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

Writ Petition Nos.31088, 31120 and 31245 of 2018

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

Heard Sri Avinash Desai, Learned Counsel for the petitioner, and Sri M.Srikanth Reddy, Learned Standing Counsel for the 1st respondent-bank (SBI), and, with their consent, these three Writ Petitions are disposed of at the stage of admission by this common order. Since facts in all these three Writ Petitions are similar, it would suffice to refer to the facts in W.P.No.31088 of 2018 alone.

The petitioner in W.P.No.31088 of 2018 seeks a writ of mandamus to declare the order passed by the Debts Recovery Tribunal-I, Hyderabad (for short, the "DRT"), in I.A.No.2060 of 2018 in O.A.No.1092 of 2016 dated 21.08.2018, as arbitrary and illegal, and to set it aside to the extent the petitioner was directed to deposit 5% of the claim amount for filing the written statement.

I.A.No.2060 of 2018 was filed to set aside the order passed by the DRT on 01.05.2018 forfeiting the petitioner's right to file their written statement. The DRT passed an order on 21.08.2018 setting aside its earlier order dated 01.05.2018, directing the petitioner herein to file their written statement, by the next date of hearing, on deposit of 5% of the claim amount, to the credit of the O.A, with the DRT within two weeks; to pay costs of Rs.1,000/- to the other side; and to pay costs of Rs.2,000/- in favour of PMNRF, failing which the I.A. would stand dismissed.

Sri Avinash Desai, Learned Counsel for the petitioner, would submit that the DRT lacked jurisdiction, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 (for short, the "RDDB Act"), to direct deposit of 5% of the claim amount; the claim of the bank is yet to crystallize into a decree; and since the very entitlement of the bank, for recovery of the amount claimed by them as due, is yet to be adjudicated by the DRT, it is not entitled to direct the petitioners (defendants in the O.A), to deposit a part of the claim amount as, among the conditions, for setting aside the earlier order dated 01.05.2018 forfeiting the petitioner's right to file their written statement.

On the other hand, Sri M.Srikanth Reddy, Learned Standing Counsel for the 1st respondent-SBI, would submit that O.A.No.1092 of 2016 was filed by the 1st respondent-Bank before the DRT on 07.09.2016 for recovery of their dues in excess of Rs.67 Crores with future interest; the O.A. was posted to 29.12.2016 for appearance of the parties; on counsel entering appearance on behalf of the defendants on 29.12.2016, the matter was adjourned to 13.02.2017 for filing a written statement; the matter was thereafter adjourned to 08.03.2017, 31.03.2017, 07.06.2017, 18.08.2017 and 04.11.2017; on the request of the petitioner-defendants, the matter was again adjourned, on payment of costs of Rs.750/-, to 16.01.2018; on a change of counsel, the matter was again adjourned to 07.02.2018, 08.03.2018 and 28.03.2018 for filing their written statement; on 28.03.2018 the matter was adjourned to 17.04.2018 recording that, in case no written statement was filed by then, their right to file a written statement would be forfeited; thereafter, the matter was again adjourned from 17.04.2018 to 01.05.2018 on payment of costs of Rs.500/-; since the written statement was not filed even by 01.05.2018, the DRT forfeited the petitioner's right to file their written statement, and when the matter was listed on 15.06.2018 for recording the evidence of the Bank, the petitioner herein filed I.A.No.2060 of 2018 to set aside the earlier order dated 01.05.2018, which was allowed by order dated 21.08.2018 subject to the aforesaid conditions.

Sri M.Srikanth Reddy, Learned Standing Counsel for the 1st respondent-SBI, would further submit that the order, impugned in the Writ Petition, was passed by the DRT only to prevent the petitioner-defendants from needlessly dragging on proceedings; the very object of constituting a DRT, and in providing for a speedier procedure under the RDDB Act, is to ensure that Banks are able to recover their dues at the earliest; if the borrowers are permitted to needlessly drag on proceedings before the DRT, the very purpose of constituting a special mechanism, for recovery of debts due to the Banks, would be defeated; the DRT has the power, under the proviso to Section 19(1), Section 19(24) and Section 19(25) of the RDDB Act, to impose a part of the Suit claim amount as costs; since the amounts have merely been directed to be deposited with the DRT, and has not been directed to be paid to the 1st respondent-Bank, the petitioner cannot claim to have suffered any prejudice thereby; and they are, therefore, not entitled to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

Section 19(1) of the RDDB Act enables the bank or a financial institution to make an application to the Tribunal for recovery of any debt due from any person. Section 19(5)(i) stipulates that the defendant shall, within a period of 30 days from the date of service of summons, present a written statement of his defence, including a claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any; and such a written statement shall be accompanied with the original documents, or the true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence. Under the proviso thereto, where the defendant fails to file the written statement within the said period of 30 days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding 15 days to file the written statement of his defence.

As has been submitted by Sri M.Srikanth Reddy, Learned Standing Counsel for the 1st respondent-Bank, in our view rightly so, though summons were served on them as early as on 29.12.2016, and they were called upon to file their written statement by 13.02.2017, the petitioners failed to do so; and even thereafter, for a period of more than one year, till their right to file a written statement was forfeited by the order of the DRT dated 01.05.2018, they have failed to submit their written statement of defence.

As has been stated, in the counter-affidavit filed on behalf of the respondent-bank, the O.A suffered several adjournments from 13.02.2017 to 08.03.2017; thereafter, to 31.03.2017, 07.06.2017, 18.08.2017 and 04.11.2017; and again from 16.01.2018 to 07.02.2018, 08.03.2018 and 28.03.2018; the O.A was adjourned to 17.04.2018 on payment of costs; and as imposition of costs had no effect on the petitioner, who failed to file their written statement even by then, the DRT was constrained to forfeit, their right to file written statement, by its order dated 01.05.2018.

While the DRT can exercise its powers under the RDDB Act and the Rules made thereunder, for just and valid reasons, to refuse to set aside its earlier order forfeiting the defendant's right to file a written statement, or even to impose exemplary costs if it is satisfied that the delay is inordinate, or it is of the view that the defendants are needlessly dragging on proceedings only with a view to disable the bank from recovering its dues, none of the sub-sections of Section 19 confer any power on the DRT to direct a borrower or a guarantor to deposit, a part of the Suit claim amount, as a pre-condition for setting aside the earlier order forfeiting their right to file a written statement.

The entitlement of the 1st respondent-Bank, for recovery of the amounts claimed as due to it from the petitioner herein, in excess of Rs.67 Crores, is yet to be finally adjudicated by the DRT, and the O.A is still pending before it. Since proceedings before the DRT are akin to a money Suit filed before the Civil Court by the plaintiff, seeking recovery of the amount due from the defendants, the DRT lacks jurisdiction to direct deposit of a part of the Suit claim amount as a condition for setting aside the order passed by it earlier forfeiting the defendant's right to file a written statement. While the DRT has, undoubtedly, the power, for just and valid reasons, either to refuse to set aside the earlier order forfeiting the right of the defendant to file a written statement, or to impose exemplary costs as a pre-condition for extending the time to file a written statement, it cannot direct the defendant to deposit a part of the Suit claim amount, as a pre-condition for the earlier order, forfeiting the defendant's right to file a written statement, to be set aside as the validity of the claim is yet to be adjudicated by the DRT.

While Section 19(24) of the RDDB Act requires proceedings before the DRT to be completed within six months, Section 19(25) enables the Tribunal to make such orders, and give such directions, as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice. The power conferred on the DRT, by Section 19(25) of the RDDB Act, to prevent abuse of its process and to secure the ends of justice cannot be exercised to direct deposit of a part of the claim amount, the validity of which is yet to adjudicated, as a condition for setting aside the order forfeiting the defendant's right to file a written statement.

As the costs imposed by the DRT, (apart from directing deposit of 5% of the claim amount), is extremely low, we were initially inclined to set aside the order of the DRT in its entirety, and request it to consider I.A.No.2060 of 2018, filed by the petitioner, to set aside the earlier order dated 01.05.2018, afresh and in accordance with law.

Sri Avinash Desai, Learned Counsel for the petitioner, would, however, place reliance on an earlier order passed by us in W.P.No.28691 of 2018 dated 23.08.2018, to submit that, since this Court had directed imposition of costs of Rs.1.00 Lakh, and had directed the petitioner therein to deposit the said amount with the DRT within three weeks, a similar order should be passed in these Writ Petitions also.

It is for the DRT, in the first instance, to decide on the nature of the order to be passed in the interlocutory application, filed by the defendants in the O.A, to set aside the earlier order forfeiting their right to file a written statement. It is only after an order is passed by the DRT, would the validity of such an order be examined by this Court within the limited parameters of judicial review under Article 226 of the Constitution of India. In our order in W.P.No.28691 of 2018 dated 23.08.2018, we had not only set aside the order of the DRT to the extent the petitioners therein were directed to deposit a part of the amount claimed as due in the O.A filed by the Bank, but had also reduced the costs imposed by the DRT of Rs.10 Lakhs, to Rs.1.00 Lakh, as we were satisfied that the imposition of costs of Rs.10.00 Lakhs, even to receive the written statement sought to be filed by the petitioners therein, was unreasonable.

The order passed by us in W.P.No.28691 of 2018 dated 23.08.2018 would not constitute a declaration of law requiring this Court to substitute in all cases the condition, of deposit of a part of the Suit claim imposed by the DRT, with payment of costs of Rs.1.00 Lakh. The directions given by a Court, on the facts and circumstances of a particular case and in the exercise of its discretion under Article 226 of the Constitution of India, would not constitute a binding precedent in another case.

Sri Avinash Desai, Learned Counsel for the petitioner, would further submit that the petitioner's written statement is ready, and it is only because of the onerous conditions imposed by the DRT, that they are disabled from filing their written statement. He would request this Court to permit the petitioners herein to file their written statement by 06.09.2018, on payment of costs of Rs.1.00 Lakh in each case. As the matter is listed before the DRT on 06.09.2018, just two days hence, and to avoid any further delay in adjudicating the main O.A (which would be the consequence if the DRT is directed to decide I.A.No.2060 of 2018 afresh), we consider it appropriate to set aside the orders passed by the DRT to the limited extent it had directed deposit of 5% of the Suit claim amount as a condition for setting aside the orders dated 01.05.2018 forfeiting the petitioner's right to file a written statement. As requested by Sri Avinash Desai, Learned Counsel for the petitioner, we direct the petitioners, instead, to pay costs of Rs.1.00 Lakh in each case, in favour of the 1st respondent-bank, on or before 06.09.2018.

Sri Avinash Desai, Learned Counsel for the petitioner, would submit that a cheque for Rs.1.00 Lakh, in each Writ Petition, would be handed over to the 1st respondent-Bank by tomorrow i.e. 05.09.2018. On proof of such deposit being furnished to the DRT on 06.09.2018, and on the petitioner herein filing the written statement by that date, the DRT shall decide the O.As in accordance with law, with utmost expedition. Needless to state that, in case the petitioners fail to comply with the conditions stipulated in this common order, the orders passed by the DRT dated 01.05.2018 shall revive, and it would then be open to the DRT, thereafter, to decide the O.As in accordance with law without the written statement of the petitioner-defendants.

All these three Writ Petitions are, accordingly, disposed of. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

Date:04th September, 2018.

Note:
Issue C.C. by 05.09.2018.
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