THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.24578 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan }

The relief sought for in this writ petition is for a writ of certiorari to quash the interlocutory order passed by the Debt Recovery Tribunal in I.A.No.603 of 2017 in O.A.No.403 of 2000 dated 26.02.2018 which was confirmed by the Debt Recovery Appellate Tribunal in Tender No.66 of 2018/956 dated 18.06.2018.

The certiorari jurisdiction of this Court, under Article 226 of the Constitution of India, is invoked by the borrower on the ground that, since the application to adduce secondary evidence was rejected by the Debt Recovery Tribunal earlier, the Debt Recovery Tribunal was not justified in entertaining a second application seeking the very same relief of being permitted to lead secondary evidence, as the earlier order passed by the Debt Recovery Tribunal constitutes *res judicata;* and the present application, filed to lead secondary evidence, does not fulfil the requirements of Section 65 of the Indian Evidence Act, 1872.

A writ of certiorari is a discretionary remedy. The High Court may, in the facts and circumstances of a particular case, refuse to extend the benefit of a discretionary relief to the applicant. (**Chandra Singh v. State of Rajasthan**[1]; **Champalal Binani v. CIT**[2]) A writ of certiorari, under Article 226 of the Constitution, would not be issued merely because it is legally permissible to do so. (**Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd**[3])· A writ of certiorari may be issued in the case of illegal exercise of jurisdiction, and also

---

[1] (2003) 6 SCC 545
[2] AIR 1970 SC 645
[3] (2010) 13 SCC 336

to correct errors of law apparent on the face of the record. It is only errors of law apparent on the face of the record, and not errors of fact though they may be ex-facie apparent, which can be corrected, (**Shri Ambica Mills Co. Ltd. v. S.B. Bhatt**[4]; **Rex v. Northumberland Compensation Appeal Tribunal**[5]; and **Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam**[6]), and not every error either of law or fact which can be corrected by a Court of appeal or revision**.** (**T. Prem Sagar v. Standard Vacuum Oil Co.,**[7]; **Bachan Singh v. Gauri Shankar Agarwal**[8]; **Nagendra Nath Bora**[6]).

An error of law, which can be corrected by a writ of certiorari, must be self-evident, (**Shri Ambica Mills Co. Ltd.**[4]), and not require elaborate examination or argument to establish it. (**CIT v. Saurashtra Kutch Stock Exchange Ltd**[9]; **Hari Vishnu Kamath v. Ahmad Ishaque**[10]; **Batuk K. Vyas v. Surat Borough Municipality**[11]). An error cannot be said to be apparent if one has to travel beyond the record to see whether a writ of certiorari can be issued. Only if the error strikes on mere looking, and does not need a long-drawn-out process of reasoning on points where there may conceivably be two opinions can such a Writ be issued. The error should be so manifest and clear that no court would permit it to remain on record. (**Saurashtra Kutch Stock Exchange Ltd**.[9]; **Sant Lal Gupta**[3]).

As the jurisdiction to issue a writ of certiorari is supervisory, and the court exercising it is not entitled to act as an appellate court, (**Saurashtra Kutch Stock Exchange Ltd**[9]; **Syed Yakoob v. K.S.**

---

[4] (1961) 3 SCR 220 : AIR 1961 SC 970 : (1961) 1 LLJ 1
[5] (1952) 1 KB 338
[6] AIR 1958 SC 398 = (1958) SCR 1240
[7] (1964) 5 SCR 1030: AIR 1965 SC 111 : (1964) 1 LLJ 47
[8] (1972) 4 SCC 257
[9] (2008) 14 SCC 171
[10] AIR 1955 SC 233 : (1955) 1 SCR 1104
[11] AIR 1953 Bom 133 : ILR 1953 Bom 91

Radhakrishnan[12]). such a writ will not issue as a cloak of an appeal in disguise. (**P. Kasilingam v. P.S.G. College of Technology**[13]; **T.C. Basappa v. T. Nagappa**[14]). A writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals. (**Radhey Shyam v. Shyam Behari Singh**[15]).

In the present case, the main O.A. is still pending adjudication before the Debt Recovery Tribunal. All the contentions now urged before us can also be raised before the Debt Recovery Tribunal, when the O.A is finally heard. It would be wholly inappropriate for us to interdict proceedings, before the Debt Recovery Tribunal, at the interlocutory stage when all these contentions can be urged before the D.R.T when the O.A is finally heard, or in appellate or writ proceedings instituted against the final orders passed by the Debt Recovery Tribunal. We see no reason, therefore, to exercise our discretion to issue a writ of certiorari to quash the order of the D.R.T and the D.R.A.T passed in an interlocutory application filed in an O.A which is still pending adjudication before the D.R.T.

Leaving it open to the petitioners to raise all the contentions, now urged before us, before the Debt Recovery Tribunal when the O.A is finally heard, the Writ Petition fails and is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

26th July, 2018
JSU

---

[12] AIR 1964 SC 477
[13] (1981) 1 SCC 405
[14] AIR 1954 SC 440 : (1955) 1 SCR 250
[15] (1970) 2 SCC 405 = AIR 1971 2337

HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

सत्यमेव जयते

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.24578 of 2018

Date: 26.07.2018

JSU