

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

WRIT PETITION No.1643 of 2016

ORDER: (Per Justice Sanjay Kumar)

This writ petition was filed assailing the order dated 06.01.2016 passed by the Debts Recovery Tribunal, Visakhapatnam, dismissing S.A.No.69 of 2015 filed by the petitioners herein. A consequential direction was sought to the Andhra Bank not to alienate the lands of the petitioners.

The ground for challenge was that the petitioners were denied an opportunity of hearing by the Tribunal, thereby violating the principles of natural justice.

By order dated 22.01.2015, this Court directed maintenance of *status quo* as obtaining on that date in all respects in relation to the properties which were sold in the auction.

One Nutalapati Srinivasa Rao, claiming to be the auction purchaser in relation to an extent of Ac.1.05 cents sold by the Andhra Bank from out of the properties offered as security by the first petitioner herein, in the capacity of a guarantor, filed W.P.M.P.No.28410 of 2016 seeking impleadment as a party respondent to this writ petition. The said W.P.M.P. was ordered today separately and he was impleaded as a party to this writ petition.

The affidavit filed in support of the writ petition reads to the effect that after disposal of W.P.No.25771 of 2015 by this Court, which arose out of the orders dated 30.07.2015 passed by the Tribunal in I.A.Nos.580 and 581 of 2015 in S.A.No.69 of 2015, the petitioners filed additional documents in support of their amended prayer in the said S.A. They also filed an amended copy of the application incorporating the pleadings

necessary to support the amended prayer. However, the bank chose not to file an additional counter and when the case was posted on 06.01.2016, the counsel for the petitioners brought it to the notice of the Tribunal that no counter had been filed by the bank. However, the Tribunal proceeded to pass a final order on the said day, ultimately dismissing the S.A.

Sri R. Raghunandan, learned senior counsel appearing for Sri T. Vinod Kumar, learned counsel for the petitioners, would point out that the Tribunal itself noted in the order that it had carefully gone through the pleadings, affidavits and documents filed by the parties. Learned senior counsel would submit that this statement clearly bears out that no opportunity of hearing was granted to the petitioners and that the same demonstrates clear violation of the principles of natural justice.

Sri M. Narender Reddy, learned senior counsel appearing for Sri V. Raghu, learned counsel for the Andhra Bank, would fairly concede that on 06.01.2016, the petitioners' counsel was not heard on merits by the Tribunal, be it for whatever reason.

In that view of the matter, as the petitioners had no opportunity to address arguments before the Tribunal after the amendment of their prayer in the S.A., we are of the opinion that the order of dismissal passed by the Tribunal basing on the record alone would not suffice to satisfy the principles of natural justice and is therefore liable to be set aside on this short ground.

The order dated 06.01.2016 passed by the Debts Recovery Tribunal, Visakhapatnam, in S.A.No.69 of 2015 is accordingly set aside and the S.A. is restored to file for fresh disposal.

It is also to be noticed that apart from the newly impleaded auction purchaser, there were two other auction purchasers in relation to two

items of property belonging to the petitioners that were sold in the same auction by the bank. They were not made parties to the S.A. and did not choose to come before this Court despite the pendency of this writ petition, wherein *status quo* was directed to be maintained. We are of the opinion that the Tribunal necessarily has to insist upon the presence of all the parties who would be affected in one way or the other by the order that would ultimately be passed in the S.A. After taking such steps, the Tribunal shall endeavour to dispose of the S.A. on its own merits and in accordance with law after giving due opportunity of hearing to all the parties concerned.

All issues are left open and the Tribunal shall adjudicate the matter uninfluenced by any observations on merits made by this Court, be it in this writ petition or the earlier writ petition. As this is the second round of litigation, the Tribunal shall endeavour to dispose of the S.A. expeditiously and preferably, within three months from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above.

Pending miscellaneous petitions, including W.V.M.P.(SR).No.121243 of 2016 filed by the auction purchaser, shall stand closed in the light of this final order. Needless to state, it would be open to Nutalapati Srinivasa Rao, the auction purchaser, to seek redressal of his grievances independently and in accordance with law before the appropriate forum. No order as to costs.

SANJAY KUMAR, J

GUDI SEVA SHYAM PRASAD, J

19th July, 2017
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