

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 MS.JUSTICE J. UMA DEVI

CIVIL REVISION PETITION No.2756 OF 2018

Date:30.04.2018

Between:

Vishnu Dayal Pande S/ o.Sukh Dayal Pande,
R/ o.Hyderabad

...Petitioner

Vs.

State Bank of India, Rep.by its AGM,
Stressed Assets Recoveyr Branch, Koti, Hyderabad and another.

.. Respondents

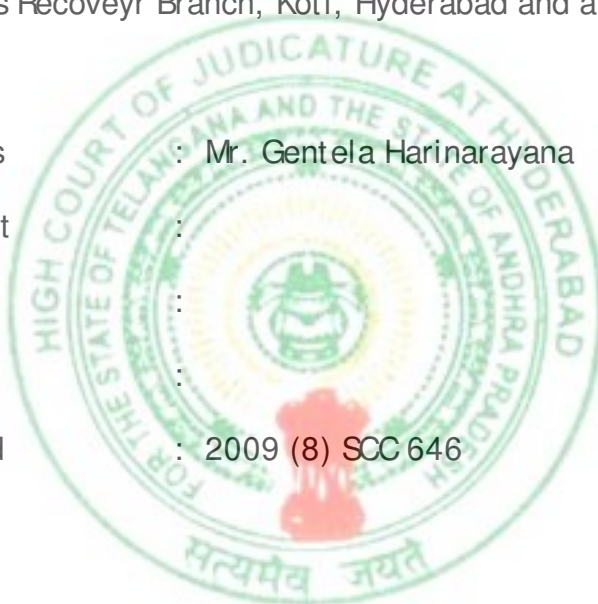
For Petitioners : Mr. Gentela Harinarayana

For Respondent :

Gist :

Head Note :

Cases Referred : 2009 (8) SCC 646



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

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ORDER: (per V. Ramasubramanian, J)

Aggrieved by the dismissal of an application to set aside the *ex parte* order passed in another application, the borrower has come up with the above revision petition.

2. Heard Mr.Gentela Harinarayana, learned counsel appearing for the petitioner.

3. As against the measures taken by the State Bank of India, the secured creditor under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner filed an appeal in SA No.433 of 2007 under Section 17 of the Securitisation Act. It appears that pending the main appeal, the debt was assigned by the State Bank of India in favour of the Asset Reconstruction Company (India) Limited. Therefore, the Asset Reconstruction Company (India) Limited, which is the 2nd respondent herein, filed an application in I.A. No.3667 of 2016 for substituting them in the place of the State Bank of India. That application was allowed by the Tribunal by an order dated 20.01.2017. The petitioner has filed the docket entry of the order passed on 20.01.2017 in I.A. No.3667 of 2016, which reads as follows:

“20.01.2017. Respondent in IA.3667/ 16 reported no counter. Heard and allowed. Carry out amendment and file amended neat copy within 15 days from this day before registrar. For reply call on 10.03.2017 finally.”

4. Contending that without hearing both parties, the Tribunal could not have passed such an order using the word “heard” as though both parties were heard, the petitioner filed an application in IAIR

No.3955 of 2017 seeking to set aside the same. But, the said application was dismissed by the Tribunal by order dated 12.03.2018 on the ground that the order was passed not *ex parte*, but on merits. Therefore, the petitioner has come up with the above revision petition.

5. The contention of the learned counsel for the petitioner is that without hearing the petitioner, the application for substitution in I.A No.3667 of 2016 was ordered by the Court, but the Court recorded as though both parties were heard. It was obviously an *ex parte* order which is liable to be set aside and this is why the petitioner filed an application to set aside *ex parte* order.

6. But, the above contentions of the learned counsel for the petitioner lack merit. The very averments contained in the application for setting aside the *ex parte* order which if extracted would show that the *ex parte* order, assuming that it was an *ex parte* order, could not have been set aside. The affidavit in support of the application to set aside the *ex parte* order consists of just three paragraphs. The third paragraph alone contains averments on the basis of which the petitioner was seeking to set aside the *ex parte* order. This third paragraph reads as follows:

“I submit that the above M.A. No.3667 in S.A. 433 of 2007 has come up for hearing on 20.01.2017. On the said date when the matter called up my Counsel was in bad intention not filed the counter and the in charge judge in the Hon’ble Court was pleased to pass Ex-Party orders in the said Application. I submit that my Counsel’s not filing the counter is intentional, and wontedly, since he is having bad Idea on the mediator, this Hon’ble Court was pleased to pass Ex-Party order in the Impleading petition filed by the Respondent/petitioner No.2, in favour of Respondent/ Petitioner 2. If this Hon’ble Court does not Set-Aside the order Dated: 20.01.2017, I will suffer grave and irreparable loss.”

7. In other words, the claim of the petitioner was that his counsel, with a bad intention, did not file a counter and allowed the Court to pass *ex parte* orders. The allegations in paragraph-3 are not

against the Bank or against the Asset Reconstruction Company or even against the Tribunal. Therefore, assuming that the order in I.A. No.3667 of 2016 was passed *ex parte*, the same was not liable to be set aside on the basis of those averments.

8. In any case, the issue whether an assignee can come on record or not had already been settled after a full fledged battle by the Supreme Court in Nahar Industrial Enterprises vs. Hongkong & Shanghai Banking Corp.¹. Therefore, the substitution of the name of the assignee, in the place of the Bank can hardly be opposed irrespective of whether it is an *ex parte* order or an order passed on merits.

9. Therefore, the Civil Revision Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

April 30, 2018
KTL

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

¹ 2009 (8) SCC 646