

THE HON'BLE SRI JUSTICE M.GANGA RAO

C.R.P. NO.2586 OF 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed being aggrieved by the order dated 04.05.2012 passed by the Presiding Officer, Debts Recovery Tribunal, Visakhapatnam, (for short 'DRT') in I.R.No.1178 of 2012 in AOR (UN) wherein and whereby the Presiding Officer upheld the objection taken by the Registrar of the Debts Recovery Tribunal, Visakhapatnam, in returning the appeal filed by the petitioners for payment of deficit court fee, as the appellants have filed AOR on payment of Rs.250/- towards Court fee as against the fee of Rs.30,000/- payable as per DRT Rules.

2. The petitioners/appellants having availed loan facilities from the Andhra Bank suffered a decree in O.A.No.40 of 2002, dated 14-03-2008 on the file of the DRT. Pursuant thereto, Recovery Certificate was issued for recovery of Rs.2,30,72,946-84 ps. from the petitioners with future interest and costs and sale of mortgaged properties. The 1st respondent in execution of the Recovery Certificate had issued a demand notice on 09-05-2008 and the matter was adjourned for further steps. While so, Respondents 2 to 4 filed IR No.872 of 2008 in R.P.No.77 of 2008 in O.A.No.40 of 2002 claiming to release an extent of Ac.1.50 cents located at D.No.142, Agathavarapadu village, Pedakakani Mandal, Guntur District i.e. half of 'A' schedule mortgaged properties, from attachment/sale. The 1st respondent allowed the petition on 30-03-2012 against which

the petitioners herein filed an appeal under Section 30(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 read with Rule 5 of the Debt Recovery Rules before the Debts Recovery Tribunal, Visakahapatnam, by a paying Court fee of Rs.250/- stating that the order impugned in the said appeal was not one under Section 20 of the Act and thereby the payment of Court fee payable under Rule 8 of the Rules would not arise and also relied upon judgments viz., *A.K.Bhardwaj And Ors. Vs. ICICI And Ors*⁽¹⁾ and *Kalyani Sales Company And Anr vs. Union of India And Anr.*⁽²⁾. However, the Registrar of the DRT took an objection with regard to payment of deficit Court Fee. Pursuant thereto, The Presiding Officer, Debts Recovery Tribunal, Visakahapatnam, passed the cryptic order in question on 04-05-2012 holding that the case laws relied upon by the petitioners/appellants has no relevancy to the present case and the objection raised by the Registrar was justified and thereby applicants were directed to pay the Court fee, if they so desire to file an appeal, failing which the appeal so filed will be treated as dismissed. As against the same, the present revision came to be filed contending that without considering the factum that the Court Fee of Rs.250/- was paid as required under Rule 7 (4) of the Rules as the appeal being filed against the interlocutory order of Recovery Officer in I.A.No.872 of 2008 and since the order of the Recovery Officer is not under Section 20 of the Act, the question of payment of Court fee under Rule 8 of the Rules does not arise.

¹ III (2006) BC 187

² AIR 2006 P H 107

3. Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

4. The counsel for the revision petitioners mainly contended that the appeal was filed under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1973, read with Rule 5 of the Debt Recovery Rules against the order passed by the Recovery Officer, for which they are supposed to pay Court fee of Rs.250/- only as per Rule 7(1)(4) of the Debts Recovery Tribunal (Procedure) Rules, 1993, but not Rs.30,000/- as per Rule 8(2) of The Debts Recovery Appellant Tribunal (Procedure) Rules, 1994. Further, the learned counsel for the revision petitioners while relying on the decisions in *A.K.Bharadwaj (1 supra)* and *Kalyani Sales Company (2 supra)*, in support of his case, contended that in the absence of any provision made by the Legislature meeting the requirement, Registrar of DRT shall only be entitled to collect Rs.250/- towards Court fee on miscellaneous appeal.

5. On the other hand, the learned counsel for the respondents, though, contended that the DRT has passed the impugned order as per Rule 8 (3) of the Rules, but the DRT failed to pass reasoned order.

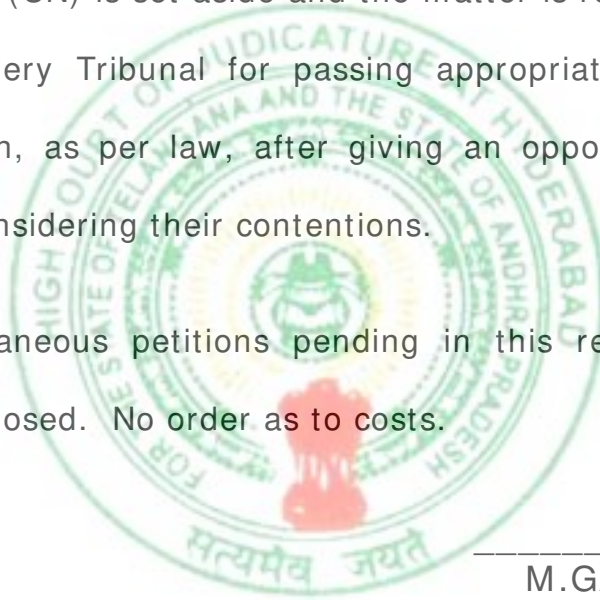
6. Apparently, upon perusing the above cited judgments and also perusal of case record, the DRT without considering the reasons put forth by the appellants for payment of Court fee of Rs.250/- as per Rule 7(1)(4) of the Debts Recovery Tribunal (Procedure) Rules, 1993, has passed the order impugned under

revision and without considering the reasons put forth by the appellants in proper perspective.

7. Therefore, instead of expressing any opinion with regard to merits of the case, to meet the ends of justice, the matter be remanded to DRT for fresh adjudication and disposal, as per law.

8. Accordingly, the Civil Revision Petition is allowed. The order dated 04.05.2012 passed by learned Presiding Officer, Debts Recovery Tribunal, Visakhapatnam, in I.R.No.1178 of 2012 in AOR (UN) is set aside and the matter is remanded to the Debts Recovery Tribunal for passing appropriate and suitable orders afresh, as per law, after giving an opportunity to both sides and considering their contentions.

9. Miscellaneous petitions pending in this revision, if any, shall stand closed. No order as to costs.



M.GANGA RAO, J

13.10.2017
TSNR