

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No.33596 OF 2016

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the order dated 29.08.2016 passed by the Debts Recovery Tribunal, Kolkata, in M.A.No.230 of 2014 in Tender No.117 of 2014. By the said order, the Debts Recovery Appellate Tribunal, Kolkata, condoned the delay in the presentation of the appeal by the Union Bank of India against the order dated 26.07.2013 passed by the Debts Recovery Tribunal, Visakhapatnam, in O.A.No.190 of 2010.

The specific case of the petitioner is that the fourth respondent in the appeal died even before filing of the condone delay application and the same was brought to the notice of the Appellate Tribunal by way of Memo dated 06.06.2014 and even in the counter filed by her before the Appellate Tribunal contesting the subject application, she mentioned the said fact.

Perusal of the order under challenge reflects that the Appellate Tribunal did not take note of this aspect of the matter at all and straight away condoned the delay in the presentation of the appeal. Trite to state, no order can be passed by a judicial authority in favour of or against a dead person and such an order would normally be a nullity in the eye of law (N.JAYARAM REDDI v. REVENUE DIVISIONAL OFFICER AND LAND ACQUISITION OFFICER¹).

The Appellate Tribunal therefore necessarily had to deal with this aspect of the matter and, all the more so, as the first respondent bank would contend that the estate of the deceased party was represented before the Appellate Tribunal and that the question of any order being

¹ (1979) 3 SCC 578 = AIR 1979 SC 1393

passed against the deceased party did not arise. These are all aspects which the Appellate Tribunal ought to have looked into and this Court does not propose to step into the shoes of the Appellate Tribunal and adjudicate upon such issues.

The order under challenge is accordingly set aside and the matter is remitted to the Debts Recovery Appellate Tribunal, Kolkata, for consideration of the subject Miscellaneous Application filed by the Union Bank of India on its own merits and in accordance with law keeping in mind the observations made hereinabove.

The writ petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

J.UMA DEVI,J

Date:14.11.2017
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