

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.1768 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by the dismissal of an application for restoration of an appeal dismissed for non-prosecution, the third parties, claiming independent ownership of the secured asset, have come up with the above writ petition.

2. Heard Mr. Mahadev Anyrambhatla, learned counsel for the petitioners and Mr. Harinatha Rao, learned counsel for the first respondent bank.

3. Technically, we cannot really find fault with the order of the Debts Recovery Tribunal. The petitioners filed SA.No.133 of 2016, which was dismissed for non-prosecution on 18.04.2018. They promptly filed IA.No.178 of 2018 for restoration. But the restoration application was also allowed to be dismissed for non-prosecution. The reason stated for non-prosecution is that the counsel went on a vacation and the Presiding Officer promised the bar association not to pass adverse orders.

4. The above can hardly be a reason for not prosecuting even the application for restoration. But the fact remains that the affidavit has been sworn to by the counsel himself. The parties were not at fault. Therefore, we are of the view that one opportunity can be given to the petitioners.

Therefore, the writ petition is allowed, the impugned order is set aside. In order to cut short the time limit, we not only allow the application for restoration MA.No.102 of 2018 but also allow IA.No.178 of 2018 so that the main appeal can be disposed of at an early date. Accordingly, the applications filed by the petitioners in MA.No.102 of 2018 and IA.No.178 of 2018 are allowed. The tribunal may take up SA.No.133 of 2016 and dispose of the same in accordance with law within a period of two (2) months from the date of receipt of a copy of this order. The petitioners shall cooperate in the disposal of the appeal. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAHA RAO, J

April 24, 2019
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