

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

Writ Petition No.36042 of 2018

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

When the matter came up before us on 05.10.2018, we had directed Sri M.Srikanth, learned counsel for the petitioners, to take out notice on the respondents by Speed Post, and to file proof of service by 10.10.2018. A memo was filed by the petitioners, vide USR No.81383 of 2018 on 10.10.2018, to the effect that service of notice was effected. Sri M.Srikanth, learned counsel for the petitioners, would submit that notice was served on the 1st respondent-bank on 09.10.2018. Despite service of notice, no counsel has entered appearance on behalf of the 1st respondent-bank. We, therefore, heard Sri M.Srikanth, learned counsel for the petitioners, and are disposing of the writ petition pursuant thereto.

The docket order, impugned in this writ petition, was passed by the Debts Recovery Tribunal-I in I.A.No.2526 of 2018 in O.A.No.13 of 2003 dated 25.09.2018 allowing the I.A filed by the petitioners subject to the following conditions:

- (i) To deposit Rs.50.00 lakhs directly with the respondent-bank within two weeks from the date of the order;
- (ii) To pay Rs.5,000/- in favour of Kerala Chief Minister Drought Relief Fund;
- (iii) To pay Rs.1,000/- to the other side; and
- (iv) To file defendants evidence and documents, if any, on or before 10.10.2018.

The Debts Recovery Tribunal made it clear that, if the petitioners failed to comply with any of the conditions, the I.A would stand dismissed.

Facts, to the limited extent necessary, are that the applicant-bank filed its evidence affidavit on 08.10.2015, and the matter was posted for defendants evidence to 30.11.2015. As the petitioners-defendants failed to file their defence evidence affidavit, their evidence was closed on 04.03.2017. They filed I.A.No.3417 of 2016 requesting the Debts Recovery Tribunal to re-open the evidence. The said I.A was allowed by docket order dated 08.03.2017, and the matter was posted to 27.03.2017 for filing of the defence evidence affidavit by the petitioners-defendants.

Sri M.Srikanth, learned counsel for the petitioners, would submit that, on account of the demise of the father of the Managing Director of petitioners 1 and 2-company on 24.03.2017, the Managing Director was unable to file his defence evidence affidavit by 27.03.2017 resulting in their right, to file the defence evidence affidavit, being forfeited by the Debts Recovery Tribunal. The petitioners, thereafter, filed I.A.No.2526 of 2018 seeking enlargement of time, in terms of the order dated 08.03.2017, and to permit the petitioners to lead evidence by filing an evidence affidavit in O.A.No.13 of 2003. It is the docket order passed in this I.A on 25.09.2018 which is subjected to challenge in this writ petition.

The question which necessitates examination in this writ petition is whether the Debts Recovery Tribunal was justified in directing the petitioners to deposit Rs.50,00,000/- with the respondent-bank as a pre-condition for passing the order dated 25.09.2018.

It is well settled that the O.A. filed by the applicant-bank, under the Recovery of Debts and Bankruptcy Act, 1993 (for short “the RDB 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 Debts Recovery Tribunal, no direction could have been issued by the Debts Recovery Tribunal, directing the petitioners to deposit a part of the amount claimed by the bank in the O.A.

Section 19(5B) of the RDB Act 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 RDB Act confers power on the Tribunal to direct the defendant in the O.A. to deposit the admitted amount. The order, impugned in the Writ Petition, does not record that the direction to deposit Rs.50.00 lakhs is because of the petitioners' admission in their written statement of certain amount being due and payable to the applicant-bank.

We consider it appropriate, in such circumstances, to set aside the order passed in I.A.No.2526 of 2018 in O.A.No.13 of 2003 dated 25.09.2018 to the limited extent the Debts Recovery Tribunal had directed the petitioners to deposit Rs.50.00 lakhs.

Sri M.Srikanth, learned counsel for the petitioners, would submit that, though the petitioners-defendants had filed the defence evidence affidavit on 04.08.2018, the Debts Recovery Tribunal had returned the said affidavit; and that the defence evidence affidavit would be filed before the Debts Recovery Tribunal on the next date of hearing. On condition that the petitioners comply with their undertaking to file the defence evidence affidavit on the next date of hearing fixed by the Debts Recovery Tribunal, the impugned order in I.A.No.2526 of 2018 is set aside and I.A.No.2526 of 2018 is restored to file.

While we were initially inclined to direct the Debts Recovery Tribunal to examine whether costs, apart from the costs already imposed, should be imposed on the petitioners, Sri M.Srikanth, learned counsel for the petitioners, would submit that, with a view to give a quietus to this dispute, the petitioners are ready and willing to pay costs of Rs.2,00,000/- to the respondent-bank.

On condition that the petitioners pay Rs.2,00,000/- to the respondent-bank, within 10 days from today, and on condition that the defence evidence affidavit is filed before the Debts Recovery Tribunal on the next date of hearing, the Debts Recovery Tribunal shall receive the defence evidence affidavit of the petitioners, and proceed thereafter in accordance with law. It is made clear that, in case the petitioners fail to pay costs of Rs.2,00,000/-, or to file the defence evidence affidavit within the time indicated hereinabove, it is open to the Debts Recovery Tribunal to forfeit the petitioners' right to file the defence evidence affidavit and, thereafter, to proceed and decide the O.A in accordance with law.

The Writ Petition is, 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)

12th October, 2018
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**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



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Date: 12.10.2018

