

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

WRIT PETITION No. 5707 of 2013

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

By way of this writ petition, the State Bank of India assails the order dated 26.11.2012 in R.A.No.124 of 2010 on the file of the Debts Recovery Appellate Tribunal, Chennai, confirming the order dated 31.03.2010 of the Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal'), in O.A.No.19 of 2002, and dismissing the appeal.

By the order dated 31.03.2010, the Tribunal held that the claim of the Bank against the fourth defendant was dismissed and insofar as the seventh defendant, being the legal representative of the second defendant was concerned, it held that no relief could be granted against her.

Notice having been served, the seventh respondent did not choose to enter appearance before this Court, while the fourth respondent entered appearance through Sri C. Kumar, learned counsel.

Sri Ambadipudi Satyanarayana, learned counsel for the petitioner - Bank, would contend that insofar as the seventh defendant in the O.A. was concerned, the Tribunal fell in error that the Bank, having impleaded her as the legal heir of the deceased second defendant, did not seek any relief against her by amending its prayer.

This Court finds merit in this submission in as much as the Tribunal referred to the fact that such an amendment was effected in the first paragraph of the order itself. Surprisingly, the Tribunal observed to the contrary in the penultimate page of the order. The record reflects that by order dated 19.11.2008 passed in I.A.No.884 of 2008, the Tribunal

permitted the Bank to amend its prayer so as to take steps against the estate of the deceased second defendant lying in the hands of the seventh defendant. It is therefore clear that the Tribunal completely misdirected itself in this regard.

Insofar as the fourth defendant in the O.A. is concerned, Sri C. Kumar, learned counsel, would contend that the mortgage created in favour of the Bank by the second defendant on the strength of the General Power of Attorney executed by the fourth defendant in favour of the second defendant was contrary to the interest of the second defendant and therefore, could not be held to be lawful.

Sri Ambadipudi Satyanarayana, learned counsel, would argue to the contrary by relying upon the express terms of the General Power of Attorney document.

However, we are not inclined to go into this aspect of the matter as we find that the level of application of mind by the Tribunal, as demonstrated by the manner in which it dealt with the claim of the Bank against the seventh defendant, clearly falls short of the required standard and therefore, the order in its entirety would require to be set aside. Unfortunately, the Appellate Tribunal lost sight of these crucial aspects and blindly confirmed the order dated 31.03.2010 passed by the Tribunal and dismissed the appeal.

The writ petition is accordingly allowed setting aside both the orders under challenge. O.A.No.19 of 2002 is remitted to the file of the Debts Recovery Tribunal, Hyderabad, for consideration afresh of all issues in accordance with law insofar as the claims of the Bank against the fourth defendant and seventh defendant, being the estate holder of the deceased second defendant, are concerned. As this is second round, the

Tribunal is directed to give priority to this O.A. and endeavour to dispose of the same expeditiously and preferably within six weeks from the date of receipt of a copy of this order. All issues are left open and the Tribunal shall deal with the matter on its own merits uninfluenced by any observations made hereinabove.

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

JUSTICE SANJAY KUMAR

Date: 22.11.2017

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JUSTICE UMA DEVI

