THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NO.4810 OF 2019

ORDER
(*Per Sri Justice Sanjay Kumar)*

1. O.A.No.517 of 2000 on the file of the Debts Recovery Tribunal-I, Hyderabad (*for brevity*, 'the Tribunal'), was instituted by the IFCI Limited, Hyderabad; the Industrial Development Bank of India Limited, Hyderabad; and the International Asset Reconstruction Company Private Limited, New Delhi and Chennai, against Shri Laxmi Saraswati Papers Limited (in liquidation), Hyderabad, and others for recovery of a sum of Rs.62,31,75,910/- with interest. By order dated 30.11.2018, the Tribunal allowed the O.A. and directed issuance of a recovery certificate for the said sum along with *pendente lite* and future interest @ 12% per annum and costs. Aggrieved thereby, M.Ramakrishna Reddy, the fourth respondent in the O.A., a guarantor for the loan facilities availed by Shri Laxmi Saraswati Papers Limited, Hyderabad, filed this writ petition.

2. By order dated 26.07.2019 passed in I.A.No.1 of 2019, this Court granted interim stay of all further proceedings pursuant to the impugned order dated 30.11.2018 on the ground that the issue of limitation required examination as the finding of the Tribunal on this aspect appeared to be debatable.

3. Heard Sri D.Prakash Reddy, learned senior counsel representing Sri K.B.Ramanna Dora, learned counsel for the petitioner, and Sri A.H.Rama Krishna Rao, learned counsel for the IFCI Limited, Hyderabad.

4. Facts, to the extent relevant, are as follows: Shri Laxmi Saraswati Papers Limited, Hyderabad, availed credit facilities to the tune of Rs.7.15 Crore during the year 1982. A fourth term loan for a sum of Rs.1.60 Crore

was availed by it during March, 1988. The petitioner stood as a guarantor for the fourth term loan and executed Guarantee Agreement dated 11.03.1988, along with others. Admittedly, Shri Laxmi Saraswati Papers Limited, Hyderabad, committed breach in loan repayment obligations in the year 1996. During the year 1999, Shri Laxmi Saraswati Papers Limited, Hyderabad, became sick and went into liquidation. IFCI Limited, Industrial Development Bank of India Limited and International Asset Reconstruction Company Private Limited filed O.A.No.517 of 2000 before the Tribunal for recovery of their dues in excess of Rs.62.00 Crore, along with interest. The specific contention of the petitioner before the Tribunal was that the said O.A. was barred by limitation. The Tribunal however held against him on this aspect and allowed the O.A.

5. The only issue that requires to be considered presently is whether the Tribunal was correct in holding so on the aspect of limitation.

6. It is an admitted fact that after execution of the Guarantee Agreement in March, 1988, neither the petitioner nor the other guarantors acknowledged any liability thereafter in relation thereto. Accepting this, the Tribunal observed that the limitation available to the financial institutions for filing the O.A. was up to March, 1991, but it was instituted only in July, 2000. Surprisingly, the Tribunal opined that as the last notice issued by the financial institutions to the petitioner and the other two guarantors, who are no more, was on 17.04.2000, the limitation for filing the O.A. would stand extended by three years from that date, i.e., up to 16.04.2003. It is on this basis that the Tribunal concluded that the O.A. filed on 31.07.2000 was within the period of limitation. The Tribunal thereupon proceeded to grant relief to the financial institutions on merits, as stated *supra.*

7. Sri D.Prakash Reddy, learned senior counsel, would contend that the approach adopted by the Tribunal is contrary to law as there was never any admission of liability by the petitioner or the other guarantors after issuance of the last notice in April, 2000. He would assert that without such an admission being made, mere issuance of a notice by itself would not extend the period of limitation.

8. *Per contra*, Sri A.H.Rama Krishna Rao, learned counsel, would contend that the O.A. was instituted within time as Shri Laxmi Saraswati Papers Limited, Hyderabad, went before the Board for Industrial and Financial Reconstruction, *vide* Case No.60 of 1988, registered under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (*for brevity*, 'the Act of 1985') and after dismissal thereof, an appeal was preferred before the Appellate Authority for Industrial and Financial Reconstruction, *vide* Appeal No.120 of 1999, which came to be dismissed on 07.01.2000. He would assert that as the matter was pending before the authorities under the Act of 1985 from 1988 to 2000, the said period would have to be excluded while computing the limitation for instituting the O.A.

9. He would, however, fairly concede that no pleading was made to this effect before the Tribunal and this aspect of the matter was never put in issue. He would argue that as it is a pure question of law, this Court can take the same into consideration. He would also point out that Section 24 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (now known as the Recovery of Debts and Bankruptcy Act, 1993) (*for brevity*, 'the Act of 1993'), states that the provisions of the Limitation Act, 1963, shall, as far as may be, apply to an application made to a Tribunal and assert that the law of limitation need not be applied in strict terms to an O.A. filed under Section 19 of the Act of 1993. He would contend that the words 'as far as

may be' should be given liberal construction so as to save the limitation when financial institutions seek recovery of their dues.

10. In reply, Sri D.Prakash Reddy, learned senior counsel, would contend that the issue of limitation cannot be treated as a pure question of law as, at best, it would constitute a mixed question of law and fact. He would point out that the financial institutions never raised the aspect of the matter being pending before the authorities under the Act of 1985 and therefore, no evidence was let in on that issue before the Tribunal, whereby this Court can now proceed on the strength of this new plea.

11. Perusal of para 4 of the petition in O.A.No.517 of 2000 reflects that the financial institutions declared that the application was filed within the limitation prescribed in Section 24 of the Act of 1993, as notices dated 07.01.2000, 01.02.2000 and 11.04.2000 were addressed to the concerned parties in relation to the advances sanctioned. Significantly, no mention was made of any proceedings under the Act of 1985.

12. The aspect of limitation cannot be treated as a pure question of law ordinarily. It would ultimately depend upon the circumstances of each individual case. In this regard, it may also be noted that the Act of 1985 and the rules and regulations framed thereunder provided for a comprehensive scheme for revival and rehabilitation of sick industrial companies. Section 22 thereof provided for suspension of legal proceedings, contracts, etc., during the pendency of an enquiry in this regard or preparation, consideration or implementation of a sanctioned scheme or where an appeal was pending under Section 25, unless the Board or the Appellate Authority, as the case may be, gave their consent. It may however be noted that Regulation 19 of the Board for Industrial and Financial Reconstruction Regulations, 1987, required the sick industrial company to furnish the details of its liabilities in

Form A and the permission, referred to *supra*, was to be obtained only if proceedings were initiated in relation to such liabilities. Therefore, the issue as to whether Shri Laxmi Saraswati Papers Limited, Hyderabad, had included the loan liability of the financial institutions, in question, while seeking a reference under Section 15 of the Act of 1985, has to be verified before the time consumed before the authorities under the Act of 1985 can be excluded while computing the limitation for filing O.A.No.517 of 2000. That exercise was never undertaken. Further, when the financial institutions never even raised this aspect before the Tribunal, it would not be open to them to improve their case at this stage in a writ petition filed by the other side against the order passed in the O.A.

13. In so far as the reasoning adopted by the Tribunal is concerned, we have no hesitation in holding that the same is bereft of legal foundation. Mere issuance of a notice by the financial institutions did not and could not have had the effect of extending the period of limitation. Unless there was an admission of liability by the addressee of such a notice, the period of limitation would not stand extended. The understanding of the Tribunal to the contrary is therefore baseless.

14. The other argument advanced by Sri A.H.Rama Krishna Rao, learned counsel, needs mention to be rejected. Section 24 of the Act of 1993 specifically states that the provisions of the Limitation Act, 1963, would apply to an application made to the Tribunal under Section 19 thereof. The words 'as far as may be' only exclude applicability of general provisions in the Limitation Act, 1963, which are contrary to provisions in the Act of 1993 or the rules framed thereunder. The said expression does not have the effect of saving an application made beyond the time prescribed in the Limitation Act, 1963. The financial institutions themselves understood it to be so, as is clear

from their recital in the O.A. to the effect that the application was filed within the time prescribed by Section 24 of the Act of 1993. The contention urged in this regard is therefore rejected.

15. On the above analysis, this Court finds that O.A.No.517 of 2000 was instituted beyond the period of limitation prescribed by law and was liable to be dismissed on that ground. The order dated 30.11.2018 passed by the Tribunal holding to the contrary and allowing the claim made by the financial institutions is set aside.

16. The writ petition is accordingly allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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K.LAKSHMAN, J

26th September, 2019

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