HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.28781 of 2018

ORDER: ***(per Hon'ble Sri Justice Ramesh Ranganathan)***

This Writ Petition is filed by the respondents in OA No.708 of 2017, pending before the Debt Recovery Tribunal-I (for short 'DRT), Hyderabad, aggrieved by the insistence of the DRT that the respondents should file their written statement, even though the application filed by them under Order VII Rule 11 CPC, seeking rejection of the O.A., is still pending consideration before the DRT in I.A.No.2005 of 2018 filed on 12.06.2018. The petitioners' grievance is that, without deciding the said application, the DRT had imposed costs on the petitioners for not filing their written statement in the O.A.

A copy of the docket proceedings of the DRT, enclosed along with the Writ Petition, discloses that, after the counsel had entered appearance for Defendant Nos.1, 3 and 5, the DRT had directed that the matter be listed on 23.01.2018 for filing counter and written statement; thereafter on 05.01.2018, after counsel had entered appearance on behalf of Defendant No.5, the O.A was adjourned to 08.02.2018 for a written statement to be filed; the O.A again stood adjourned to 06.03.2018 for a written statement to be filed; on 06.03.2018, the O.A was posted to 09.04.2018 for hearing, and filing of written statement by Defendant Nos.1 and 3; on 09.04.2018, the DRT made it clear, while adjourning hearing of the O.A to 08.05.2018, that no further adjournment would be granted; on 12.06.2018, the matter was adjourned to 03.07.2018 for filing written statement on payment of costs of Rs.500/-, failing which the right of filing written statement and counter would stand forfeited; on 03.07.2018, the DRT had noted that a written statement had not been filed, but a petition was filed seeking extension of time; the matter was adjourned till 16.07.2018, making it clear that, if the written statement was not filed by then, the right to file a written statement would stand forfeited; on 16.07.2018, the DRT observed that the conditional order dated 03.07.2018 had not been complied with; and on 26.07.2018, the matter was again adjourned, on payment of costs of Rs.1000/-, to 01.08.2018 for filing counter and written statement.

Sri A. Suryanarayana, Learned counsel for the petitioners, would submit that I.A.No.31 of 2018 was filed by the applicant-bank seeking amendment of the suit schedule, and to incorporate the subject property in the schedule to the O.A; the application, seeking amendment, was ordered on 26.07.2018; and, consequently, the prescribed time limit to file a written statement would commence only from 26.07.2018, and not prior thereto.

It is unnecessary for us to dwell on this aspect, as the petitioner's grievance in this writ petition is that, despite an application being filed on 12.06.2018 for rejection of the O.A, the DRT was insisting on a written statement being filed, even without considering the I.A. filed by the petitioners seeking rejection of the O.A. filed by the applicant-Bank. Reliance is placed by Sri A. Suryanarayana, learned counsel for the petitioners, on ***Industrial***

Credit and Investment Corporation of India Limited vs. Crapco Industries Limited[1], in this regard.

Before examining the contentions, urged on behalf of the petitioners, it is necessary to briefly note the relevant provisions of the Recovery of Debts and Bankruptcy Act, 1993 (for short the '1993 Act'). Section 22(1) of the 1993 Act stipulates that the DRT and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice and, subject to the other provisions of the 1993 Act and of any rules, the DRT and the Appellate Tribunal shall have the power to regulate their own procedure, including the places at which they shall have their sittings. Section 22(2) stipulates that the DRT and the Appellate Tribunal shall have, for the purpose of discharging their functions under the 1993 Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) Dismissing an application for default or deciding it *ex parte;*

(g) Setting aside any order of dismissal of any application for default or any order passed by it *ex parte;*

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[1] 1999(4) SCC 710

(h) Any other matter which may be prescribed.

Section 22(3) of the 1993 Act stipulates that any proceeding, before the DRT or the Appellate Tribunal, shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code, and the DRT or the Appellate Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. It is evident therefore that, except for the limited purposes specified in Section 22(2) of the 1993 Act, the provisions of the CPC are not automatically applicable to proceedings before the DRT under the 1993 Act.

Since reliance is placed by Sri A.Surayanarayana, Learned Counsel for the petitioner, on ***Industrial Credit and Investment Corporation of India Limited***[1], it is useful to refer to the issue which arose for consideration therein. The question of law that arose for consideration, before the Supreme Court in ***Industrial Credit and Investment Corporation of India Limited***[1], was whether the Debt Recovery Tribunal, constituted under Section 3(1) of the 1993 Act, had jurisdiction to grant an *ad interim ex parte* order of injunction, or stay against the defendant, on an application filed by the bank or financial institution for recovery of the debt as defined under clause (g) of Section 2 of the 1993 Act? It is in this context that the Supreme Court, after referring to Sections 19 and 22 of the 1993 Act, observed:

> "…..We, however, do not agree with the reasoning adopted by the High Court. **When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the CPC, it does not, mean that it will not have jurisdiction to exercise powers of a Court as contained in the CPC. Rather, the Tribunal can travel beyond the CPC and the only fetter that is put on its**

powers is to observe the principles of natural justice....."(emphasis supplied)

Thereafter, the Supreme Court observed that, while there were no limitations on the powers of the DRT under the 1993 Act, the Legislature had thought it fit to restrict the powers under certain enactments; the meaning of Section 22 of the 1993 Act was that, as the DRT was exercising the powers of a Civil Court while trying a money suit and when power is given to the DRT to make an interim order by way of injunction or stay, it inheres in it the power to grant that order even *ex parte*, if it is in the interest of justice to pass such an order.

Unlike in ***Industrial Credit and Investment Corporation of India Limited***[1]**,** where the Supreme Court held that the DRT had the power to grant an *ex parte* order of interim injunction, the question which arises for consideration, in the present Writ Petition, is whether the DRT can reject the O.A filed by the Bank exercising power under the provisions of Order VII Rule 11 CPC, and on the conditions stipulated therein being satisfied. As noted hereinabove, the provisions of the Civil Procedure Code are not automatically applicable to proceedings before the DRT, except to the limited extent referred to in Section 22(2) of the 1993 Act. Section 22(2) makes no reference to Order VII Rule 11 CPC. The submission of Sri A. Surayanarayana, learned counsel for the petitioners, that the provisions of Order VII Rule 11 CPC are applicable to the DRT obligating it to examine the petitioners' application for rejection of the O.A filed by the applicant-Bank, before calling upon them to file the written statement, is without merit and necessitates rejection.

While we are not inclined to entertain a challenge to the proceedings pending before the DRT on this ground, we must also bear in mind that, since proceedings before the DRT are not circumscribed by the provisions of the CPC, it is always open to the DRT to consider the application, filed before it by any of the parties to the proceedings, in accordance with law.

Suffice it to make it clear that, while we see no reason to interfere with the proceedings pending before the DRT, we have no reason to doubt that the DRT-I shall consider I.A.No.2005 of 2018 filed by the petitioner, and pass orders thereupon in accordance with law with utmost expedition.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 14.08.2018

Note: C.C. by 17.08.2018
B/o
BSS

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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Date: 14.08.2018

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