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 Nos.23247 and 23319 of 2010

%Date: 18.04.2018

WP No.23247 of 2010:

Between:

M/s.Suresh Trading Company, Chilakaluripet, Guntur,
Rep.by its Managing Partner and others.

.. Petitioner

Vs.

$ The Debts Recovery Appellate Tribunal at Chennai,
Rep. by its Registrar and others

.. Respondents

AND

WP No.23247 of 2010:

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M/s.Suresh Trading Company, Chilakaluripet, Guntur,
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.. Petitioner

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$ The Debts Recovery Appellate Tribunal at Chennai,
Rep. by its Registrar and others

.. Respondents

! Counsel for petitioners : Mr.O.Manohar Reddy

^ Counsel for respondents : Mr. M.Narender Reddy
Mr. P.Prabhakar Rao

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? CASES REFERRED: ----

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AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION Nos.23247 and 23319 of 2010

COMMON ORDER: *(Per V.Ramasubramanian, J)*

These writ petitions arise out of the dismissal of two applications, one for condonation of the delay of (87) days and another for setting aside the certificate of recovery ordered to be issued *ex parte* by the Debts Recovery Tribunal, which was also confirmed by the Appellate Tribunal.

2. Heard Mr.O.Manohar Reddy, learned counsel for the petitioner, Mr.M.Narender Reddy, learned senior counsel appearing for the Bank and Mr.P.Prabhakar, learned counsel appearing for the third party/auction purchaser.

3. The Bank initiated proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (1993 Act), before Debts Recovery Tribunal in O.A.No.1027/2002. No written statement was filed by the petitioners, on account of which they were set ex parte and a decree was passed on 03.09.2004 directing issue of a certificate of recovery.

4. The petitioners filed MA Nos.2 and 3 of 2005 seeking (1) condonation of the delay of 89 days and (2) setting aside of the *ex parte* decree. Both these petitions were dismissed by the Tribunal by an order dated 16.05.2007.

5. As against the said order, the petitioners filed statutory appeals before the Debts Recovery Appellate Tribunal in MA Nos.90 and 91 of 2007. The Appellate Tribunal dismissed both the appeals forcing the petitioners to come up with the above writ petitions.

6. The main grievance of the petitioners is that they entrusted the matter to an Advocate by name Sri T.Tarakaram at Chilakaluripet and that they were under the bonafide impression that the matter was being taken care of. But, they came to know in December 2004 that the counsel did not attend the Court resulting in an *ex parte* decree being passed. Though the petitioners stated these reasons in the affidavit in support of their applications, the Tribunal as well as the Appellate Tribunal did not take into account the same. Therefore, the learned counsel for the petitioners submits that the petitioners have not been provided adequate opportunity to defend themselves before the Debts Recovery Tribunal.

7. Mr. M.Narender Reddy, learned senior counsel appearing for the Bank contended that today the petitioners cannot achieve anything by contesting the main original application, since the property was already brought to sale, sold and sale certificate issued and registered about 12 years ago and that therefore, the clock cannot be put back.

8. Mr.P.Prabhakar Rao, learned counsel appearing for the auction purchaser also submits that the petitioners have not even challenged the auction conducted and that therefore, by having the certificate of recovery set aside, the petitioners cannot seek to achieve some thing that they could not have achieved without a valid challenge to the auction.

9. We have carefully considered the above submissions.

10. On the objections of Mr.Prabhakar Rao, learned counsel for the auction purchaser, we have to state that a contest to the application for recovery of money under Section 19 of the Act stands on a different footing from a contest to the auction sale. As to what would happen in case the petitioners get the certificate of recovery set aside eventually,

is a matter which need not be gone into at this stage and the answer to the said question, will not also have a bearing upon the right of the borrowers to contest the entitlement of the Bank to a decree as prayed for.

11. It is true that the auction appears to have taken place 12 years ago. According to the learned Standing Counsel for the Bank, there were four properties, three of which were already sold and possession delivered. The sale proceeds were adjusted towards the dues. The 4th respondent in WP No.23247 of 2010 is the auction purchaser in respect of one property and she is the one now caught in the crossfire.

12. It appears that the sale of that property in favour of the 4th respondent took place on 09.03.2006, the sale certificate was issued on 13.04.2006 and sale deed was registered on 24.04.2006. But the physical possession of the property was not handed over to the auction purchaser, since the petitioner was in enjoyment of stay throughout the pendency of the applications for condonation of delay and for setting aside the *ex parte* decree.

13. However, the Bank itself was the lessee of the property and according to the learned Senior Counsel for the Bank, the Bank continued to be in possession as a lessee till the year 2015-16. But curiously, the Bank did not pay the rent from the date of execution of sale deed, namely, 24.04.2006, to the date of their vacating the premises in 2015-16 to the auction purchaser. They were paying the rent only to the Recovery Officer. In other words, the rents from April 2006 up to 2015-16 are now with the Recovery Officer and obviously this cannot be adjusted towards the dues of the borrower. The reason is that the amount that accrues after the date of sale of the property

should either belong to the auction purchaser or to the borrower depending upon who succeeds, but certainly not to the Bank.

14. Keeping the above in mind, let us come back to the core issue, namely, whether the petitioners had shown sufficient cause for the condonation of the delay. In the affidavit in support of the application for condonation of delay, the petitioners had stated that upon receipt of summons, the petitioners entrusted the brief to a local lawyer, who used to look after their regular cases. The local lawyer was from a village by name, Chilakaluripeta. He has promised to engage his colleague at Visakhapatnam. But, unfortunately, there had been a failure.

15. It is also stated in the affidavit that the petitioners signed certain documents and gave the same to their counsel, but no action was taken. This has resulted in an *ex parte* decree being passed. The petitioners claim that they came to know about it only in December, as a consequence of which a delay of 87 days had occasioned.

16. The above reasons, in our considered view, constitute sufficient cause. The old theory that every day's delay should be explained, cannot be applied in today's circumstances. We are conscious of the fact that in some cases, the Supreme Court has taken the view that delay cannot be condoned when the cause for the delay was the fault of the counsel for the parties. But, the standards of the Bar at the time when such a preposition was laid, were completely different from today's standards. Therefore, we cannot apply that strict Rule today.

17. After all, the petitioners are seeking one opportunity to contest the claim of the Bank in the application under Section 19 of the 1993 Act. If this can be given without detriment to the interest of any

of the parties here, there should be no objection from anyone. In order to find out how to work out the equities, we asked the learned Senior Counsel for the Bank as to what was the quantum of rent that was deposited by them with the Recovery Officer, after the date of registration of the sale deed. The learned senior counsel stated that it was Rs.3,800/- per month.

18. Therefore, taking into account the above, both the writ petitions are disposed of to the following effect:

(1) The orders of the Debts Recovery Appellate Tribunal dated 15.06.2010 in MA Nos.90 and 91 of 2007 as well as the orders of the Debts Recovery Tribunal in MA Nos.2 and 3 of 2005 in O.A. No.1027 of 2002 are set aside. The applications for condonation of delay and for setting aside the exparte decree shall stand allowed subject to the conditions stipulated hereinafter.

(2) The petitioners shall file a written statement within a period of one month from the date of receipt of a copy of this order and thereafter, the Debts Recovery Tribunal shall proceed to hear the matter.

(3) The rents deposited by the Bank with the Recovery Officer from 24.04.2006 up to the date of their vacating the premises in the year 2015-16, is permitted to be withdrawn by the auction purchaser so that for the investments that she had made, she will have a return.

(4) From the date of the Bank vacating the premises until further orders, the petitioner shall pay a sum of Rs.3,800/- per month to the auction purchaser, subject however to the condition that this will be without prejudice to their rights in the main O.A.

(5) Until the disposal of the main O.A., by the Debts Recovery Tribunal, The property shall continue to be in the actual physical possession of the Bank, as it is stated across the Bar by the learned Senior Counsel for the Bank that the physical possession is not so far been handed over.

(6) If the O.A. filed by the Bank is allowed on merits and a decree passed, the Bank shall hand over possession to the auction purchaser immediately. If for any reason the O.A. filed by the Bank is dismissed, the petitioner may have to take steps either for restitution or for damages depending upon what is permitted by law in cases where a decree for money is set aside after the sale.

19. It is open to the petitioners to raise all issues before the Tribunal.

20. Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

GUDISEVA SHYAM PRASAD, J

April 18, 2018

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