

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

Writ Petition No.35981 of 2018

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

Heard Sri Alluri Raghu Rama Aurava, learned counsel for the petitioner, and Smt. V.Dyumani, learned Standing Counsel for the respondent-bank. With their consent, the Writ Petition is disposed of at the stage of admission. The order impugned in the Writ Petition was passed by the Debts Recovery Tribunal-I (for short 'DRT') at Hyderabad in M.A.No.128 of 2018 in O.A.No.738 of 2013 dated 10.09.2018.

The petitioner herein is the respondent in O.A.No.738 of 2013 filed by the respondent-bank before the DRT. He had entered appearance through counsel, and had filed her written statement in the O.A. The said O.A. was posted for arguments to 21.06.2018. In the meanwhile the petitioner's Advocate's mother is said to have passed away on 11.06.2018 because of which he was unable to appear before the DRT. The Tribunal passed an *ex-parte* decree on the ground of non-representation. An application was filed by the petitioner's counsel to set aside the *ex-parte* order dated 21.06.2018 in M.A.No.128 of 2018, and impugned order was passed allowing the application, subject to petitioner depositing 20% of claim amount, with the DRT to the credit of O.A, within three weeks, besides payment of costs of Rs.2000/- in favour of the Kerala C.M. Distress Relief Fund.

Sri A.Raghurama Aurava, learned counsel for the petitioner, would submit that the Tribunal had exceeded its jurisdiction in directing the petitioner to deposit 20% of the claim amount, with

the DRT to the credit of the O.A even without adjudicating the claim of the applicant-bank; the impugned order requires the petitioner to deposit a sum of around Rs.4,00,000/-; and the impugned order of the DRT is bereft of reasons and is liable to be set aside.

On the other hand Smt. V.Dyumani, learned standing counsel for the respondent bank, would submit that the power of the Debt Recovery Tribunal to direct deposit of 20% of the claim amount is referable to Section 19(5B) of the Recovery of Debts and Bankruptcy Act, 1993 (for short 'RDDB Act'); the O.A. relates to the year 2013, and has been pending on the file of the DRT for the past five years; failure on the part of the petitioner's counsel, to appear before the DRT, justified the earlier order allowing the O.A; nothing prevented the petitioner's counsel to have the matter represented before the DRT; and, in such circumstances, the order of the DRT does not necessitate interference.

As noted hereinabove, the application to set aside the earlier order was allowed by the DRT by its order in M.A.No.128 of 2018 in O.A.No.738 of 2013 dated 10.09.2018. It is wholly unnecessary for us, in a Writ Petition filed by the respondent in the O.A, to examine the contention of the applicant-bank as to whether or not the DRT was justified in setting aside its earlier *ex-parte* order dated 21.06.2018 for non-representation.

The only question which necessitates examination is whether the DRT was justified in directing the petitioner to deposit 20% of the claim amount as a pre-condition for setting aside the earlier *ex-parte* order. It is well settled that the O.A. filed by the Bank, under the RDDB Act, is akin to a money suit; and the applicant-

bank's claim for recovery of the money lent by it, and for issuance of a recovery certificate necessitates adjudication in the O.A. filed before the DRT. It is only after a decree is passed by the DRT, is the applicant bank entitled to recover the decretal amount. As the claim of the applicant-bank is still pending adjudication before the DRT, no direction could have been issued by the DRT, directing the petitioner to deposit a part of the amount claimed by the bank in the O.A.

Since Smt. V.Dyumani, learned counsel for the respondent bank, would rely on Section 19(5B) of the DRB Act it is useful to refer to the contents of the said provision which reads thus:-

“where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.”

Section 19(5B) of the RDDB Act confers power on the Tribunal to direct the defendant in the O.A. to deposit the admitted amount. The fact, however, remains that the order, impugned in the Writ Petition, does not even record that the direction to deposit 20% of the claim amount is because of the petitioner's admission in her written statement of certain amount being due and payable to the applicant-bank. While Sri A.Raghurama Aurava, learned counsel for the petitioner, would deny the petitioner having admitted that any amount is due from her to the bank, it is wholly unnecessary for us to examine the said contention in the absence of a finding being recorded by the DRT, in the impugned order, that the direction to deposit 20% of the claim amount, is because

the petitioner had admitted that the said amount was due from her to the respondent bank.

We consider it appropriate, in such circumstances to set aside the order passed in M.A.No.128 of 2018 in O.A.No.738 of 2013 dated 10.09.2018 to the limited extent the DRT had directed the petitioner to deposit 20% of the claim amount. M.A. No.128 of 2018 is restored to file. It is open to the DRT to impose costs, apart from the Rs.2000/- costs which it had directed the petitioner to pay in favour of the Kerala CM Distress Relief Fund. It is made clear that the DRT is not entitled to direct the petitioner to deposit a certain percentage of the amount claimed as due by the applicant-bank unless, of course, the said amount is admitted in the written statement to be due and payable by the petitioner to the respondent-bank, in which case alone would the provisions of Section 19(5B) of the RDDB Act be attracted. Suffice it to request DRT to dispose of M.A.No.128 of 2018 at the earliest, preferably within three weeks from the date of receipt of a copy of this order.

The Writ Petition stands disposed of accordingly. 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: 11.10.2018
Note: Furnish CC by 12.10.2018
(BO)
BSS