

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 GUDISEVA SHYAM PRASAD

+ WRIT PETITION No.12189 of 2018

%Date: 18.04.2018

Between:

M/s. Durga Bhavani Agro Tech Industry,
Atmakur Village & Mandal, Warangal Dist.,
Rep. by its Manager M. Sreedhar

.. Petitioner

Vs.

\$ Canara Bank, Hanamkonda Branch,
Warangal, Rep. by its Authorized Officer,
and others

.. Respondent

! Counsel for petitioner : Smt. P. Kalyani

^ Counsel for respondent : Mr. Dishit Bhattacharjee

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>HEAD NOTE:

? CASES REFERRED: ----

THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.12189 of 2018

ORDER: (Per V.Ramasubramanian, J)

Aggrieved by one portion of an order passed by the Debts Recovery Tribunal, where the Tribunal allowed the application for amendment, but directed the payment of additional Court fee, the borrower/ applicant before the Tribunal has come up with the above writ petition.

2. Heard Smt.P.K. kalyani, learned counsel for the petitioner and Mr.Dhishit Bhattacharjee, learned counsel appearing for the Bank.

3. The petitioner availed two loans from the respondent Bank in March, 2010. On the ground that the account became a non-performing asset, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was issued on 16.05.2011. It was followed by a possession notice dated 16.07.2011. Challenging the possession notice, the petitioner filed S.A. No.213/ 2011 on the file of the Debts Recovery Tribunal. Thereafter, the possession notice was re-issued on 06.11.2014.

4. Subsequently, two auction notices were issued, one on 09.06.2016 and another on 29.06.2016. The dates of the auction were fixed as 14.07.2016 and 11.07.2016. Challenging the auction notices, the petitioner filed SA No.289 of 2016.

5. It is relevant to point out that the auction notice dated 09.06.2016 was in respect of immovable properties. The auction notice dated 29.06.2016 was in respect of plant and machinery.

6. During the pendency of the appeal, the Bank issued yet another E-auction sale notice, dated 16.02.2018. This notice was in respect of certain immovable properties, which were not included in the earlier notices. Therefore, the petitioner moved an application in I.A.I.R. No.962 of 2018 seeking amendment of the prayer so as to include a challenge to the fresh E-auction notice, dated 16.02.2018. The Tribunal allowed the application for amendment, but imposed a condition that the petitioner should pay Court fee afresh on or before 28.03.2018. Therefore, challenging the conditions so imposed, the petitioner is before us.

7. It may be true that the E-auction notice dated 16.02.2018 may give rise to a fresh cause of action. But, the law is very clear. If what happens after the initiation of a proceeding gives rise to a fresh cause of action, it may be open to a judicial authority to reject the application for amendment. But, after allowing the amendment, the judicial authority, cannot impose a condition for payment of fresh court fee.

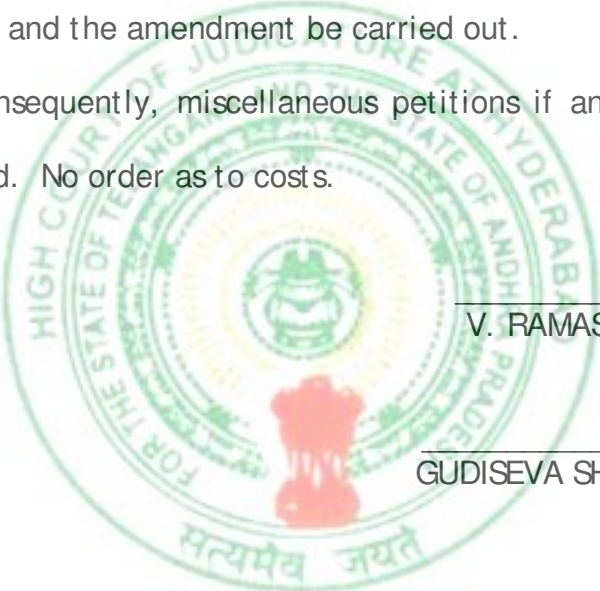
8. As a matter of fact, the series of steps that could be taken by the Authorized Officer under Section 13(4) of the Act are generally termed as "measures". A right of a person against whom anyone or more of the measures are taken under Section 13(4) of the Act, is to challenge those measures under Section 17 of the Act. In fact, when an auction notice is challenged, it is even open to the borrower to challenge the series of steps from the date of issue of Section 13(4) of the Act, up to the date of the auction notice. It is not as though the Court fee becomes payable on every single cause of action. Cause of action is nothing but a bundle of facts. If this logic is applied, every prayer as in a civil suit has got to be independently valued and a separate Court fee paid. Court fee before the Tribunal is not paid on

the basis of the valuation of everyone of the prayer made before the Tribunal.

9. In fact, in paragraph-6 of their S.A.No.289/ 2016, the petitioner has sought various prayers including the first notice under Section 13(4) of the Act. Therefore, the order calling upon the petitioners to pay Court fee afresh, is not traceable even to any of the Rules or the statutory provisions.

10. Hence, the Writ Petition is allowed, that portion of the order of the Tribunal directing the petitioner to pay fresh Court fee alone is set aside. The portion allowing the application for amendment shall remain as such and the amendment be carried out.

11. Consequently, miscellaneous petitions if any pending, shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

GUDISEVA SHYAM PRASAD, J

April 18, 2018

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