

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.6235 of 2004

ORDER:

This Writ Petition is filed by the 1st petitioner challenging the order dt.27-09-2003 in I.A.No.1 of 2002 in A.R.C.No.128 of 1989 of the Co-operative Sub-Registrar/Arbitrator, Office of the Divisional Co-operative Officer, Secunderabad Division.

2. The 1st petitioner borrowed a sum of Rs.2 lakhs from the Prudential Co-operative Bank Limited (for short “the Bank”). The said mortgage was secured by deposit of title deeds. He alleged that he paid the said sum to the Managing Director of the said Bank.

3. However, an award was passed by the 4th respondent against the 1st petitioner on 09-09-1989 setting the 1st petitioner *ex parte*.

4. Alleging that he was not served with any notice either before passing of the award or after passing of the award, the 1st petitioner filed W.P.No.2664 of 2001 before this Court. On 16-02-2002 this Court granted interim stay of demand notice dt.31-12-2000. Ultimately, the said Writ Petition was disposed of on 28-12-2001 directing the 1st petitioner either to prefer statutory appeal before the Tribunal or alternatively to file a petition before the Arbitrator to set aside the *ex parte* award.

5. The 1st petitioner then filed I.A.No.1 of 2002 before the 4th respondent specifically taking the plea that he was not communicated either by the Office of the 4th respondent or by the

Bank about the proceedings prior to the passing of the award and therefore the *ex parte* award dt.09-09-1989 in A.R.C.No.128 of 1989 should be set aside.

6. On 27-09-2003, the 4th respondent dismissed the said application on the ground that 1st petitioner had admitted his liability, that he and did not explain the reasons for the delay from the date of knowledge, he has approached the Arbitrator and that he did not have reasonable and sufficient cause to seek condonation of the delay. He did not go into the question whether the 1st petitioner has received any notice of proceedings prior to the passing of the award dt.09-09-1989 in A.R.C.No.128 of 1989 by the 4th respondent.

7. Assailing the same, this Writ Petition is filed.

8. Pending Writ Petition, this Court granted interim stay of all further proceedings.

9. Learned counsel for petitioners contends that no notice prior to the passing of the award or subsequent to the passing of the award dt.09-09-1989 is given to the 1st petitioner and received by him from the 4th respondent, and so the question of petitioners showing sufficient cause for condonation of delay or for setting aside the *ex parte* award does not arise at all. He contends that therefore the impugned order dt.27-09-2003 should be aside and the 1st petitioner should be given opportunity to contest the proceedings.

10. It is not in dispute that the said Bank has subsequently been liquidated and the Official Liquidator/Authorised Officer has been appointed to manage its affairs.

11. Sri M.Venkat Divakar, learned counsel is appearing for the Liquidator of the Bank. He submitted that the 1st petitioner had admitted taking the loan and had not paid money to the Bank and at this point of time and at his instance, the award proceedings cannot be nullified particularly when he did not avail the alternative remedy of appeal to the A.P. Co-operative Tribunal.

12. However, he has not been able to produce any material before this Court to show that 4th respondent had issued any notice of proceedings to the 1st petitioner and served the 1st petitioner of such notice before passing award on 09-09-1989 in A.R.C.No.128 of 1989. If the 1st petitioner did not receive any notice prior to the passing of the award or subsequent thereto, he cannot be criticized for not contesting the proceedings and for not showing sufficient cause for condonation of delay.

13. Learned counsel for the Official Liquidator of Bank does not dispute the fact that 4th respondent did not at all go into the issue as to whether there was any service of notice on the 1st petitioner before passing of the award or subsequent to the passing of the award. When a specific contention is raised by the 1st petitioner that he did not receive such notice prior to the passing of the award or subsequent thereto from 4th respondent, it was incumbent on the

4th respondent to deal with the said aspect and if there is no evidence of service of such notice on the 1st petitioner, the 4th respondent was bound to set aside the award passed by him on 09-09-1989 and give opportunity to the 1st petitioner to contest the proceedings in A.R.C.No.128 of 1989. The 4th respondent, however, did not do so and unnecessarily went into the merits and claims of the rival parties, which he ought not to have done.

14. Also the plea of the counsel for the Liquidator Bank that 1st petitioner should avail the alternative remedy cannot be accepted because the Writ Petition has been admitted on 22-04-2004 by this Court and has been pending on the file of this Court for almost 13 years. It would not serve the interests of justice now to compel the 1st petitioner to approach the A.P. Co-operative Tribunal. Also, when notice prior to passing of award is not given, there is violation of principles of natural justice. It is settled law that in such circumstances, existence of alternative remedy is not bar. Therefore this contention is rejected.

15. Accordingly the Writ Petition is allowed; the order dt.27-09-2003 in I.A.No.1 of 2002 passed by the 4th respondent is set aside; the said I.A. is allowed; the proceedings in A.R.C.No.128 of 1989 stand restored to the file of the 4th respondent; the 4th respondent shall issue notice to the 1st petitioner's L.Rs. at house No.18-7-455/A/18, Lalithabagh, Patel Nagar, Uppuguda, Hyderabad and at House No.23-4-1/1/109/A, Sultan Shahi, L.B.S. Nagar,

Shahaalibanda, Charminar, Hyderabad; and on receipt of notice from the 4th respondent, the petitioner Nos.2 to 5 shall cooperate with the 4th respondent so that the 4th respondent can decide the matter within three (03) months from the date of receipt of a copy of this order. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-08-2017

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