

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.4531 OF 2018

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

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

“For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ more particularly in the nature of a Writ of Mandamus or any other appropriate writ, order or direction thereby the O.A 1421/2017 and un-numbered counter-claim which are pending adjudication on the file of Honourable Debts Recovery Tribunal-II at Hyderabad, these two cases be transferred to the file of Honourable Debts Recovery Tribunal at Visakhapatnam and be clubbed, tried and adjudicated with S.A 162/2015, or vice-versa, the reason being that if all the cases are adjudicated separately then it may lead to miscarriage of justice and if all the cases are clubbed together then the precious time of the Honourable Tribunals, time and money of the concerned parties and that of their Advocates will be saved and to pass such other order and further orders as this Honourable Court may deem fit, just and proper in the interest of justice.”

The aforesaid prayer makes it clear that the petitioner wants O.A.No.1421 of 2017, along with the counter-claim therein, pending on the file of the Debts Recovery Tribunal-II, Hyderabad, and S.A.No.162 of 2015 pending on the file of the Debts Recovery Tribunal at Visakhapatnam, to be clubbed and heard together.

Specific provision has been made for clubbing of cases pending on the files of different Tribunals in Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 (for short, 'the Act of 1993'). This provision states to the effect that the Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion, after notice to the parties and after hearing them, transfer any case from one Tribunal to any other Tribunal for disposal.

Though Sri V.K.Viswanath, learned counsel for the petitioner, would point out that the aforestated provision finds mention in the Act of 1993, it may be noted that Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), makes applicable the provisions of the Act of 1993 to proceedings under the SARFAESI Act. Therefore, by virtue of the extension of the provisions of Section 17A(2) of the Act of 1993 to proceedings initiated under the SARFAESI Act, it would be open to any party seeking clubbing of cases pending on the files of different Tribunals, be the cases under the Act of 1993 or the SARFAESI Act, to approach the Appellate Tribunal having jurisdiction over the said Tribunals for relief.

It is not in dispute that the Debts Recovery Appellate Tribunal at Kolkata would have jurisdiction over the Tribunals dealing with the subject cases and the petitioner can invoke the statutory remedy available to it under Section 17A(2) of the Act of 1993 read with Section 37 of the SARFAESI Act for seeking relief.

Leaving it open to the petitioner to do so in accordance with law, the writ petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

P. KESHAHA RAO,J

Date: 21.02.2018

Note:-

Issue CC by 26.02.2018.

(B/o)

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