

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

-
WRIT PETITION No.19915 OF 2010

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

Heard learned counsel appearing for the petitioner
and

Sri P.B. Vijay Kumar, learned counsel appearing for the
1st respondent – Bank.

This Writ Petition is filed questioning the order, dated
30.07.2010, passed in M.A.No.43 of 2010 in S.A.No.67 of
2006 by the Debts Recovery Tribunal, Hyderabad.

Petitioner, having secured loan of Rs.8,00,000/- on
03.03.2000 from the 1st respondent–Bank, failed to repay
the same. Therefore, the 1st respondent – Bank has
initiated proceedings under Securitisation and
Reconstruction of Financial Assets and Enforcement of
Security Interest Act, 2002 (for short, 'the Act'), and issued
notice under Section 13 (2) of the Act. Thereafter, the 1st
respondent – Bank has taken symbolic possession of the
property in question on 09.10.2004. Aggrieved by the
same, petitioner filed S.A.No.82 of 2004 before the Debts
Recovery Tribunal, Visakhapatnam, but the same was
transferred to the file of Debts Recovery Tribunal,
Hyderabad, and was renumbered as S.A.No.67 of 2006,
which was dismissed for non-prosecution on 28.01.2010.

To set aside the order, dated 28.01.2010, petitioner filed M.A.No.43 of 2010, annexed with a detailed affidavit. By impugned order, dated 30.07.2010, the said M.A. was dismissed mainly on the ground that the S.A. is of the year 2006.

When a case is dismissed for non-prosecution and when an application is filed to set aside such order, the Tribunal has to consider only the reasons stated in the affidavit filed in support of such application. In the present case, the Tribunal, without adverting to the reasons stated in the affidavit filed in support of M.A.No.43 of 2010, only on the ground that the S.A. was pending for four long years, dismissed the M.A.. In that view of the matter, we are of the view that it is a fit case to set aside the impugned order, dated 30.07.2010.

Accordingly, the impugned order, dated 30.07.2010, is set aside. Consequently, M.A.No.43 of 2010 stands allowed and the order, dated 28.01.2015, stands set aside. Further, the Debts Recovery Tribunal, Hyderabad, is directed to dispose of the S.A. as expeditiously as possible, preferably within a period of two (2) months from the date of receipt of a copy of this order.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH

REDDY, J

A.SHANKAR

NARAYANA, J
June 29, 2015
MD