

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.1102 OF 2019

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

Aggrieved by the refusal of the Debts Recovery Tribunal to allow cross examination of the witness for the Bank and also aggrieved by the dismissal of a review petition, the borrowers have come up with the above Writ Petition.

2. Heard Mr.G.Vasanthan Raidu, learned counsel appearing for the petitioners.

3. The State Bank of Hyderabad filed an application in O.A.No.179 of 2003 on the file of the Debts Recovery Tribunal. The application was filed by the State Bank of Hyderabad, along with all other Banks, who rendered financial assistance to the petitioners.

4. Since the application filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has been pending for more than fifteen years, the Banks assigned their dues, in favour of the Asset Reconstruction Company (India) Limited. Therefore, the Asset Reconstruction Company came on record in place of the applicant Banks.

5. Thereafter, the Asset Reconstruction Company marked documents through one of their witness examined as AW1. The petitioner filed an application in I.A.No.1863 of 2018 seeking

permission to cross examine AW1. It was dismissed by the Tribunal by order, dated 06.08.2018.

6. The petitioners sought a review of the said order by filing I.A.No.3130 of 2018. The review application was also dismissed forcing the petitioners to come up with the above Writ Petition.

7. This Court has already held in W.P.No.43758 of 2018 that the borrowers cannot seek cross examination, as a matter of right. Rule 12(9) of the Debts Recovery Tribunal (Procedure) Rules, makes it very clear that if the Tribunal intends to permit cross examination, it must record reasons for the same. The relevant portion of the order passed by this Court on this aspect reads as follows:

“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”.

8. In view of the above, we do not find any error in the order of the Tribunal warranting interference under Article 226 of the Constitution of India.

9. Hence, the Writ Petition is dismissed. No order as to costs.

10. Consequently, miscellaneous petitions if any pending in the Writ Petition shall stand dismissed.

V. RAMASUBRAMANIAN, J

P. KESHAHA RAO, J

24.01.2019
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