

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.5340 of 2014

ORDER: (Per Justice Sanjay Kumar)

This writ petition was filed assailing the order dated 14.02.2014 passed by the Debts Recovery Tribunal, Hyderabad, in I.A.No.321 of 2009 in S.A.I.R.No.90 of 2009. By the said I.A., the petitioner herein sought condonation of the delay of 355 days in filing the application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). Challenge in the said application was to the possession notice dated 30.01.2008 issued by the State Bank of Hyderabad under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

The only reason offered by the petitioner for the delay of 355 days in filing the application under Section 17 of the SARFAESI Act was that by the time he could take legal advice, limitation had lapsed and the delay occurred. The Tribunal opined that the delay had not been explained with any sufficient cause and therefore refused to condone the same.

By order dated 03.03.2014, this Court took note of the fact that pending the disposal of the said I.A., interim stay granted by the Tribunal was in force and accordingly directed the State Bank of Hyderabad not to put the residential house belonging to the petitioner to sale and stayed further proceedings pursuant to the possession notice. This interim order was extended until further orders on 18.03.2014.

Sri D. Raghavulu, learned counsel for the petitioner, is unable to establish as to how the finding of the Tribunal that the petitioner had failed to show sufficient cause for the delay is unsustainable.

Perusal of the affidavit filed in support of the I.A. reflects that the petitioner merely stated that he was a retired Constable and had no knowledge of litigation. He further stated that he had paid substantial amount to avoid litigation and by the time he could take legal advice, the time had lapsed and that the delay was not wanton or deliberate but purely accidental and beyond his control.

Needless to state, the aforesaid reasons, by no stretch of imagination, constitute sufficient cause for condoning the delay of nearly one year in filing the application. The order passed by the Tribunal therefore does not brook interference on facts or in law.

The writ petition is devoid of merit and is accordingly dismissed. This order shall however not preclude the petitioner from availing appropriate remedies in accordance with law if and when a fresh cause of action arises.

Interim order dated 03.03.2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

GUDI SEVA SHYAM PRASAD, J

17th July, 2017
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