

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.13422 OF 2019

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

The docket order dated 20.05.2019 passed by the Debts Recovery Tribunal - I, Hyderabad, in I.A. No.3199 of 2018 filed by the petitioner - defendant Nos.4 and 9, refusing to condone the delay of 590 days in filing an application for setting aside the dismissal order dated 21.02.2017 is under challenge.

2. It is the contention of the petitioners that respondents bank filed O.A.No.59 of 2007 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short 'Act') against the petitioners, respondent Nos.3 to 6 herein and others for recovery of an amount of Rs.4.05 Crores.

i) It is further contended by the petitioners that on receipt of summons in the said O.A., they entered appearance, filed a written statement and counter claim for Rs.10,67,66,950/- (Rupees ten crores sixty seven lakhs sixty six thousand nine hundred and fifty only) under various heads on 08.03.2010 by paying requisite Court fee. After filing of the written statement/counter claim, the respondents bank had sought time for filing rejoinder to the counter claim from time to time. Thereafter, the petitioners came to know about the

dismissal of the aforesaid O.A. for default by the Debts Recovery Tribunal on 21.02.2017 upon reporting of '*no instructions*' by the learned counsel for the respondents bank. Therefore, they have filed I.A. No.3199 of 2018 to condone the delay of 590 days in filing an application to set aside the dismissal order dated 21.02.2017.

3. However, the Debts Recovery Tribunal - I, Hyderabad, dismissed the said application vide order dated 20.05.2019 holding that as O.A. No.59 of 2007 filed by the respondents' bank itself came to be dismissed for default, the counter claim of the petitioners, independently, *sans* OA, would not survive before it and also that no purpose would be served even if the application to condone the delay is allowed. The Tribunal while dismissing the aforesaid application directed the Registry to refund the Court fee paid by the petitioners as per the Rules.

4. Heard Mr. Amancharla V. Gopala Rao, learned counsel for the petitioners. Despite service of notice upon M/s. Kotak Mahindra Bank Limited, Hanamkonda Branch, respondent No.2 herein, none appeared for it. Respondent Nos.3 to 6 are not necessary parties as per the endorsement made in the cause title of the writ petition.

5. It is contended by the learned counsel for the petitioners that the petitioners had shown sufficient cause for condoning the delay of 590 days in filing the application to set aside the dismissal order dated 21.02.2017 passed by the Tribunal dismissing the O.A. No.59 of 2007

for default, and that in the matter of condonation of delay, liberal approach has to be adopted by the Courts and in support of the said contention, he placed reliance on the decision of the Apex court in **State of Bihar v. Kameshwar Prasad Singh**¹.

6. Perusal of the record reveals that originally ING Vysya Bank Limited, which was subsequently merged with Kotak Mahindra Bank Limited, filed the aforesaid O.A. No.59 of 2007 against the petitioners and respondent Nos.3 to 6 herein and others under Section 19 of the Act on the file of the Debts Recovery Tribunal - I, Hyderabad, for recovery of an amount of Rs.4.05 crores. It is the specific contention of the petitioners that on receipt of the summons from the Tribunal, they entered appearance and filed a written statement and counter claim for Rs.10,67,66,950/- under various heads against the respondents bank by paying requisite Court fee. The said O.A. was adjourned for filing written statement to the counter claim by the bank and thereafter the said O.A. was dismissed on 21.02.2017 by the Tribunal, on reporting of '*no instructions*' by the bank counsel, for default. Admittedly, the bank has neither filed an application for restoration of the said OA, nor taken any steps to get the said OA restored to its original position. Thus, virtually no application under Section 19 of the Act was pending before the Tribunal for adjudication as on the date of filing of the application for

¹. (2000) 9 SCC 94

condonation of the delay to file a petition to set aside the order dated 21.02.2017.

7. The Recovery of Debts and Bankruptcy Act, 1993 is an enactment introduced to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. As per the scheme of the Act, it is the bank or financial institution that can approach the Tribunal under Section 19 of the Act for recovery of amount due to it, but the claim of an individual or legal entity alone cannot be adjudicated. Thus, pendency of application under Section 19 of the Act is *sine qua non* for adjudication of counter claim of the individual or legal entity.

8. It is also relevant to note that Chapter IV of the Act deals with procedure to be followed by the Tribunals. Section 19 of the Act enables a bank or a financial institution to file an application before the jurisdictional Debts Recovery Tribunal for recovery of amount due to it. The procedure is prescribed under Section 19 of the Act with regard to filing of the application by the bank, written statement, counter claim, written statement by the applicant bank to the counter

claim filed by the defendants. The said proviso is in *pari materia* to Order VIII of the Code of Civil Procedure, 1908.

9. In the case on hand, when the original application *viz.*, O.A. No.59 of 2007 itself was dismissed for default on 21.02.2017 by the Tribunal, the question of independent adjudication of the counter claim filed by the petitioners, who are defendant Nos.4 and 9 therein, does not arise. As discussed above, the Banks and Financial Institutions alone can approach the Debts Recovery of Tribunals for recovery of dues and individuals/legal entities cannot approach the said Tribunals as per the scheme of the Act. Thus, the Tribunal rightly passed the docket order dated 20.05.2019 in I.A. No.3199 of 2018 dismissing the said I.A. filed by the petitioners to condone the delay of 590 days in filing the petition to set aside the dismissal order dated 21.02.2017, on the ground that the counter claim of the petitioners, independently, *sans* O.A., would not survive. Further, if at all the petitioners have any grievance/claim against the respondents bank as projected in the counter claim, they can ventilate the same before the competent jurisdictional Civil Court, but not before the Debts Recovery Tribunal- I, Hyderabad. Therefore, there is no circumstance that warrants interference with the docket order under challenge by this Court under Article 226 of the Constitution of India.

10. The Writ Petition is accordingly dismissed at the stage of admission itself. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

SANJAY KUMAR, J

K. LAKSHMAN, J

October 01, 2019
Mgr

