

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.1577 OF 2009

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

Challenge is to the order, dated 18-12-2008, in I.A. No.1171 of 2008 in O.A. No.238 of 2006, passed by the learned Debts Recovery Tribunal, Hyderabad by way of Writ of *Certiorari* so far as imposition of costs of Rs.10,000/-(Rupees ten thousand) payable to the Prime Minister's Relief Fund is concerned.

2 . According to the petitioner – State Bank of Hyderabad, Vizianagaram Branch, respondents - borrowers obtained loan facility from it by executing necessary loan documents, besides guarantors executing agreements of guarantee creating security interest in the property for the loan amount. Since the loan stood un-discharged, the petitioner filed O.A. No.238 of 2006 (Old No.25 of 2005) before the Debts Recovery Tribunal at Hyderabad (for short 'the Tribunal') for recovery of Rs.27,85,389.20 paise. During inquiry, the respondents - borrower/guarantors, remained *ex parte* before the Tribunal.

i) It is further stated that the petitioner examined its Branch Officer as AW.1 and marked the documents. At the stage of arguments, it was found that the statement of account originally filed was in accordance with un-amended provisions of the Bankers Book of Evidence Act (for short 'the Act') and, as per subsequent amendments to the Act, additional format was required to be certified

by the person in-charge of the Computer System of the bank certifying that the system was operated properly at the relevant point of time when print out was taken.

ii) It is also stated that the petitioner filed I.A. No.1170 of 2008 to reopen the case and I.A. No.1171 of 2008 to receive the certification of statement of accounts. The Tribunal while allowing the applications, imposed costs of Rs.10,000/- payable to the Prime Minister's Relief Fund. According to the petitioner, such order has been passed causing lot of financial strain on the financial institutions, especially when suit is filed for recovery of money on account of default by the borrowers. Other contentions have been raised, but it is mainly contended that it was a mere technical objection, as originally relevant statement of account was filed without certification and, therefore, sought to allow the writ petition.

3. No counter is filed opposing the request made herein.

4 . Heard Sri Addepalli Suryanarayana, learned Standing Counsel for the petitioner. No representation for the respondents.

5. Perused the impugned order. The order reflects that the Tribunal observing that AW.1 was expected to verify the documents before giving evidence and, had he really verified, he would have expected to know that the statement of account is not duly certified under the Act and, thus, AW.1 has exhibited casual manner in giving evidence, and that there was negligence on the part of the signatory of OA and thereby imposed costs of Rs.10,000/- (Rupees ten thousand) to be paid to the Prime Minister's Relief Fund in each case.

6. Except the aforesaid reason, no other convincing reasons are to

be found for saddling the petitioner with payment of costs. It is not as though the petitioner has not filed any statement of account, but, somehow, the compliance, as required by the amended provisions of the Act by way of certification by the in-charge of the computer system, was not made. When respondents in O.A. remained *ex parte* before the Tribunal and there was no resistance and the statement of account was already filed at the time of submitting OA, merely because there was slight negligence in not obtaining certification on the statement of account, cannot be a ground to saddle the petitioner with huge costs of Rs.10,000/-. Therefore, we are of the view that the relief sought by the petitioner can be acceded to.

7. Accordingly, the Writ Petition is allowed, quashing the impugned order, dated 18-12-2008, in I.A. No.1171 of 2008 in O.A. No.238 of 2006, passed by the Tribunal to the extent of imposition of costs of Rs.10,000/- (Rupees ten thousand only). There shall be no order as to costs.

8. As a sequel thereto, Miscellaneous Petitions, if any, pending in this writ petition, stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 23, 2015.

Mgr

