

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

CIVIL REVISION PETITIONS No.547 and 569 of 2019

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

Aggrieved by the Orders passed by the Debts Recovery Tribunal in two (2) Interlocutory Applications, directing them to disclose their personal assets on oath, the defendants No.9 and 10 in two (2) Original Applications filed by the State Bank of India under Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, have come up with these Civil Revision Petitions under Article 227 of the Constitution of India.

2. Heard Mr.Avinash Desai, learned Counsel for the petitioners.

3. The State Bank of India filed two (2) Original Applications in O.A.Nos.399 and 402 of 2017, respectively, for the recovery of (1) a sum of Rs.71,35,16,695/-, and (2) a sum of Rs.70,63,22,611/-. In both the Original Applications, three different Companies carrying on business in gold and gold ornaments were arrayed as defendants No.1 to 3. The companies which were arrayed as defendants No.1 to 3 were (i) Meena Jewellers Exclusive Private Limited, (ii) Meena Jewellers Private Limited, and (iii) Meena Jewellers and Diamonds Private Limited.

4. Apart from the three companies, who were defendants No.1 to 3 in both the applications, there were also seven individuals who were arrayed as defendants No.4 to 10 in both the applications. The case of the Bank before the Tribunal in both the applications was that one or the other of the companies received credit facilities for which the other companies gave corporate guarantee. It was the further case of the Bank that defendants No.4, 5, 7, 9 and 10 created a mortgage in respect of certain properties and also stood as guarantors. On these allegations, the Bank sought a joint and several decree against all the defendants No.1 to 10 in both the applications.

5. In the original applications, the Bank filed several Interlocutory Applications, the Orders passed in two of which have become the subject matter of the present Civil Revision Petitions. In O.A.No.399 of 2017, the Bank took out an application in I.A.No.2067 of 2017. In O.A.No.402 of 2017, the Bank took out an application in I.A.No.2246 of 2017. The prayer in both these applications were for a direction to defendants No.4 to 10 to declare their personal assets on oath. The ground on which the Bank sought such a direction was that the secured assets were insufficient to meet the huge liabilities of the borrowers and that therefore the Bank required the details of the personal assets of defendants No.4 to 10.

6. The applications in I.A.No.2067 of 2017 in O.A.No.399 of 2017, and I.A.No.2246 of 2017 in O.A.No.402 of 2017 were opposed by defendants No.9 and 10 by filing a counter. The contention of defendants No.9 and 10 in their counter affidavit

to the Interlocutory Applications was that they never stood as guarantor and that they did not create a mortgage of any property and that they had nothing to do with the loan transaction between the Bank and defendants No.1 to 3. The further contention of defendants No.9 and 10 in their counter affidavit to the Interlocutory Applications was that they never executed any document with regard to the loan transaction and that they did not stand as guarantor for the loans.

7. It appears that apart from filing a counter affidavit to the applications for the disclosure of their personal assets, the petitioners also argued before the Tribunal, without filing any application that the documents purportedly bearing their signatures should be sent to forensic examination.

8. By a cryptic order passed on 08.08.2018, the Debts Recovery Tribunal allowed both the Interlocutory Applications directing the defendants No.9 and 10 in both the Original Applications to disclose their personal assets on oath. It is against these Orders that the defendants No.9 and 10 have come up with the above Civil Revision Petitions.

9. The objections of the petitioners to the impugned orders are threefold viz., (1) that without any reference to any of their contentions in the counter affidavit, the Tribunal has passed a non-speaking laconic order, (2) that even their request for sending the documents purportedly containing their signatures for forensic examination, was not considered by the Tribunal before passing the impugned orders, and (3) that without even

prima facie holding them liable to answer the claims of the Bank, a direction has been issued to them to disclose their personal assets.

10. We have carefully considered the above submissions.

11. Insofar as the first objection is concerned, what is filed before us as the Order impugned in these Civil Revisions, is actually a docket Order, dated 08.08.2018. We do not know whether this is the full fair Order or not. Generally, docket orders contain the results and the reasons are contained in a separate Order.

12. Let us assume for a minute that there was no reasoned order. Even then we do not think that the case on hand deserves interference under Article 227 of the Constitution of India.

13. There can be no doubt that in an ideal situation, the Courts and Tribunals do pass reasoned orders. There is no doubt that the reasons form the very foundation for every judicial or quasi-judicial order. But, by the very nature of the orders that are impugned in these revisions, we do not think that we will hold it in favour of the petitioners that the non-furnishing of the reasons would vitiate the orders. This is for the reason that the objections raised by the petitioners in their counter affidavit to the Interlocutory Applications constitute nothing but a total denial. This is not a case where the petitioners have raised any particular ground other than a total

denial of the creation of the mortgage, execution of the deed of guarantee and being part of the loan transaction.

14. As a matter of fact, the counter affidavits filed by the petitioners herein to I.A.Nos.2067 and 2246 of 2017 do not even contain any prayer for referring either the documents by which mortgage was created or the letter of guarantee, for forensic examination. Except stating in para 5 of the counter affidavit that they informed the bank immediately upon perusal of the documents that the signatures found therein did not pertain to them, the petitioners have not even prayed for a reference of the documents for forensic examination.

15. In fact, we do not know how the impugned order is prejudicial to the petitioners. All that has been done by the impugned Order is to direct the petitioners to disclose their personal assets. The apprehension of the petitioners is that the Bank will next ask for an attachment before judgment of those assets. A mere disclosure of the assets to the Tribunal would not automatically lead to an Order of attachment. For passing an Order of attachment, there are certain requirements. Today the Bank wants to know the details of the personal assets of the petitioners, in view of the magnitude of the problem. More than a sum of Rs.150 crores is sought to be recovered in two (2) Original Applications out of which the present revisions arise. Therefore, we do not think that we would hold the non-furnishing of reasons against the respondent/Bank, in our jurisdiction under Article 227 of the Constitution of India.

16. Insofar as the second contention of the petitioners is concerned, as we have stated earlier, there is no prayer either in the counter affidavit or by way of a separate application for referring the documents in question for forensic examination. Therefore, in an application for a direction to disclose the personal assets, the objection that the documents ought to have been referred for forensic examination cannot be raised. Hence, the second contention should also fail.

17. Insofar as the third contention is concerned, the question of recording a finding whether the petitioners are liable to answer the claims of the Bank or not, does not arise at this stage. If the petitioners have filed a counter to the main Original Applications, that they have not stood as guarantors and that they have not executed a mortgage, the same will always be looked into by the Tribunal at the time of disposal of the main Applications. For the purpose of a mere direction to the petitioners to disclose their personal assets, we do not think that the Tribunal should have first recorded a *prima facie* finding of liability. Probably at the stage when the Tribunal considers an application for attachment, it may be necessary for the Tribunal to find out whether the petitioners are *prima facie* liable to answer the claims of the Bank or not. It is at that stage that the petitioners can raise these objections and not at the stage of a mere direction to disclose the assets.

18. Therefore, we do not think that the orders impugned in these revisions call for any interference. Hence, the revisions are dismissed. It will be open to the petitioners to raise all the

contentions, as and when occasions arise, either when an application for attachment is filed or at the time of disposal of the main Original Applications.

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

V. RAMASUBRAMANIAN, J

**P. KESHAHA RAO,
J**

March 13, 2019
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