

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

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

WRIT PETITION No.38295 OF 2018

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

Heard Sri Venkateshwar Varanasi, learned counsel for the petitioners, and Smt. V. Dyumani, learned counsel for the respondent-Bank.

The respondent Bank filed O.A.No.184 of 2017, before the Debts Recovery Tribunal-I, Hyderabad, seeking recovery of a sum in excess of Rs.5.23 Crores. After the petitioners herein filed their written statement and their defence affidavit, the matter was listed for appearance and marking of documents on 18.09.2018. The petitioners failed to appear before the Tribunal on the said date. The reason for non-appearance, according to the second petitioner, is that the family needs and family problems compelled him to leave station, and he was at Delhi on 18.09.2018, resulting in his inability to appear before the Tribunal on that day. On the evidence of the defendants-petitioners herein being closed, and the matter being posted for arguments, the petitioners filed I.A.No.2815 of 2018 to reopen the case to enable them to adduce evidence. The said I.A. was allowed by order dated 01.10.2018 subject to (1) payment of 10% of the claim amount in three weeks to the credit of the O.A., (2) to pay costs of Rs.5,000/- in favour of the Prime Minister's National Relief Fund; and (3) filing of written statement in defence along with documents within three weeks.

Sri Venkateshwar Varanasi, learned counsel for the petitioners, would submit, not without justification, that the

docket order is cyclostyled order; and the Tribunal has erroneously recorded that a written statement and defence affidavit should be filed when, in fact, they were filed long ago.

The O.A. filed by the Bank, under Section 19 of the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993, is akin to a money suit and, as the claim of the Bank is yet to be adjudicated, the Tribunal could not have directed the petitioners-borrowers to deposit 10% of the claim amount. While the costs of Rs.5,000/- imposed by the Tribunal is undoubtedly meagre, and the Tribunal could have imposed a higher amount as costs for failure of the petitioners to be present on 18.09.2018, and for grant of permission to mark the documents, it could not have directed to deposit a part of the claim amount as a condition for setting aside its earlier order dated 18.09.2018.

The order of the Debts Recovery Tribunal dated 01.10.2018 is set aside, and I.A.No.2815 of 2018 is restored to file. The Tribunal shall consider I.A.No.2815 of 2018 afresh and pass orders thereupon in accordance with law, including imposition of additional costs for the failure of the petitioners to be present before the Tribunal on 18.09.2018.

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

(RAMESH RANGANATHAN, J)

Date: 24.10.2018

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

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