*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

***HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

+W.P.No.9032 of 2018

% 20-03-2018

R. Yadagiri, S/o late R. Rajaiah, aged about 54 years,
Occ: Business, R/o H.No.5-5-9/1, Kranthi Colony,
Vanasthalipuram, Hyderabad and another

… Petitioners

Vs.

$ State Bank of India, Nallakunta Branch, Hyderabad,
represented by the Chief Manager, Nallakunta,
Hyderabad and 3 others

… Respondents

! Counsel for the Petitioners : Mr. Srinivas Velagapudi

Counsel for Respondents : Mr. B.S. Prasad, standing counsel

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> Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.9032 of 2018

Between:

R. Yadagiri, S/o late R. Rajaiah, aged about 54 years,
Occ: Business, R/o H.No.5-5-9/1, Kranthi Colony,
Vanasthalipuram, Hyderabad and another

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Counsel for the Petitioners : Mr. Srinivas Velagapudi

Counsel for Respondents : Mr. B.S. Prasad, standing counsel

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.9032 of 2018

ORDER: *(V. Ramasubramanian, J)*

The petitioners, who were arrayed as respondents 4 and 5 in an Original Application in O.A.No.326 of 2017 filed by the State Bank of India on the file of the Debts Recovery Tribunal-I, Hyderabad, have come up with the above writ petition challenging the Certificate of Recovery issued against them.

2. Heard Mr. Srinivas Velagapudi, learned counsel for the petitioners. Mr. B.S. Prasad, learned standing counsel, takes notice for the respondent-bank.

3. The main grievance of the petitioners is that the Bank, in their Original Application in O.A.No.326 of 2017, did not even seek a Certificate of Recovery against the petitioners herein, who were arrayed as respondents 4 and 5. The Certificate of Recovery was sought by the bank only as against persons, who were arrayed as respondents 1 to 3 in the Original Application. The petitioners were neither borrowers nor guarantors nor persons, who offered any property as collateral security. Therefore, the Tribunal did not even have any jurisdiction as against the petitioners herein, and hence, it is contended that the Certificate of Recovery issued against the petitioners, against whom a certificate was not even sought, was completely contrary to the statutory provisions.

4. We have carefully considered the above submissions.

5. It is true that there were five respondents in O.A.No.326 of 2017 filed by the bank. The petitioners herein were arrayed as respondents 4 and 5. The reliefs sought by the bank in O.A.No.326 of 2017 were as follows:

"**Reliefs Sought:**

Hence, it is prayed that this Hon'ble Tribunal may be pleased to grant the following reliefs to the applicant.

a) to issue a certificate for recovery of Rs.26,47,129-74ps. (Rupees twenty six lakhs forty seven thousand one hundred twenty nine and seventy four paise only) with subsequent interest at 17.75% per annum from 05-03-2004 (date of institution of EP 21/2004) to till the date of realization with costs from defendants Nos.1 to 3 jointly and severally as per Section 25 of RDDBFI Act, 1993;
b) to issue order for sale of the schedule properties and pay the proceeds to the applicant for the adjustment of decreetal dues;
c) to bind defendant Nos.4 and 5 with the orders of this Tribunal in favour of applicant in respect of schedule mortgaged properties;
d) To order for payment of costs to the applicant from the defendant Nos.1 to 3;
e) To grant any other reliefs to which the applicant is found entitled to under law."

6. Therefore, the learned counsel for the petitioners is very right in his contention that no Certificate of Recovery was sought against the petitioners. But the fact remains that the petitioners have a claim over the properties that are allegedly under mortgage with the Bank. This is why a prayer was made by the bank for binding the petitioners herein with the orders of the Tribunal. In such circumstances, it is no use contending that the Tribunal has no jurisdiction over the petitioners.

7. The jurisdiction of the Tribunal is first upon borrowers, guarantors and parties, who offered properties as securities. But the jurisdiction also extends to persons, who have a claim to properties that are actually under mortgage with the bank. Therefore, the petitioners ought to have participated in the proceedings before the Debts Recovery Tribunal and contested the claim.

8. According to the learned counsel for the petitioners, they did not receive any notice from the Debts Recovery Tribunal. If that is so, they can always file an application for setting aside the *ex parte* Certificate of Recovery. Even now it is not too late, since the Certificate of Recovery issued by the Tribunal is obviously wrong, making the petitioners also jointly and severally liable for the loan amount itself. The Certificate of Recovery issued by the Tribunal on 06-11-2017 reads as follows:

> "In terms of final order dated 26.8.2017 passed by this Tribunal in the above mentioned case, it is ordered that the applicant Certificate Holder Bank is entitled to recover a sum of Rs.26,47,129.74ps. along with costs, expenses, and future interest @ 17.75% p.a. from i.e. 5.3.2004 till the date of realization in full, jointly and severally from the Certificate Debtors No.1 to 4 hereinafter referred to as:

Certificate of Debtor 1	Hyderabad Television Corporation
Certificate of Debtor 2	Sri G. Ravi Kishore
Certificate of Debtor 3	Sri P. Venkata Subba Rao
Certificate of Debtor 4	Sri R. Yadagiri
Certificate of Debtor 5	Sri R. Kavitha

9. While the bank would have been justified in seeking a certificate binding the petitioners herein with the effect of the Certificate of Recovery issued as against the other respondents, the bank could not have got a Certificate of Recovery making the

petitioners jointly and severally liable for the loan amount itself. But this is a clerical mistake that appears to have crept in while drafting the Certificate of Recovery. Therefore, the petitioners can as well move an application for modification of the Certificate of Recovery by the Tribunal. Once it is modified, it is always open to the petitioners to seek to set aside the *ex parte* Certificate of Recovery and contest the case in so far as the relief claimed by the bank in paragraph 6 (c) of their Original Application is concerned.

Therefore, leaving it open to the petitioners 1 and 2 to workout their remedies before the Debts Recovery Tribunal, Hyderabad, for a modification of the Certificate of Recovery, due to the mistake that we have pointed out, the writ petition is dismissed.

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

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

Date: 23-03-2018

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