

***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.43758 OF 2018

% Date:03.12.2018

Between:

M/s. Aditya Steel Industries,
A Partnership, Shamirpet Road,
Medchal, Ranga Reddy District and another

... Petitioners

v.

\$ The Kotak Mahindra Bank,
Rep. by its Branch Manager,
Himayatnagar, Hyderabad and others

.. Respondents

! For Petitioners : M/s. Sharad Sanghi

^ For Respondents : None

< Gist :

> Head Note :

? Cases Referred : AIR 2013 Supreme Court 58

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.43758 OF 2018

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

Aggrieved by the rejection of their request to cross examine the Bank's witness in an application filed by the Bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'RDDB Act'), the borrower has come up with the above writ petition.

2. Heard Mr. Sharad Sanghi, learned counsel for the petitioner.

3. Before proceeding to consider the main submission of the learned counsel for the petitioner, that the right to cross examination is an integral part of the principles of natural justice and that the same cannot be allowed to be violated, it is necessary for us to take note of certain bare minimum facts. The respondent Bank filed O.A No.20 of 1998 on the file of the Debts Recovery Tribunal, Bangalore, for recovery of a sum of Rs.75,24,606-07 ps. The application was originally filed on the file of the Debts Recovery Tribunal, Bangalore. Later it was transferred to DRT-I, Hyderabad and renumbered as O.A. 1338 of 1999. It is quite unfortunate that for reasons not solely attributable to the petitioner, but partly attributable to the system in which we are functioning, the adjudication of the application has been prolonged for nearly 20 years. In fact, the very object of establishment of Debts Recovery Tribunal is to enable the Banks to

have speedy recovery. The creation of Tribunals including the Debts Recovery Tribunal was the product of a realization that there is a huge delay in the matter of adjudication of disputes by civil Courts. But, in this case if the Bank had filed a civil suit, we believe it could have been disposed of by now.

4. Be that as it may, the petitioners filed a written statement, way back in July 1998, raising several contentions including (1) limitation, (2) non-maintainability of the application and (3) the repayment of the entire dues.

5. After the Bank's witness filed his affidavit in lieu of oral evidence along with 34 documents, the petitioners filed an application in I.A. No.1219 of 2017 seeking permission to cross examine him. The said application was rejected by the Tribunal, by the order impugned in the writ petition, by relying upon sub Rules (9) and (10) of Rule 12 of the Debts Recovery Tribunal (Procedure) Rules. Aggrieved by the said order, the petitioners is before us.

6. The contention of the learned counsel for the petitioner is that the defence taken by the petitioners revolves around several pure questions of fact and some mixed questions of fact and law and that therefore, the amended Rule 12 (9) entitles the petitioners to seek cross examination of the witness of the Bank. Reliance is also placed upon a judgment of the Supreme Court in **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra**¹ in support of the contention that the

¹ AIR 2013 Supreme Court 58

right to cross examination is integral part of the principles of natural justice.

7. We have carefully considered the above submissions.

8. In matters of this nature, oral evidence actually falls insignificant in the light of the fact that the transactions between the parties are commercial in nature and all of them are supposed to be recorded in the books of accounts and in the correspondence. Realising this fact, the rules of procedure prescribed in DRT (Procedure) Rules 1993 makes it clear that only those facts which are required to be proved by affidavit, shall be proved so. Rule 12 (9) of the Rules after its amendment, reads as follows:

“(9) The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted.”

9. It is seen from the proviso to sub Rule (9) of Rule 12 that three conditions are to be satisfied for the Tribunal to permit the cross examination. They are (1) the desire on the part of one of the parties

for production of a witness for cross examination, (2) the opinion on the part of the Tribunal that it is necessary to permit such cross examination and (3) the recording of sufficient reasons by the Tribunal for permitting cross examination.

10. The manner in which the proviso is worded would indicate that the Tribunal has to record sufficient reason for permitting cross-examination. In normal jurisprudence, a quasi judicial authority will be obliged to record reasons for denying permission for cross examination. But under the proviso to Rule 12 (9) it is the other way about. This is a clear indication as to how the Tribunal is obliged to proceed in the matter.

11. As we have pointed out earlier, the transactions were of the year prior to 1998. The original application itself was filed in the year 1998. In the year 2018, an Officer, who swears to an affidavit, will be speaking only from the facts as disclosed in the files. Therefore, there is no use of putting questions to such an officer, who does not have personal knowledge of the transactions, so as to disprove the claim of the Bank.

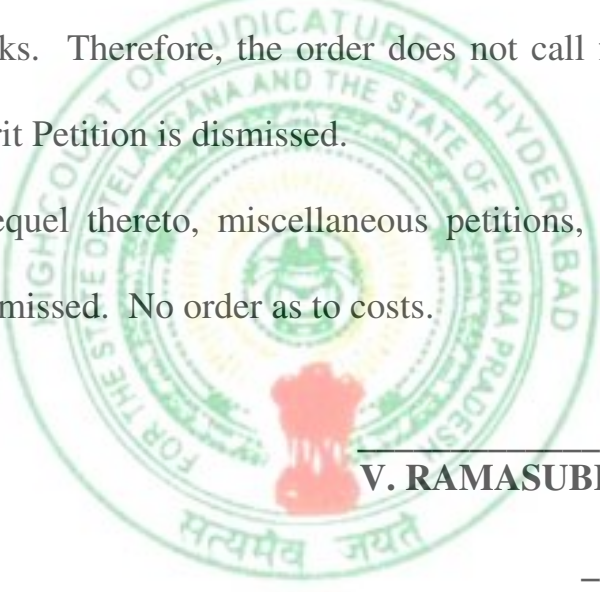
12. Cross examination is necessary only of such witnesses who speak of facts that they are personally aware of. Witnesses like Officers of Bank, who may not have been appointed at the time when the transactions took place, will be speaking only from what is available in the files and in the statement of accounts. Therefore, attempting to dislodge their credibility, through cross examination, will only turn the art of cross examination into an art of intimidation

and nothing else. Therefore, the Tribunal was right in rejecting the request, in as much as the witness sought to be examined was never there at the time when the transaction was entered into and cannot speak personally from facts.

13. As rightly observed by the Tribunal, the case of the petitioner is one of discharge of liability. Therefore, the onus is on the petitioner to prove the same.

14. In so far as the question of limitation is concerned, though it is a mixed question of facts and law, the facts are on record and the law is on books. Therefore, the order does not call for interference. Hence, the Writ Petition is dismissed.

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



V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

December 03, 2018

Note:

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