

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

**WRIT PETITION Nos.1574, 1575, 1576, 1578 AND 954
OF 2009**

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

Challenge is to the orders, dated 18-12-2008, 30-12-2008,

18-12-2008 and 19-11-2008 in I.A. No.1167 of 2008 in O.A. No.230 of 2006; I.A. No.1494 of 2008 in O.A. No.166 of 2002; I.A. No.1169 of 2008 in O.A. No.231 of 2006; I.A. No.1173 of 2008 in

O.A. No.239 of 2006 and I.A. No.1257 of 2008 in O.A. No.105 of 2005, respectively, 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, Shapurnagar and Bhongir Branches, respectively, respective respondents - borrowers obtained loan facility from their respective branches by executing necessary loan documents, besides guarantors executing agreements of guarantee creating security interest in the respective properties for

the loan amounts. Since the loans stood un-discharged, the petitioner filed O.A. Nos.230 of 2006 (old No.109 of 2005), 166 of 2002, 231 of 2006, 239 of 2006 and 105 of 2005 before the Debts Recovery Tribunal at Hyderabad (for short 'the Tribunal') for recovery of Rs.32,30,895.65ps; Rs.20,04,665/-; 10,05,282/-; 11,91,702.69ps. and Rs.38,91,031/-, respectively. During inquiry, the respondents - borrowers/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. Nos.1166, 1493, 1168, 1172 and 1256 of 2008, respectively, to reopen the cases and I.A. Nos.1167, 1494, 1169, 1173 and 1257 of 2008, respectively, 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 in each case. According to the petitioner, such orders have been passed causing lot of financial strain on the financial institutions, especially when suits are 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 petitions.

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 respective 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.As. 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 Petitions are allowed, quashing the impugned orders, dated 18-12-2008, 30-12-2008, 18-12-2008 and 19-11-2008 in I.A. No.1167 of 2008 in O.A. No.230 of 2006; I.A. No.1494 of 2008 in O.A. No.166 of 2002; I.A. No.1169 of 2008 in O.A. No.231 of 2006; I.A. No.1173 of 2008 in O.A. No.239 of 2006 and I.A. No.1257 of 2008 in O.A. No.105 of 2005, respectively, 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 these writ petitions, stand disposed of.

**R. SUBHASH
REDDY, J**

A. SHANKAR NARAYANA, J

September 22, 2015.

Mgr