

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

+ WRIT PETITION No.34471 OF 2018

% Date:22.11.2018

Between:

Smt. Gardasu Lavanya W/o.G. Maheshwar,
R/o.Sanjivapuram, Parsigutta, Secunderabad
and others.

... Petitioners

v.

\$ The Registrar, Debts Recovery Tribunal II,
Hyderabad, Triveni Complex, Abids,
Hyderabad and others.

.. Respondents

! For Petitioners : Smt. V. Dyumani

^ For Respondents : Smt. Kalpana Ekbote

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> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.34471 OF 2018

ORDER: *(Per V. Ramasubramanian, J)*

The petitioners, who are the owners of individual plots of land, in a colony developed by the 3rd respondent herein, have come up with the above writ petition challenging an order passed by the Debts Recovery Tribunal allowing two interlocutory applications filed by them for getting impleaded as applicants both in the main appeal arising under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitization Act") and in the stay petition, on condition that they pay separate Court fee.

2. Heard Smt.V. Dyumani, learned counsel for the petitioners and Smt. Kalpana Ekbote, learned counsel appearing for the 2nd respondent Bank.

3. Notice to the other respondents is dispensed with, as the dispute is confined only to the payment of court fee and the other respondents cannot have any grievance insofar as the same is concerned.

4. As against the measures taken by the Bank under Section 13 (4) of the Securitisation Act, and the order passed by the Chief Metropolitan Magistrate, under Section 14 of the Securitisation Act, the 3rd respondent in this writ petition, namely, the Lalitha Nagar

Colony Development and Welfare Association, filed an appeal in SA No.154 of 2018. Their primary contention in the appeal filed under Section 17 of the Securitisation Act was that it is a Society registered under the Societies Registration Act and that the members of the Society purchased house sites way back in the year 1980, developed in an agricultural land in Sy.Nos.407, 408 and 412 situate at Pasumamla Village, Hayath Nagar Taluq, Ranga Reddy District, and that the Bank started proceeding against the said property on the ground that the respondents 4 to 8 borrowed loans and created a security interest in the land.

5. Along with their main appeal SA No.154 of 2018, the Society also moved an application for stay in I.A No.1847 of 2018. It appears that an interim order of stay was granted in the said application.

6. Thereafter, the individual members of the 3rd respondent Society moved two applications in I.A Nos.3401 and 3402 of 2018 seeking to implead themselves as appellants, both in the main appeal SA No.154 of 2018 and in the stay petition I.A No.1847 of 2018. These applications were allowed by the Tribunal by an order dated 16.08.2018, on condition that the petitioners pay separate Court fees in terms of Rule 13 (2) (1) (d) of the Security Interest (Enforcements) Rules, 2002. Aggrieved by the said condition, the petitioners have come up with the above writ petition.

7. It is seen from the stand taken by the Bank, as reflected in the impugned order that the Bank has challenged the very

maintainability of the appeal by the 3rd respondent Society. The borrowers have also questioned the maintainability of the appeal at the instance of an Association on the ground that the very registration of the Association was illegal.

8. In the light of such an attack to the appeal filed by the society, the individual members thought it fit to come on record as appellants, as otherwise their interest may be jeopardized in the event of the appeal by the Society being held not maintainable. If, after the dismissal of the appeal filed by the Society, the petitioners seek to file a separate appeal under Section 17 of the Securitisation Act, the same may even be time barred. Therefore, the petitioners had a genuine cause for concern and their right to come on record as the appellants in the appeal, could not be questioned. This is perhaps the reason why the Tribunal thought fit to allow the application for impleadment.

9. After having found a justification in the request of the petitioners to implead themselves as appellants in the pending appeal, the Tribunal thought fit to impose a condition that they should pay separate Court fee in terms of the Rule. Therefore, the only question that arises for consideration is as to whether the petitioners are liable to pay separate Court fee or not?

10. Court fee is payable on all applications under Section 17 of the Securitisation Act and on all appeals under Section 18 of the Securitisation Act in terms of the Rule 13 of the Security Interest (Enforcement) Rules 2002. The Rule reads as follows:

13. Fees for applications and appeals under sections 17 and 18 of the Act:-- (1) Every application under sub-section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section n18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case maybe, payable at the place where the Tribunal or the Court is situated.

No.	Nature of application	Amount of fee payable
(1)	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	
(a)	Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs	Rs.500 for every Rs.1 lakh or part thereof
(b)	Where the applicant is a borrower and the amount of debt due is Rs.10 lakhs and above	Rs. 5000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs.10 lakhs subject to a maximum of Rs.1,00,000
(c)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs.125 for every rupees one lakh or part thereof
(d)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above	Rs. 1250 + Rs. 125 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to maximum of Rs. 50,000
(e)	Any other application by any person	Rs. 200
(2)	Appeal to the Appellate Authority against any order passed by the Debts Recovery Tribunal under section 17	Same fees as provided at clauses (a) to (e) of Serial Number 1 of this rule

11. A careful look at the charging section shows that the liability to pay Court fee under Rule 13, has a nexus only with the application and not the applicant. Sub-Rule (1) of Rule 13 begins with the expression “every application”. It does not begin with the words “every applicant”. Therefore, irrespective of the number of applicants, who join together in an application under Section 17 of the Act, the Court fee payable is only one, if there is only one application.

12. Take for instance a case where the company and its Directors move an application. The Court fee is not charged on every applicant. Therefore, the demand made by the Tribunal does not appear to be justified.

13. Drawing our attention to the words “the applicant” appearing in clauses (a) to (d) under Serial No.1 of the Table under Sub-Rule (2) of Rule 13, it was contended by Smt. Kalpana Ekbote, that when it comes to the amount of Court fee payable, the Rule uses the expression “applicant” and not the expression “application”. Therefore, it is contended by the learned counsel for the Bank that every applicant is obliged under Sub-Rule (2) of Rule 13 to make payment of Court fee individually.

14. But, there is a small distinction between Sub-Rule (1) and Sub-Rule (2) of Rule 13. Sub-Rule (1) is the charging section. Sub-Rule (2) is the rule that classifies the amounts payable. If the charging section imposes a liability only in respect of every application, the Rule prescribing the amount of fee cannot go beyond the same. In fact, the expression “applicant” appearing in the table under Sub-Rule (2) of Rule 13 has to be understood as including within its fold “applicants”. Under the General Clauses Act, singular includes the plural and *vice versa*. Therefore, the condition imposed by the Tribunal for allowing the applications for impleadment is not justified.

15. Hence, the Writ Petition is allowed, the condition imposed by the Tribunal for payment of Court fee alone is set aside and the other portion of the order will remain.

As a sequel thereto, miscellaneous petitions, if any pending,
shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 22, 2018
KTL

Note:
LR copy to be marked.
B/O.KTL

