

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 3711 of 2019

ORDER: (per V. Ramasubramanian, J)

1) Aggrieved by an order passed by the Debts Recovery Tribunal refusing to condone the delay of 89 days in seeking to *set aside* the *ex parte* order passed against the petitioners, the borrower has come up with the above writ petition.

2) Heard Mr.Gopala Rao, learned counsel for the petitioners and Mr.A.Krishnam Raju, learned Standing Counsel for the respondent-bank.

3) The first petitioner availed a term loan facility from the respondent-bank for the purpose of establishing educational institutions. The loan was secured by the mortgage of the immovable properties owned by the first petitioner.

4) After the account of the first petitioner became a non-performing asset, the bank filed an application in O.A.No.26 of 2017 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for recovery of a sum of Rs.7,91,93,902/- . The first petitioner appears to have filed a written statement on 28.10.2014.

5) It appears that the petitioners were set *ex parte*, after the Original Application was transferred from Debts Recovery Tribunal-I to Debts Recovery Tribunal-II in the year 2017. Thereafter, a certificate of recovery was issued on 05.02.2018.

6) Upon coming to know of the *ex parte* judgment, the petitioners moved an application to *set aside* the same along with an application to condone the delay of 89 days in moving the petition. This application was dismissed by the Tribunal forcing the petitioners to come up with the above writ petition.

7) It is seen from the affidavit filed in support of the condone delay application that the main reason for the petitioners not appearing before the Tribunal was that father of the second petitioner, who was also the fourth defendant in the main application expired on 30.11.2015. It appears that the death of the fourth defendant was also not communicated to the counsel. In 2017, upon the constitution of a second Bench in Hyderabad, the matter got transferred to Debts Recovery Tribunal-II and re-numbered. Hence, the delay.

8) However, the Tribunal took a view that the first petitioner is an educational society represented by the President, the Vice President, the General Secretary, Joint Secretary, Treasurer and Executive Committee members and that therefore all of them were not precluded from pursuing the matter, despite the death of one of the office bearers. The Tribunal also opined that the death of one of the office bearers did not affect the judgment of the Tribunal.

9) But the actual question to be addressed in such cases is as to whether sufficient cause was shown for the delay. It may be true that all the office bearers of a society are made respondents in Original Application. But when they collectively defend an action, it may be that only one of them took up the entire responsibility. The delay in this case was not very huge. When one of the parties plead the death of one

of the defendants, who also happened to be the father of the person swearing to the affidavit, some leverage ought to have been granted. Therefore, we are of the considered view that the delay ought to be condoned.

10) Accordingly, the Writ Petition is allowed, the impugned order is *set aside* and the application for condonation of delay is allowed. The Tribunal may now take up the *set aside* petition, pass orders and proceed to dispose of the main O.A. which is already 7 years old, preferably, within a period of three months from the date of receipt of a copy of the order.

11) Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 6, 2019
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HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

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WRIT PETITION No. 2832 of 2019

Date: 06.03.2019