

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.24155 and 24158 of 2015

COMMON ORDER:

Heard the learned counsel for the petitioner, and learned Standing Counsel for the third respondent.

The petitioner availed overdraft facility under OD Account No.15423 from the third respondent and in order to recover the amounts outstanding in that account the third respondent filed O.P.No.10/2005. In the said O.P., the third respondent prayed for passing an award for recovery of Rs.36,55,600/- along with interest @ 21% per annum. It is stated in the said proceedings that the petitioner mortgaged the property of an extent of 400 square yards belonging to the respondents 4 to 6 herein bearing municipal No.12-2-825/6/1 situated at Mehidipatnam, Hyderabad. Counter was filed before the second respondent. In the said O.P., the petitioner filed I.A. No.158/2014 to summon the Official Liquidator of the third respondent as a witness to depose before the second respondent about the subject loan transaction and also on various documents filed by the third respondent. The said application was dismissed by order dated 08.07.2015. The petitioner also filed I.A.No.228/2014 seeking leave to file additional counter, and the said application was also dismissed on 08.07.2015. Challenging the above said interlocutory applications, the present writ petitions are filed.

The case of the petitioner in support of I.A. No.158/2014 is that he did not avail the loan amount to the extent that was claimed and the mortgage created in respect of the property of the respondents 4 to 6 was cancelled by a registered document and even otherwise the mortgage was only for an amount of Rs.50,000/- as could be seen from the Memorandum of Deposit of Title Deeds produced by the third respondent. To the said application, the third respondent filed a counter

stating that the application was filed only to drag on the proceedings. It was also stated that earlier he filed I.A. Nos.267/2012 and 268/2012 and the same were dismissed by the second respondent on 02.07.2014. The present application was filed at the time when the case was posted for arguments. The petitioner also cross-examined PW1 on 08.07.2009 and the present application was filed after several years. The application was dismissed by the second respondent holding as follows:

“The main contention of the petitioner is to summon the liquidator as a witness to the proceedings, but the evidence of the witness was completed and the matter is coming up for arguments. The bank contended that liquidator is not an eye witness and he has not filed any documents and thus his evidence is not required and the petition is filed only to delay the proceedings. Already bank examined the junior legal officer as PW1 and he was cross examined by the petitioner way back in the year 2009 itself, now he came up with this petition at the fag end of the case only to drag on the proceedings.”

No doubt, the application was filed at the stage of arguments. The main plea of the petitioner is that he availed loan of Rs.3.00 lakhs, but the said amount was liquidated and the O.P. was filed for recovery of Rs.36,55,600/-, which is an exorbitant amount. He also submits that the counter filed in the O.P. was not elaborate and an opportunity should be given to him to present his case completely.

Learned counsel appearing for the third respondent submits that the petitioner is intentionally dragging on the proceedings and the proceedings are pending for the last ten years.

This Court noticed that RW2 was examined on 10.02.2014 and the case is coming up for arguments.

The petitioner filed an affidavit before this Court giving an undertaking that he would complete the evidence and cooperate with the Tribunal for disposal of the matter. The said affidavit is taken on record.

In the circumstances, in order to provide an opportunity to the petitioner to completely present his case, the petitioner is given liberty to file additional counter and cross-examine PW1 and complete the entire

process within six (6) weeks from the date of receipt of a copy of this order. The petitioner is given liberty to file additional counter within one week and the Tribunal shall fix the date after one week, after filing of additional counter, for cross-examination of PW1 and post the case thereafter for arguments. If the petitioner does not co-operate with the disposal of the case, it is open to the second respondent to pass appropriate orders in accordance with law for disposal of the O.P. pending before it.

Accordingly, these two writ petitions are disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 23.09.2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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