

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

WP.No.13143 of 2019

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

This Writ Petition is filed assailing the order dt.02.05.2019 in IA.No.3086 of 2017 in OA.No.2547 of 2017 of Debt Recovery Tribunal-II, Hyderabad(for short 'the Tribunal').

2. The said application had been filed by the petitioners herein, who were defendants 1 and 2 in OA.No.165 of 2010 (which was later renumbered as OA.No.2547 of 2017) filed by the 1st respondent against them.

3. Admittedly, summons in the said OA were served on the petitioners and they engaged a counsel, but they did not file any written statement. They were accordingly set *ex-parte* on 01.07.2013.

4. Petitioners then filed IA.No.1658 of 2014 to set aside the same and to permit them to file written statement.

5. The said application was allowed on 07.04.2015 subject to the petitioners filing written statement.

6. Petitioners however did not file any written statement in spite of the matter being adjourned from time to time and ultimately the Tribunal dismissed I.A.No.1658 of 2014 on 21.02.2017 and subsequently even in OA.No.2547 of 2017, the Tribunal set the petitioners *ex-parte* again on 25.03.2017.

7. 186 days later, petitioners filed IA.No.3086 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 186 days in filing the application to set aside the order dt.25.03.2017 setting the petitioners *ex-parte*.

8. In the said application, it is contended that the petitioners were not aware of the conditional order passed on 07.04.2015 in I.A.No.1658 of 2014 as the 2nd petitioner was working at a remote place in the State of West Bengal. He also contended that the petitioners did not receive any notice of transfer of OA No.165 of 2010, which is renumbered as OA.No.2547 of 2017 along with IA.No.1658 of 2017 from Debt Recovery Tribunal-I to Debt Recovery Tribunal-II, and so they could not follow the proceedings and thus suffered the order dt.25.03.2017.

9. The 1st respondent contested the said application stating that petitioners had been set *ex-parte* on 01.07.2013 but the said order was recalled in IA.No.1658 of 2014 on 07.04.2015 subject to filing of written statement, and because they did not file written statement, IA.No.1658 of 2014 was dismissed on 21.02.2017 and again the petitioners were set *ex-parte* on 25.03.2017 in the OA. It contended that the only intention of the petitioners is to drag on the matter indefinitely.

10. By order dt.02.05.2019, IA.No.3086 of 2017 in OA.No.2547 of 2017 was dismissed by the Debt Recovery Tribunal-II, Hyderabad. It referred to the contentions of the petitioners as contained in the affidavit filed by the petitioners and in particular,

the plea that the delay occurred in the process of getting the certified copies of the docket proceedings and preparation of the petition, and observed that the said pleas cannot be believed. It also held that the reason for the delay was invented only for the purpose of filing this petition.

11. Assailing the same, this Writ Petition is filed.

12. Heard counsel for petitioners and Sri P.Pavan Kumar Rao, Counsel for 1st respondent.

13. From the facts narrated above, it is clear that though the petitioners engaged a counsel in OA.No.165 of 2010, which was renumbered as OA.No.2547 of 2017, no written statement was filed and therefore they were set *ex-parte* initially on 01.07.2013. Thereafter, they themselves sought for setting aside of the order by filing IA.No.1658 of 2014 which was allowed on 07.04.2015 on condition of the petitioners filing the written statement. Since they did not file the written statement, IA.No.1658 of 2014 was dismissed on 21.02.2017 and the petitioners were again set *ex-parte* on 25.03.2017.

14. Having themselves filed an application IA.No.1658 of 2014 to set aside the earlier order passed on 01.07.2013 setting them *ex-parte*, it was incumbent on the petitioners to file written statement and contest the matter before the Tribunal. Petitioners cannot contend that the 2nd petitioner was working at a remote place and therefore could not know about the order passed in IA.No.1658 of 2014. It was the duty of the petitioners to keep in

touch with their counsel and take appropriate steps, and they cannot be allowed to contend that they are not aware of the developments in the OA.

15. The reason given by the petitioners that the delay of 186 days occurred in the process of getting the certified copies of docket proceedings and in preparation of the application also cannot be accepted.

16. We therefore do not find any error of jurisdiction in the order passed by the Tribunal warranting interference of this Court under Article 226 of the Constitution of India.

17. Accordingly, this Writ Petition fails and it is dismissed. No order as to costs.

18. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

07th November, 2019.

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