

**THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE K. LAKSHMAN**

WRIT PETITION No.4419 of 2019

ORDER: *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

This Writ Petition is filed assailing the docket order dt.21-01-2019 in S.A.No.464 of 2013 of the Debts Recovery Tribunal-I at Hyderabad dismissing the said S.A. for non-prosecution.

2. It is important to note that M.A.No.116 of 2018 was filed by petitioner on the very same day on which S.A. was dismissed for default without any delay.

3. In the affidavit filed in support of M.A.No.116 of 2018, it was stated that the party had represented the matter along with a Junior counsel seeking adjournment with an application, but the Court had dismissed the S.A. for non-prosecution on 14-06-2018; after lunch recess, the party and counsel intended to make a mention but they were advised to file a petition for restoration; and therefore the application was moved; but by docket order dt.21-01-2019, the Tribunal returned the same referring to earlier adjournments wherein the petitioner was not ready to present the arguments.

4. Learned counsel for petitioner contends that “sufficient cause” referred to in Order IX Rule 13 C.P.C. refers to date on which absence was made ground for proceeding *ex parte* and cannot be stretched to rely upon other circumstances anterior in time and previous negligence or inaction of the petitioner cannot be taken into

account. Reliance is placed on the judgment of the Supreme Court in **G.P. Srivastava Vs. R.K. Raizada and others**¹.

5. This legal position is not disputed by the learned counsel for respondent.

6. Since application in M.A.No.116 of 2018 seeking restoration was filed on the same day on which the Tribunal had dismissed S.A.No.464 of 2013, the Tribunal ought to have allowed it, fixed a date for hearing, heard the matter and decided it on merits. Since the entire order is based on the earlier adjournments sought by petitioner, the impugned order is set aside and M.A.No.116 of 2018 is allowed; the Debts Recovery Tribunal-I at Hyderabad is directed to give one opportunity to the petitioner to contest S.A.No.464 of 2013 by also giving notice to the auction purchaser; and if the petitioner does not cooperate and address arguments in the S.A. on the day fixed by it, this Writ Petition shall stand dismissed and petitioner shall not be permitted to avail the benefit of this order.

7. The Writ Petition is allowed with the above directions. No costs.

8. As a sequel, miscellaneous petitions pending if any in these Revisions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 28-10-2019
Vsv

¹ (2000) 3 SCC 54

