THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.935 OF 2018

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

The prayer of the petitioners in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, preferably a Writ in the nature of Mandamus to declare the action of the Debts Recovery Tribunal-I, Hyderabad in passing the Docket Order dated 27.12.2017 in S.A.No.329/2016 without notice to the petitioners herein as illegal, arbitrary, and violative of Article 14 of the Constitution of India apart from the procedure contemplated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), apart from declaring the action of the Debts Recovery Tribunal-I, Hyderabad in trying to proceed with the matter on 9.1.2018 is equally illegal and arbitrary, consequently direct the Debts Recovery Tribunal-I, Hyderabad, not to proceed with the hearing of S. A. No. 329 of 2016 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Sri A. Satyaprasad, learned senior counsel appearing for Sri Prakash Buddarapu, learned counsel for the petitioners, would submit that the present Presiding Officer of the Debts Recovery Tribunal-I, Hyderabad, who passed the impugned docket order dated 27.12.2017 was a General Manager in the service of the Andhra Bank, the respondent herein, and had occasion to deal with the petitioners' loan account in the capacity of Zonal Manager of the Andhra Bank at Nizamabad.

Taking note of this very submission, this Court had passed order dated 05.01.2018, opining that justice must not only be done but must also be seen to be done, and accordingly stayed further proceedings in S.A.No.329 of 2016 on the file of the Debts Recovery

Tribunal-I, Hyderabad. In consequence, the Andhra Bank was also directed not to proceed further in the matter in relation to the petitioners' secured assets.

Pleadings being complete, the matter is amenable to disposal at the admission stage.

Sri A. Satya Prasad, learned senior counsel, would point out that the Presiding Officer of the Tribunal worked as the Zonal Manager of Nizamabad Zone of the Andhra Bank from 03.06.2013 to 15.05.2015 and the loan account of the first petitioner at the main branch at Nizamabad fell within his jurisdiction in that capacity. The said account was originally opened in 2010 and the Bank extended various financial facilities from time to time. The Open Cash Credit limit of Rs.12.00 Crores was sanctioned by the Bank on 11.04.2015, and during this period, the said Presiding Officer was the Zonal Manager at Nizamabad Zone who approved the enhancement of the limits. Learned senior counsel would draw our attention to the sanction letter dated 09.01.2014 which bears out that the sanction was based on the Zonal Manager's recommendation. Learned senior counsel would further state that thereafter, the Presiding Officer became the Circle General Manager of Warangal Circle on 14.05.2015 and continued to have jurisdiction over the main branch at Nizamabad. The Presiding Officer then became the Recovery General Manager at the head office of the Bank at Hyderabad and worked as such from 17.04.2016 to 30.09.2017.

It is an admitted fact that the loan account of the petitioners became a Non-Performing Asset on 31.01.2016 and the Presiding Officer would have had occasion to deal with the same in the capacity of the Recovery General Manager of the Bank at its head office.

These facts clearly demonstrate that the Presiding Officer of the Tribunal did have occasion to deal with the loan account which is the subject matter of the SARFAESI proceedings leading to the institution of S.A.No.329 of 2016 before the Tribunal. That being so, we are constrained to reiterate that justice must not only be done but must also be seen to be done and that higher purpose would not be served if the present Presiding Officer of the Tribunal deals with the instant case.

It appears that after the passing of the interim order by this Court on 05.01.2018, the Presiding Officer himself wrote to the Chairman of the Debts Recovery Appellate Tribunal, Kolkata, on 18.01.2018, seeking transfer of the subject case to another Tribunal. However, it cannot be lost sight of that prior thereto, the Presiding Officer deemed it fit and proper to deal with the matter and passed the docket order dated 27.12.2017.

Sri A. Satya Prasad, learned senior counsel, would inform this Court that an application has already been filed for recall of the order dated 27.12.2017 and the said application has been numbered as I.A.No.12 of 2018 in S.A.No.329 of 2016.

As the said application would have to be considered on its own merits, we are of the opinion that it would be inappropriate for this Court to venture into the merits of the matter.

The writ petition is accordingly allowed on the short ground that it would not be proper for the Presiding Officer of the Tribunal to hear the subject case owing to his association with the Andhra Bank and the petitioners' loan account, in particular. S.A.No.329 of 2016 shall accordingly stand transferred from the file of the Debts Recovery Tribunal-I, Hyderabad, to the file of the Debts Recovery Tribunal-II, Hyderabad, forthwith. The petitioners shall thereafter seek expeditious hearing of their recall petition in I.A.No.12 of 2018 in S.A.No.329 of 2016. Till the disposal of the recall petition, the parties shall maintain *status quo* as obtaining today.

Interim order dated 05.01.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

____
JUSTICE SANJAY KUMAR

____
JUSTICE M.GANGA RAO

Date: 28.02.2018
va