

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT

WRIT APEAL No. 438 OF 2015

05-06-2015

Between:

The District Co-operative Marketing Society Ltd., Adilabad, Adilabad

District, rep., by its Business Manager, N. Mohan Rao

... Petitioner

And

D. Ramlal Rathod and three others

... Respondents

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

-
WRIT APEAL No. 438 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the parties.

This writ appeal is directed against the order dated 07-04-2015 passed in Writ Petition No. 9205 of 2009. The writ petition was filed by respondent No.1 challenging the order dated 23-03-2009 passed in RP No. 4 of 2008 and the order dated 12-10-2006 made in CTA No.323 of 2002 by the Andhra Pradesh Cooperative Appellate Tribunal (for short, the Tribunal'). The review petition was filed by respondent No.1 solely on the ground that the appeal was decided *ex parte*. In other words, it was submitted by respondent No.1 in the review petition that when the appeal CTA No. 323 of 2003 was decided, he was not heard. The review petition was however disposed of as not maintainable.

Learned single Judge however allowed the writ petition and relegated the parties to the Tribunal setting aside the orders passed in the review and so also in the appeal and directed the Tribunal to dispose of CTA No. 323 of 2002 expeditiously on merits in accordance with law. While passing this order, the learned Judge took into account the bona fides shown by respondent No.1 by depositing Rs.5,00,000/- in the Court. The total principal amount involved in the

dispute is Rs.9,56,000/-, which, according to the appellant, with interest is about Rs.18,00,000/-. The interest part is disputed by learned counsel for respondent No.1.

We are not inclined to enter into that controversy. Having considered the order passed by the learned single Judge and considering that respondent No.1 was not heard when the appeal was decided, we are satisfied that this writ appeal can be conveniently disposed of by protecting the interest of the appellant. We also make it clear that we have seen the conduct of respondent No.1 before the Tribunal when the appeal was dealt with on merits. Keeping that in view, when we asked learned counsel for respondent No.1, in order to show his bona fides, whether respondent No.1 is ready to deposit the entire principal amount i.e., Rs.4,56,000/- in addition to Rs.5,00,000/-. He stated that respondent No.1 shall deposit the said amount within a period of eight weeks from today without prejudice to his rights and contentions. He further prayed for observation that if respondent No.1 succeeds in the appeal, he shall be entitled for refund of the entire amount with interest.

In the circumstance, we dispose of this appeal by the following order:

“Respondent No.1 shall deposit Rs.4,56,000/- with the appellant – Society without prejudice to his rights and contentions, within a period of eight weeks from today, failing which it is made clear that the order passed by learned single Judge dated 07-04-2015 shall stand set aside.

If the amount, as aforementioned, is deposited by respondent No.1 within the stipulated time, the Tribunal shall proceed to hear and decide CTA No.323 of 2003, as directed in the impugned order, afresh, as expeditiously as possible and preferably within a period of 12 weeks from the date of deposit of the amount. If respondent No.1 ultimately succeeds, the appellant shall refund the amount with simple

interest at the rate of 6% per annum within four weeks from the date of order. All contentions of the parties on merits are kept open.”

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

05-06-2015
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