''ble Supreme court in the ease of Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., and also to a decision of the Hon''ble Supreme Court in the case of Central Coal Fields Limited v. State of Jharkhand reported in AIR 2005 SCW 4348 : AIR 2001 SC 3425. In the light of these decisions of the Hon''ble Supreme Court, it is not free from doubt whether the Writ petition filed by the respondent without availing of an alternative remedy of filing an appeal under the statute was maintainable in law. All these aspects of the matter required consideration by the learned single Judge before passing the impugned interim order. Whether all these aspects of the matter have been considered or not by the learned Single Judge could not be reflected from the nature of the impugned interim order passed by the learned single Judge. In a matter like this, where both the parties have been heard before passing the impugned interim order, the learned single Judge was required to indicate the reasons for granting an interim order as prayed for. It was imperative on the learned single Judge to indicate the reasons as to why the prayer for interim order was found acceptance with him. In the absence of any such reasons, the impugned interim order of the learned single Judge is indefensible. Even under Order-41 Rule-5 of CPC which deals with the stay of the proceedings, it is clearly indicated that no order for stay of execution shall be made unless the conditions contemplated therein are satisfied. Though strictly speaking, the provisions of Order 41 Rule 5 of CPC may not be applicable to the writ proceedings, the same can be taken as a guideline for issue of interim order of stay in a case of this nature in view of the provisions contained in Rule-39 of the Writ Proceedings Rules framed by this Court. Certain specific considerations to be noted in the matter of grant or otherwise of an interim order sought for by the petitioner, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of interim order usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the Court hearing the application seeking for interim

stay are that:- Extent of damages being an adequate remedy; that the substantial loss may result to the party applying for stay of execution unless the order is made etc. The issue regarding the grant or otherwise of an interim stay is to be looked from the point of view as to whether on refusal of the interim prayer sought for by the petitioner, he would suffer irreparable loss and injury keeping in view the strength of the parties case. We have not been able to gather from the impugned interim order whether all these issues have been looked into by the learned single Judge while granting an interim order in favour of the respondent petitioner. By a non-reasoned order, the impugned interim order could not have been passed when both the parties had raised several contentions. On plainest consideration of justice, the learned single Judge ought to have set forth the reasons, howsoever brief in the impugned order, indicative of an application of his mind, all the more when the same is amenable to further avenue of challenge. The absence of reasons has rendered the impugned interim order passed by the learned single Judge not sustainable in law. The desirability of a speaking order while dealing with the interim prayer sought for by a party cannot be lightly ignored more so when both the parties have been heard and they have raised several contentions and as also when the same is amenable to further avenue of challenge. The requirement of indicating reasons in such cases has been judicially recognized as imperative. Reason is the heart beat of every conclusion, and without the same it becomes lifeless. Even in respect of administrative orders, Lord Denning M.R. in *Breen V. Amalgamated Engineering Union* reported in 1971 (1) All. E.R. 1148 observed:

The giving of reasons is one of the fundamentals of good administration". Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a Speaking out. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of *Bolin Chetia Vs. Jogadish Bhuyan and Others*, wherein it is observed in para 11 of the decision that:

...The first appellate Court exercising power to dismiss the appeals summarily ought to pass a speaking order making it precise that it did go into the pleas - of fact and/or law - sought to be urged before it and upon deliberating on them found them to be devoid of any merit or substance and giving brief reasons. This is necessary to satisfy any superior jurisdiction to whom the aggrieved appellant may approach that the power to summarily dismiss the appeal was exercised

judicially and consciously by way of an exception.

In this connection, a reference may also be made to a decision of the Hon''ble Supreme Court in the case of State of Punjab v. Bhagsingh reported in AIR 2004 SCW 102 : AIR 2004 SC 1203 and also to another decision of the Hon''ble Supreme Court in the case of Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another, (relevant paras 10, 11 and 12).

22. The learned Counsel further relied upon the following decisions - M.R. Utensils v. Union of India 2003 (113) Comp Cas 667 Apex Electricals Limited v. ICICI Limited 2003 (117) Comp.Cas. 412 Manoj D. Kapasi v. Union of India 2005 (125) Comp.Cas. 676 Hotel Rajahamsa International and Others Vs. Authorised Officer, Indian Overseas Bank and Another, A. Aboobakcer v. Punjab National Bank (2005) 127 Company cases 519 (Ker), Siddh Industries, Indore v. Union Bank of India, Mumbai 2004 (1) M.P.L.J. 147 Ravindra Agrawal v. Bank of India 2005 (123) Comp.Cas. 266 and Rajesh Kumar v. Union of India 2004 (1220) Comp.Cas. 823.

23. In the light of the views expressed in the decisions first referred to supra and also the other decisions which had been referred to above, this Court is of the considered opinion that inasmuch as no acceptable material as such had been placed relating to the alleged tenancy rights, this question cannot effectively be gone into in the present writ petition. Even otherwise, since the petitioner has other alternative remedies, let the petitioner pursue such alternative remedies available to him in law. In the light of the same, liberty is given to the petitioner to pursue the other legal remedies available to him in accordance with law.

24. With the above observation, the writ petition is disposed of, since no other relief can be granted in favour of the petitioner in the present writ petition. No order as to costs.