

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

Writ Petition No.31800 of 2018

Order: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri Chetluru Sreenivas, learned counsel for the petitioners and Sri Ambadipudi Satyanarayana, learned Standing Counsel for the first respondent Bank. With their consent, the Writ petition is disposed of at the stage of admission. The order, impugned in this Writ Petition, was passed by the Debts Recovery Tribunal-I at Hyderabad, in I.A.No.1822 of 2018 in O.A.No.219 of 2010 dated 09.08.2018.

I.A.No.1822 of 2018 was filed by the petitioners herein to set aside the order dated 11.05.2018, whereby the petitioners were set *ex parte* on the ground that they had failed to submit their evidence affidavit in lieu of chief examination. While the order, impugned in this Writ Petition, does not record reasons which weighed with the Debts Recovery Tribunal in setting the petitioners herein, *ex parte*, a perusal of the counter affidavit, filed by the first respondent Bank in IA No.1822 of 2018, would show that, after the applicant Bank had filed their evidence affidavit on 19.01.2018, the case was posted to 30.10.2018 for the defendants evidence; the matter was adjourned thereafter to 15.02.2018; from 15.02.2018 to 28.02.2018, 15.03.2018, 06.04.2018, 18.04.2018 and 27.04.2018; and finally the case was posted to 11.05.2018.

Sri Chetluru Sreenivas, learned counsel for the petitioners, would submit that, though the written statement was filed by the petitioners herein, in October 2013, the applicant Bank had filed its evidence affidavit, more than four (4) years thereafter, only on 19.01.2018; the mere fact that the petitioners had sought a few

adjournments, within a short span of four months, did not justify the Debts Recovery Tribunal in directing them to deposit Rs.1.00 Crore to the credit of the OA, as a pre-condition to set aside the order dated 11.05.2018 whereby the petitioners were set *ex parte*.

In the order, impugned in the Writ Petition, the Debts Recovery Tribunal observed that the petitioner was deliberately delaying, by taking several adjournments, with a view to frustrate proceedings even after a lapse of eight (8) years; and, with a view to afford the petitioners an opportunity, IA No.1822 of 2018 was allowed subject to the condition, among others, that the petitioners should deposit Rs.1.00 Crore to the credit of the OA within three weeks. While the OA claim amount is around Rs.10.00 Crores, the Debts Recovery Tribunal has directed 1/10th of the said claim amount to be deposited as a pre-condition for setting aside the earlier order without assigning reasons for doing so. As the petitioners herein dispute the applicant Bank's claim for recovery of Rs.10.00 Crores, it is only on the claim amount being adjudicated, and a decree passed thereafter, can the petitioners be held liable to make payment of the said amount. Even without adjudicating the Bank's claim, the Debts Recovery Tribunal may not be justified in directing them to deposit 1/10th of the claim amount to the credit of the OA as a condition to set aside the order forfeiting the petitioners right to file an evidence affidavit.

While Sri Chetluru Sreenivas, learned counsel for the petitioners, would submit that it would suffice if only that part of the order, whereby the Debts Recovery Tribunal had directed deposit of Rs.1.00 Crore is set aside and the remaining part of the order may be permitted to remain, it does appear that the costs imposed by the Debts Recovery Tribunal is merely of Rs.2,000/-, with an additional sum of Rs.20,000/- directed to be paid to the Prime Minister's National Relief Fund. This meagre amount towards costs was

evidently imposed, by the Debts Recovery Tribunal, because the petitioners were also directed to deposit Rs.1.00 Crore to the credit of the OA. It would be wholly inappropriate for us, therefore, to permit the petitioners to file their evidence affidavit on payment of meagre costs of Rs.2,000/-, even in cases where they have sought repeated adjournments, during the period January 2018 to May 2018, for filing their evidence affidavit.

Sri Chetluru Sreenivas, learned counsel for the petitioners, would submit that the evidence affidavit is ready, and would be filed before the Debts Recovery Tribunal on the very next date of hearing. Recording the said submission of the learned counsel for the petitioners, we consider it appropriate to set aside the impugned order, and restore IA No.1822 of 2018 to file. The Debts Recovery Tribunal shall, after taking into consideration the delay, if any, on the part of the applicant Bank in filing its evidence affidavit earlier, pass orders afresh on whether the petitioners request, for the order dated 11.05.2018 to be set aside, should be acceded to and, if so, on what terms and conditions. Since the OA relates to the year 2010, IA No.1822 of 2018 shall be decided with utmost expedition and, in any event, within two (2) weeks from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 10.09.2018

Note:

Issue CC in two days

(B/O)

Nsr

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