

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Writ Petition No.26894 of 2017

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

Heard Sri Sai Gangadhar Chamarty, learned counsel for the petitioners, and Sri M.V.S.Prasad, learned Standing Counsel for the respondent-bank and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the order of the Debts Recovery Tribunal, Visakhapatnam in M.A.No.95 of 2012 in O.A.No.70 of 2011 dated 17.07.2017. The respondent-bank filed O.A.No.70 of 2011 before the Debt Recovery Tribunal, Visakhapatnam, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of Rs.1,06,46,281.70 ps. with interest. The respondent-bank had issued a demand notice on 31.08.2009 calling upon the petitioners to make payment and, as the amounts due were not paid, they invoked the jurisdiction of the Debts Recovery Tribunal. Before the Debts Recovery Tribunal, the petitioners were called absent and were set *ex parte* on 09.04.2012. The O.A was allowed on 17.07.2012. The petitioners filed an application in M.A.No.95 of 2012 on 28.09.2012 to condone the delay of 43 days in filing the application to set aside the *ex parte* order. By the order impugned in the writ petition dated 17.07.2017, the application to condone the delay of 43 days was rejected by the Debts Recovery Tribunal.

In the impugned order, the Debts Recovery Tribunal took note of the petitioners' contention that they had received a notice from the Recovery Officer in R.P.No.60 of 2012 in O.A.No.70 of 2011; on enquiry they came to know that an *ex-parte* decree was passed on 17.07.2012; as the wife of the 2nd petitioner had fallen sick, and was under treatment at Vijayawada,

he could not pursue the litigation diligently; and the petitioners filed a copy of the certificate issued by JJ Hospital on 27.09.2012 and sought condonation of the delay of 43 days in filing the application to set aside the *ex parte* decree. Thereafter, the Tribunal took note of the contention of the respondent-bank that the petitioners had failed to file a written statement inspite of several opportunities being given by the Tribunal; they were called absent and were set *ex parte*; an *ex parte* decree was passed on 17.07.2012; subsequently, recovery proceedings were initiated in R.P.No.60 of 2012; and the delay of 43 days had not been properly explained.

In the order, impugned in the Writ Petition, the Tribunal observed that, inspite of several opportunities, the petitioners did not file their written statement; they were called absent and were set *ex parte* on 09.04.2012; the respondent-bank had filed its evidence affidavit on 28.06.2012, and the O.A was allowed on 17.07.2012; till the O.A was allowed, the petitioners did not file an application to set aside the *ex-parte* order dated 09.04.2012; they did not contest the matter seriously, despite several adjournments; no cogent reasons were furnished explaining the delay; and it was, therefore, of the considered opinion that there were no merits in the petition.

In the affidavit filed in support of the application to condone the delay of 43 days, the 2nd petitioner stated that his wife was undergoing treatment for a gynaec disorder at Vijayawada and Hyderabad; he was the only person taking care of his wife; and the delay of 43 days, in filing the application, was neither wilful nor wanton, but was because of the circumstances beyond the petitioners' control.

While the explanation furnished for the delay is lacking in sufficient particulars, the fact remains that the delay in filing the application is of a period of less than one and half months. The petitioner contends that the suit claim was inflated. As the delay is of less than a month and a half,

we consider it appropriate to set aside the impugned order, condone the delay, and set aside the *ex parte* decree, on condition that the petitioners pay Rs.1,00,000/- (Rupees One Lakh Only) as costs to the respondent bank within three weeks from today. Failure on the part of the petitioners to pay costs of Rs.1.00 lakh to the respondent-bank, within the time stipulated hereinabove, would result in revival of the impugned order passed by the Debts Recovery Tribunal; and it would then be open to the respondent-bank to proceed to recover the amounts due in accordance with law. The delay is being condoned, and the *ex parte* decree is being set aside, on condition the petitioners diligently prosecute the matter. Suffice it to make it clear that, in case the Debts Recovery Tribunal were to find that the petitioners are indulging in needless procrastination, it would be open to it take necessary action in accordance with law.

As the O.A relates to the year 2011, and has been pending on the file of the Debts Recovery Tribunal for the past 7 years, we record the submission of Sri Sai Gangadhar Chamarty, learned counsel for the petitioners, that the petitioners would cooperate in the early completion of the proceedings before the Debts Recovery Tribunal, and request the Debts Recovery Tribunal to decide the O.A with utmost expedition, preferably within a period of four months from the date of receipt of a copy of this order.

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

(RAMESH RANGANATHAN, J)

(D.V.S.S.SOMAYAJULU, J)

22nd October, 2018
JSU

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU



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Date: 22.10.2018

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