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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9257/2018, CM Nos. 35770-35772/2018**

SUDHISH AGGARWAL

..... Petitioner

Through: Mr. Anoop Awasthi, Adv.

versus

LIC HOUSING FINANCE LTD. AND ORS.

..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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13.09.2018

CM Nos. 35770/2018 & 35772/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 9257/2018

1. This petition has been filed by the petitioner with the following prayers:-

“In the light of aforementioned, it is most respectfully prayed that this Hon’ble Court may be pleased to issue appropriate writ or urgent direction to the Ld. Debt Recovery Tribunal III, Delhi to:-

(i) Permit the documents on the file of OA No. 243/2013 to be examined by a private expert for verifying the genuineness of the signatures of the Petitioner or in alternative be sent to

Central Forensic Science Laboratory (CFSL) for verifying the genuineness of the signatures of the Petitioner.

(ii) Permit cross-examination of the witness of the LIC Housing Finance Ltd. who has filed his affidavit in evidence before the Ld. Debt Recovery Tribunal III, Delhi

(iii) Pass such other or further orders as may be deemed just and fit under the circumstances of the case.”

2. The brief facts are that the petitioner who is an employee of Indian Oil Corporation Limited had taken a loan from the respondent No.1 for purchase of a house. The petitioner defaulted in paying the loan amount, which resulted in the respondent No.1 filing Original Application No. 243/2013 before the Debt Recovery Tribunal, Delhi-III, which is pending adjudication. It is noted that during the pendency of the Original Application, the petitioner has filed IA No. 1977/2016 praying therein to compare and ascertain the genuineness of the signatures on the documents filed by the respondent No.1 purported to have been signed by the petitioner viz a viz his admitted signatures and also prayed for calling expert opinion, if so required. The said application was decided by the Tribunal on May 04, 2018 whereby the Tribunal was of the view that the OA was filed on May 18, 2013 and the petitioner has been appearing in the matter since April 09, 2015 but no such application has been moved at the initial stage by the

petitioner and the said application has been moved after completion of pleadings of the case, even after filing the written arguments before the Tribunal. The Tribunal also noted that no criminal complaint has been moved by the petitioner with respect to the fact that the signature on the loan documents were forged and fabricated. The Tribunal had also taken into consideration the fact that a cheque was also presented in the account of the petitioner and a sum of Rs.5,37,800/- was debited by the respondent No.1 from its account in the month of March, 2011, which is admitted by the petitioner. The Tribunal rejected the said application.

3. The petitioner has challenged order dated May 04, 2018 before the Debts Recovery Appellate Tribunal, Delhi. The Appellate Tribunal, in its order dated May 22, 2018 has taken a following view:-

“In view of the fact that the appellant has already disputed and denied the genuineness of the signatures purporting to be his signatures on various loan documents, except the original loan application and few other documents on which he is not disputing his signatures, it will be for the Financial Institution to establish its case by adducing appropriate evidence to show that all the signatures which the appellant was disputing are in fact his signatures. How the FI would establish that will be for the FI to decide. The appellant has also made a prayer to the DRT for itself comparing the signatures appearing on the admitted documents and the questioned documents. It will be for the DRT at an appropriate stage to do the comparison in accordance with law and then to arrive at an appropriate conclusion.”

4. It is also noted that two more applications being IA 754-755/2018 were filed by the petitioner herein. The said applications were considered by the DRT-III, Delhi. In the applications, the petitioner had made a request to summon and cross examine the witnesses of the respondent No.1 LIC Housing Finance Ltd and respondent No.2 Builder and grant permission, for getting documents examined by CFSL or by private expert as to know the genuineness of the documents.

5. In the application, a similar plea was taken by the petitioner that the documents, on which the respondent No.1 has relied upon in the Original Application, has never been executed by him. Therefore, the document i.e the sanction letter dated January 20, 2009 does not contain signature of the petitioner and has been false as the same also contains wrong address. Suffice to state, the Tribunal vide order dated July 09, 2018 has rejected both the applications by holding that it was a tactic to delay the proceedings that too, when evidence has already been conducted way back in 2015.

6. The learned counsel for the petitioner would make similar submissions as was made before the Tribunal. The fact that the petitioner had earlier filed an application being 1977/2016 for comparing and ascertaining the genuineness of the signatures, which he denies and calling

for an expert opinion was rejected on May 04, 2018, which order was challenged by the petitioner on May 22, 2018, the subsequent applications being IA 754-755/2018 for similar reliefs could not have been filed by the petitioner as being barred by principles of *res-judicata*.

7. The Tribunal has rightly observed in para 4 of the order dated July 09, 2018 that “*almost similar facts have been urged in IA 1977/2016 moved by the defendant No.1, which was dismissed by the Tribunal on May 04, 2018.*”

Even otherwise, the reasoning given by the Tribunal in dismissing the application is that the petitioner has been appearing in the proceedings since 2015 and the matter is at arguments stage; written arguments have already been filed. In other words, filing of application at this point of time is only to delay the proceedings. We agree with the said conclusion of the Tribunal against the petitioner.

8. We do not see any merit in the petition. The same is dismissed.

CM No. 35771/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 13, 2018/ak