

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

WRIT PETITION No.5727 of 2015

—
ORDER: (Per R. Subhash Reddy, J)

This Writ Petition is filed with the following prayer:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring:

- (a) the Notice of Demand dated 22.04.2014 issued by the Recovery Officer, DRT, Visakhapatnam in RP No.30/2014 on behalf of the Respondent Bank pursuant to the Recovery Certificate dated 04.04.2014 drawn for Rs.47,13,597/- in OA No.1000/2002 as being illegal, erroneous, arbitrary, onerous and violation of principles of natural justice and constitutional rights; consequently set aside the same;
- (b) the continued physical possession of the Schedule “A” property of the petitioners by the respondent bank beyond 28.03.2014 even after getting back the entire dues by 28.03.2014 as being illegal, erroneous, arbitrary, onerous and violation of principles of natural justice and constitutional rights; consequently direct the respondent bank to restore the physical possession of the Schedule “A” property to the petitioners;
- (c) the continued holding of title deeds and link documents of the properties mentioned in Schedule ‘B’ beyond 28.03.2014 even after getting back the entire dues by 28.03.2014 as being illegal, erroneous, arbitrary, onerous and violation of principles of natural justice and constitutional rights;
- (d) the amount of Rs.2,32,091/- received and held by the respondent bank from the petitioners as being illegal, arbitrary, undue enrichment and consequently direct the respondent bank to refund the same to the petitioners.”

2. Petitioners are guarantors for the loan availed by late Sri P. Krishna Rao. In view of the default committed in repaying the loan, respondent-bank filed O.A.No.558 of 1998 before the

Debts Recovery Tribunal, Bangalore, which was subsequently transferred on constitution of Debts Recovery Tribunal, Hyderabad and numbered as O.S.No.1586 of 1999. Again, on constitution of Debts Recovery Tribunal, Visakhapatnam, the same was transferred and re-numbered as O.S.No.1000 of 2002. The said O.A., was allowed by order dated 17.02.2014 by the Debts Recovery Tribunal, Visakhapatnam, directing the defendant therein to pay a sum of Rs.23,41,089/- with simple interest at 12% per annum to be recovered from the petitioners. On recovery of the said sum, recovery proceedings were initiated for recovery of Rs.47,13,597/-.

3. It is the case of the petitioners that there is arithmetical and calculation error and recovery certificate should have been only for Rs.31,11,778/-. For correction of arithmetical error, petitioners filed M.A.No.44 of 2014 in R.P.No.30 of 2014. It is stated that in the said application also, the amount which was to be recovered was mentioned as Rs.34,39,810/- instead of Rs.31,11,778/-. After suit is decreed, petitioners paid amounts at different intervals totalling Rs.36,99,558/-. It is the grievance of the petitioners that the very demand notice issued in the recovery proceedings is illegal and excess money of the petitioners lying with the respondents; in spite of the same, respondents are not releasing the mortgaged properties which were offered as security for the loan obtained by the borrower.

4. The claim of the petitioners with regard to arithmetical error is a matter which is required to be considered in M.A.No.44 of 2014 filed by the petitioners in R.P.No.30 of 2014 in O.A.No.1000 of 2012 before the Debts Recovery Tribunal, Visakhapatnam. As recovery certificate is issued for Rs.47,13,597/-, after deducting the amounts already paid at different intervals, the amount due would only be Rs.10,14,039/-. It is submitted that petitioners are ready to pay the said amount

without prejudice to their rights in M.A.No.44 of 2014 and respondents may be directed to release the security which was furnished by the petitioners who are guarantors to the loan obtained by the borrower.

5. In view of the request made by the petitioners, we deem it appropriate to dispose of the Writ Petition permitting the petitioners to deposit a sum of Rs.10,14,039/- and the subsequent interest, if any, within a period of four (04) weeks from the date of receipt of this order. On such deposit, respondent-bank is directed to release all the securities furnished by the petitioners. The sum of Rs.10,14,039/- shall be kept in separate 'No-lien Account' and the same shall be subject to the orders to be passed by the Debts Recovery Tribunal, Visakhapatnam in M.A.No.44 of 2014 in R.P.No.30 of 2014 in O.A.No.1000 of 2012 before the Debts Recovery Tribunal, Visakhapatnam.

6. Writ Petition is accordingly disposed of. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Writ Petition stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

July 28, 2015
Mgr/MRR