

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.15429 of 2015

ORDER:

Heard Sri Origala Ramesh, learned counsel for the petitioner and the learned Government Pleader for Cooperation appearing for the respondents.

2. In this Writ Petition, the petitioner has questioned order dt.17-01-2015 in CTA No.67 of 2012 of the Cooperative Tribunal, Hyderabad confirming the order dt.30-11-2011 passed by 2nd respondent in Rc.No.676/2010-C/SLMCUB/S.O.3.

3. On 02-03-2010, 2nd respondent-Deputy Registrar/Liquidator of Sri Laxmi Mahila Cooperative Urban Bank Limited returned 43 execution petitions stating that execution petitions could not be executed since there are procedure lapses noticed in the sanctioning of loans to the tune of Rs.15,58,980/-, and that the loans were sanctioned to fictitious persons by Sri Laxmi Mahila Cooperative Urban Bank Limited, Hyderabad which is under liquidation etc. He requested them to initiate action under Section 60 of the AP Cooperative Societies Act, 1964 against the said Ex-Managing Committee members of the said bank who sanctioned over drafts and personal loans to the persons mentioned therein.

4. Thereafter, a show cause notice dt.06-07-2010 under Section 60 of the said Act was issued to the petitioner who was also one of the Ex Managing Committee members.

5. The notice sent to the petitioner by RPAD was neither returned nor was any acknowledgment received by the office of the 2nd respondent.

6. He gave another show cause notice dt.31-05-2011 and sought to serve it through a Special Messenger/the office subordinate of DLCO, but the letter was returned stating that it could not be served on the petitioner and other Ex Managing Committee Members since they were not available at their last known address, and that the Special Messenger affixed them on the last known addresses.

7. Thereafter, the publication was made in Andhra Bhoomi Daily Telugu Newspaper on 18-11-2011 directing the petitioner and other former Managing Committee members to appear before 2nd respondent on 28-11-2011 and put forth their defence to the allegations leveled in the notice dt.31-05-2011 and indicating that the matter would be proceeded *ex parte* if they did not do so.

8. Since the petitioner and other Ex Managing Committee members did not appear before 2nd respondent on that day, the 2nd respondent passed an

order on 30-11-2011 directing recovery of Rs.15,58,980/- jointly and severally from the petitioner as well as other Ex Managing Committee members of the bank with 18% interest from the date of sanction till the date of realization.

9. Petitioner questioned this in C.T.A.No.67 of 2012 before the Cooperative Tribunal at Hyderabad raising a specific plea that the notice alleged to have been sent by 2nd respondent was not received by her.

10. The said appeal was dismissed on 17-01-2015 stating that notice dt.06-07-2010 was issued to the petitioner but she did not submit explanation and that the other show cause notice dt.31-05-2011 was sought to be served through the office subordinate of the DLCO but the latter could not serve it since the petitioner was not available in the last known address. The Tribunal also referred to publication in the Andhra Bhoomi Daily Telugu Newspaper on 18-11-2011 and held that the plea of the petitioner that the notice under Section 60 issued by 2nd respondent was not served on her was not correct and that the petitioner did not adduce any evidence even though opportunities were given to her to defend the case.

11. Learned counsel for the petitioner contended that neither the notice dt.06-07-2010 nor the notice dt.31-05-2011 issued by 2nd respondent were

served on the petitioner.

12. This Court then asked the learned Government Pleader for Cooperation to produce the record relating to the service of these notices on the petitioner.

13. The learned Government Pleader has today produced the record. The record does not reveal that the notice dt.06-11-2010 was even dispatched to the petitioner, let alone served on her. Even the notice dt.31-05-2011 bears an endorsement of the office subordinate of the office of the DLCO, Hyderabad that the notice dt.31-05-2011 could not be served on the petitioner and other Ex Managing Committee members of the bank since they were not available in the present known address.

14. There is no finding even in the order of the Tribunal that the notice dt.06-07-2010 was actually served on the petitioner. As regards the notice dt.31-05-2011, the Tribunal noticed that the notice could not be served by the office subordinate of the DLCO on the last known address, whereas endorsement of the office subordinate of the DLCO on the notice dt.31-05-2011 states that the petitioner and others were not available at their present known addresses and not to last known addresses. Without attempting to serve notice on the petitioner by RPAD at her present address, it is not open to 2nd respondent to proceed to pass an order under Section 60

of the Act against the petitioner merely on the basis of publication made on 18-11-2011 in Andhra Bhoomi Daily Telugu Newspaper.

15. Therefore, the order dt.30-11-2011 of 2nd respondent as confirmed by the order dt.17-01-2015 in CTA No.67 of 2012 of the Cooperative Tribunal, Hyderabad, are both unsustainable since the said orders are passed in violation of principles of natural justice.

16. Accordingly the Writ Petition is allowed and both the impugned orders are set aside insofar as petitioner is concerned and the matter is remitted back to 2nd respondent. The 2nd respondent shall issue a fresh notice by RPAD to the petitioner on the address viz., Plot No.145/13, Trimulgherry, Greenfields, Teachers Colony, Secunderabad to show cause why proceedings under Section 60 of the Act shall not be initiated against her. On receipt of the said notice, the petitioner shall submit her explanation within four weeks thereafter. After receipt of the explanation, the 2nd respondent shall fix a date for conducting enquiry into the allegations against the petitioner. On such date or any other date fixed by 2nd respondent, an enquiry shall be conducted. The final order shall be passed by 2nd respondent within two months from the date of receipt of an explanation of the petitioner by 2nd respondent. If the petitioner does not

appear before 2nd respondent, after receiving the notice from the 2nd respondent, it is open to the 2nd respondent to proceed *ex parte* in the matter.

17. The Writ Petition is allowed with the above directions. No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-12-2015

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