

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No.7963 of 2016

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29.07.2016

Between:

Sooram Ravinder

..Petitioner

And

M/s.India Bulls Financial Services Limited,
Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.Sharad Sanghi

Counsel for respondent Nos.1 and 2: Mr.K.V.Rusheek Reddy

Counsel for respondent No.3:--

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The order, dated 16.02.2016, in Securitization Appeal (for short 'the S.A.') No.583 of 2014 on the file of the Debts Recovery Tribunal, Hyderabad (for short 'the D.R.T.') is under challenge by the appellant in the said application.

2. We have heard Mr.Sharad Sanghi, learned counsel for the petitioner and Mr.Rusheek Reddy K.V., learned counsel for respondent Nos.1 and 2, and perused the record.

3. The petitioner, who is the co-borrower from respondent Nos. 1 and 2, filed the abovementioned appeal on 27.08.2014 questioning the proposed sale scheduled to be held on 30.08.2014. He also filed an application for amendment of the prayer in the S.A. by including the prayer to declare the action of respondent Nos.1 and 2 in taking the symbolic possession of the mortgaged property on 01.01.2014 and physical possession thereof on 14.06.2014 as illegal. The said application was dismissed by the D.R.T. on the ground that the application filed beyond 45 days of taking possession is barred by limitation.

4. Ordinarily, Courts must be liberal in allowing the amendments unless such amendments change the nature and character of the litigation and the same, if allowed, causes injury to the opposite party, which cannot be compensated monetarily. No doubt, limitation is also a relevant aspect in considering an application for amendment. However, ordinarily the aspect of limitation will not be considered at the threshold and instead, the same will be considered while disposing of the main case, for limitation is a mixed question of law and fact, which could be adjudicated by the Courts or the Tribunals after considering the evidence on record, which may include oral

evidence also, besides documentary evidence.

5. In the above view of the matter, we are of the opinion that the D.R.T. ought to have allowed the application for amendment and framed a specific issue regarding the limitation to enable both the parties to adduce relevant evidence on this aspect. As the D.R.T. has failed to follow this procedure, the impugned order is set aside. The application filed for amendment is allowed. The D.R.T. shall frame an issue on limitation, allow both the parties to adduce their respective evidence and adjudicate the same while disposing of the main case.

6. The Writ Petition is allowed to the extent indicated above.

7. As a sequel to allowing the writ petition, W.P.M.P.No.10125 of 2016 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

29th July, 2016

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