

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.3312 of 2019

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

1) Aggrieved by an order passed by the Debts Recovery Tribunal dismissing an application seeking cross-examination of the witnesses on the side of the bank, persons who claimed to be coparceners of the secured asset have come up with the above writ petition.

2) Heard Mr.B.Venkateswara Rao, learned counsel for the petitioners. Mr.Maruthi Jadav, learned counsel takes notice for the second respondent-bank.

3) Challenging the measures taken by the State Bank of India under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act"), the petitioners herein filed an appeal in S.A.No.406 of 2015 (later renumbered as S.A.No.1246 of 2017). It appears that this appeal came up for hearing. At that time the petitioners claimed to have filed an affidavit in lieu of chief-examination along with certain documents. Thereafter, an application was

also filed in I.A.I.R. No.898 of 2018 seeking permission to cross-examine the bank's witness-RW1.

4) By an order dated 21.01.2019, the Debts Recovery Tribunal dismissed the application for cross-examination as not maintainable, on the ground that when the bank has not even filed any evidence affidavit, the question of permitting the petitioners to cross-examine such a witness would not arise.

5) Contending (1) that this order forfeits their right to cross-examine a witness whom the bank may examine in future and (2) that their own affidavit for examination of witnesses has also not been considered by the Tribunal, the petitioners have come up with the above writ petition.

6) There are two parts to the grievance of the petitioners. The first part relates to dismissal of the application seeking permission to cross-examine RW1. There is actually no RW1. Unless a party to a proceeding has filed an evidence affidavit, we do not know how the other party is entitled to seek cross-examination. The permission application filed by the petitioners is something in the nature of caveat which is not permitted in examination of witnesses.

7) The second part of the grievance of the petitioners is about their own right to examine witnesses. Insofar as this

grievance is concerned, we must bear in mind the distinction between an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and an appeal under Section 17 of the Securitization Act.

8) What is provided under Section 17 of the Securitization Act is actually an appeal though by virtue of a judgment of the Supreme Court in *Mardia Chemicals Ltd., Vs. Union of India and others*¹ the same was directed to be treated as an application. The direction issued in *Mardia Chemicals* (supra) for treating an appeal under Section 17 of the Securitization Act as an application, was for the purpose of holding that Section 17 (4) of the Securitization Act which imposed a pre-condition for filing the same, was unconstitutional, since there cannot be a pre-condition deposit in original proceedings. Therefore, the question of detailed examination of witnesses etc., does not arise in an appeal under Section 17 of the Securitization Act.

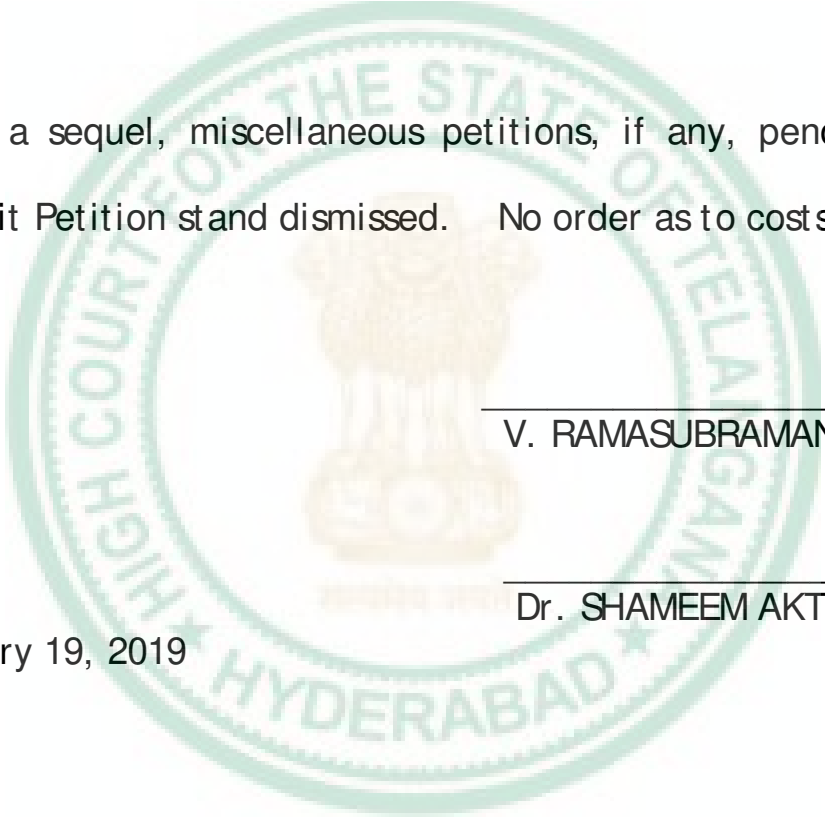
9) Of course, this does not prevent the parties from filing documents and arguing the matter on merits. Persons who are third parties will always be entitled to file their documents and argue their case but it does not mean that the whole proceedings will be converted into full fledged trial like

¹ (2004) 4 SCC 311

that of a civil suit since that is not the object of the Securitization Act.

10) Therefore, we find no merits in the writ petition. Hence, the writ petition is dismissed. It will be open to the petitioners to produce all the documents in support of their claim and if the Tribunal refuses to look into the documents, the petitioners can avail the alternative remedy of appeal to DRAT.

11) As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 19, 2019
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WRIT PETITION No. 3312 of 2019

Date: 19.02.2019

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