THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition No.17941 of 2019

ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard the counsel for petitioner, and Smt. V. Dyumani, learned Standing Counsel for Corporation Bank, for 2nd respondent. None appears for respondent nos.3 to 7 as they are not necessary parties to the Writ Petition.

2. This Writ Petition has been filed assailing the order dt.03.07.2019 passed in I.A.I.R.No.6020 of 2018 in O.A.No.378 of 2017 on the file of the Debts Recovery Tribunal-II, at Hyderabad.

3. The petitioner herein is 6th defendant in the above O.A. which was previously numbered as Old O.A.No.468 of 2014.

4. The said O.A. was filed by 2nd respondent herein against the petitioner and respondent nos.3 to 7 before the Debts Recovery Tribunal-II, at Hyderabad for recovery of Rs.49,10,040/- together with subsequent interest at the rate of 18.25 per cent per annum with monthly rest from the date of O.A. till the date of realization under Account No.CHOME/01/050008; to pass an order declaring that defendant nos.1 and 2 and the estate of late N. Koteswra Rao in the hands of defendant nos.3 to 5 are jointly and severally liable to pay a sum of Rs.42,22,111/- together with subsequent interest at the rate of

16.10 percent per annum with monthly rest from the date of O.A. till the date of realization under Account No.CMTCC/01/080001; to pass an order directing the Recovery Officer to realize the amounts specified above and costs of the O.A. from the defendants by sale of mortgaged properties fully described in Schedule as Item Nos.1 and 2 and other personal properties of defendant nos.1 and 2 and the estate of Late N. Koteswra Rao in the hands of defendant nos.3 to 5 under Section 25 of the RDB & FI Act, 1993 read with II and III Schedules of Income Tax Act, 1961 and Income Tax Certificate (proceedings) Rules 1962 and pay the sale proceeds to the applicant in *pro tanto* satisfaction of O.A. claim and to appropriate the same towards liability in the above said accounts; to pass an order of injunction restraining defendant nos.1 and 6 from transferring or alienating or creating third-party rights over item No.1 of the Scheduled mentioned property without the permission of the Hon'ble Tribunal; and to award costs.

5. In the said O.A., it is the contention of 2nd respondent-Bank that 3rd respondent had taken a home loan of Rs.15 lakhs which was sanctioned on 16.07.2005; and from time to time issued acknowledgment of debts; that he later approached for an over-draft loan of Rs.25 lakhs to develop his business by loan application dt.12.04.2008 which was also sanctioned on 15.04.2008 and the bank is entitled to seek recovery of the same.

6. The Bank contends that item No.1 of the suit schedule property was mortgaged to it in regard to the over-draft loan amount.

7. Exs.A.13 to 26 and A.28 to A.31 were marked in the O.A. in relation to this item No.1 of the Schedule property.

8. The petitioner however is claiming title to this item of the property under a registered Sale Deed No.5554/2010 dt.29.10.2010 said to have been executed in his favour by the 3rd respondent which was preceded by a registered Agreement-of-Sale – cum – General Power of Attorney dt.03.02.2007 in favour of one Mr. P. Gopala Krishna Reddy.

9. The petitioner is the main contesting defendant in the above O.A.

10. In the Chief-examination affidavit filed on behalf of the Bank by A.W.1 in para no.23 it is stated as under :

> *"23. It is submitted that the rate of interest is charged as per the terms of the agreement. As per the statement of Vehicle Loan A/c. No.CHOME/01/050008 of Rs.49,10,040.00 maintained by the Applicant in the ordinary course of Banking, the defendants are liable to pay as on 12.05.2014 together with subsequent interest."*

11. There is no reference to the over-draft account claimed in the Chief-examination affidavit.

12. In the cross-examination, a specific question was put to A.W.1 by the counsel for petitioner whether he had filed the Chief-examination affidavit after going through it. The witness stated that he went through the affidavit fully, understood its contents and signed it.

13. Later, another question was put to him in the cross-examination by the counsel for petitioner as to whether the mortgage loan / over-draft loan which is covered by the mortgage in respect of item No.1 is also part of the claim in the suit. But the witness stated as under :

> *"It is true that in the chief-affidavit we have claimed only in respect of housing loan and have not claimed the mortgage loan."*

14. There was no re-examination of A.W.1.

15. On the basis of this evidence which is on record, the petitioner filed I.A.I.R.No.6080 of 2018 to de-exhibit the Exs.A.13 to 26 and A.28 and A.31.

16. The counsel for petitioner contended in the said application that the affidavit in lieu of chief-examination had been filed by A.W.1 when the petitioner was set *ex parte* and certain documents were marked at that time; that later an application was filed for setting aside *ex parte* order and the petitioner was permitted to file written statement and trial commenced; that leave was granted by the Tribunal to petitioner to cross-examine A.W.1; and A.W.1 in his cross-examination admitted that the chief-affidavit filed was only in respect of housing loan and the bank has not claimed the mortgage loan; and in such circumstances, the documents pertaining to the mortgage loan are not relevant for the claim of the Bank; and therefore, they should be de-exhibited as it would lead to unnecessary confusion.

17. This prayer of the petitioner is relatable to the power of the Court to reject irrelevant or inadmissible document under Order XIII Rule 3 of Civil Procedure Code, 1908 which states '*the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible recording the grounds of such rejection*'.

18. This Court in its order dt.05.02.2016 passed in Civil Revision Petition No.4794 of 2015 considered the said provision and not only held that such applications are maintainable but also laid down the procedure to be followed while marking a document.

19. It observed in para no.24 as under :

> *"24. According to Order 13 Rule 3 CPC the Court may at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Order 13 Rule 4 CPC prescribes the endorsement to be made on the document when a document is admitted in evidence. According to it, there shall be an endorsement on every document which has been admitted in evidence containing number and title of the suit, the name of the person producing the document, the date on which it was produced and a statement of its having been so admitted and the endorsement shall be signed or initialled by the Judge.*
>
> *25. Here there is an endorsement on the reverse of possessory contract of sale consisting the details under Order 13 Rule 4(1)(A)to (C), 1(D) is absent. Therefore, the document cannot be said to be admitted after judicial determination, in such a case,*

exercising power under Order 13 Rule 3 CPC, the Court can reject any document which it considers irrelevant or in-admissible, recording reasons.

26. In the present case, the trial Court did not record any statement as to the admissibility as required under Order 13 Rule 4(1)(d) and there was absolutely no judicial determination about the admissibility of possessory contract of sale, in evidence. In such a case, when an objection was raised, the Court is under obligation to record reasons in admitting the document in evidence or reject the same even if it is marked for numerical purpose or for convenience of reference, by following the procedure under Order13 Rule 3 CPC. The trial Court in the present case, only on the ground that once the document is marked as exhibit, the same cannot be challenged in view of interdict contained under Section36 of Indian Stamp Act. The trial Court did not draw distinction between marking of document for convenience of reference and judicial determination of admissibility of the document, as no objection was raised as to the admissibility of the document at the time, it was marked, committed an error in considering the objection raised by the learned counsel for the petitioner i.e. 4th defendant before the trial Court."

20. No doubt, Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993 sets out the procedure to be followed, and states as under:

"12. Filing of written statement and other documents by the defendant and by the applicant as a reply to the written statement :

(1) The defendant may, within a period of thirty days from the date of service of summons, file two complete sets of written statement including claim for set-off or counter claim, if any, along with documents in a paper book form.

(2) A copy of the written statement filed under sub-rule (1) shall be served to the applicant.

(3) If the defendant fails to file the written statement of his defence, including claim for set off or counter claim under sub-rule

(1), if any, within the period of thirty days, the Presiding Officer may in exceptional cases and special circumstances to be recorded in writing, extend the period, by such further period not exceeding fifteen days.

(4) If the defendant have filed their claim for set off or counter claim, the applicant shall file reply statement in answer to the claim for set off or counter claim within a period of thirty days of filing of such claims.

(5) If the applicant fails to file his reply within the period of thirty days, the Presiding Officer may, in exceptional cases and special circumstances, to be recorded in writing, extend the period, by such further period not exceeding fifteen days.

(6) The written statement of the defendant including claim for set off or counter claim or any other pleading whatsoever by the defendant or the applicant, as the case may be, shall be supported by an affidavit sworn in by the defendant or the applicant or the witnesses, verifying all the facts and pleadings and other documents annexed and the affidavits of witnesses, to be led by defendant or the applicant shall be filed simultaneously with the written statement of the defendant or the reply of the applicant.

(7) If the defendant or the applicant as the case may be, fails to file the reply as specified above, the Tribunal may proceed forthwith to pass an order on the application as it thinks fit.

(8) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant, to pay such amount, to the extent of the admission, by the application within a period of thirty days from the date of such order, failing which the Tribunal may issue a certificate in accordance with section 19 of the Act, to the extent of amount of debt due admitted by the defendant.

(9) The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted.

(10) If the defendant denies his liability to pay the claim made by the applicant, the Tribunal may act upon the affidavit of the applicant who is acquainted with the facts of the case or who has on verification of the record sworn the affidavit in respect of the contents of application and the documents as evidence.

(11) The provisions contained in section 4 of the Banker's Books Evidence Act, 1891 (18 of 1891) shall apply to a certified copy of an entry in a banker's book furnished along with the application filed under sub-section (1) of Section 19 by the applicant."

21. It has been held that provisions of Civil Procedure Code would strictly apply to Debt Recovery Tribunals, but its powers are wider and it must follow fair procedure while deciding the matters brought to it. [See **Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd.**[1]]

22. The Rule of Law contained in Order XIII Rule 3 of Civil Procedure Code, 1908 which permits the Court to reject documents which it considers irrelevant is also part of the fair procedure so that unnecessary material is not brought on record leading to confusion.

[1] (1999) 4 S.C.C. Pg.710

23. We are surprised that I.A.No.6020 of 2018 was not even numbered by the Debts Recovery Tribunal because it could have been disposed of on merits only when it is properly numbered.

24. The counsel for petitioner says that the Court had in fact listed the application to consider its maintainability, but instead of deciding the question of maintainability went ahead and passed the order on the merits of the plea raised in the said application, which itself renders its order void in law.

25. In the order dt.03.07.2019 passed by the Debts Recovery Tribunal-II, at Hyderabad, after referring to the contentions of the parties, the Tribunal held that the petitioner filed this application based on a stray statement made by A.W.1 and that the evidence of the witness is to be considered in a whole, and not stray statement made by the witness.

26. Having said that, it relied on the pleadings in the O.A. where reliance is made both to the housing loan and the cash credit facility in respect of which the mortgage was created, and held that these documents are not irrelevant.

27. It may be that in the O.A. there is a reference to the cash credit loan / mortgage loan as well. But, when the witness for the 2nd respondent-Bank as A.W.1 stated in his cross-examination that the chief-examination affidavit filed by him is only in respect of the housing loan and not with regard to the mortgage loan and he insisted that he had read the chief-examination affidavit fully and had understood its contents and signed it, and the said witness was not re-examined by the Bank to clarify his statement in the cross-examination, it has to be held that irrespective of the pleadings in the O.A. or the relief claimed in it, the 2nd respondent-Bank has confined itself only to the housing loan and not to the mortgage loan.

28. This is because the evidence of A.W.1 as it stands is binding on the 2nd respondent-Bank, and it cannot contend that the documents referred to above which relate to the mortgage loan, continue to be relevant.

29. It is the contention of the counsel for the Bank that the Bank had filed I.A.No.4645 and 4646 of 2019 before the Debts Recovery Tribunal-II, at Hyderabad to permit the 2nd respondent-Bank to adduce further evidence and to re-open the O.A. for such evidence and that these applications are still pending before the Debts Recovery Tribunal-II, at Hyderabad, though they have been filed on 17.09.2017.

30. Mere pendency of these applications does not mean that the order passed on 03.07.2019 in I.A.I.R.No.6020 of 2018 in O.A.No.378 of 2017 has to be confirmed by this Court.

31. In our considered opinion, having regard to the statement of A.W.1 in his cross-examination, Exs.A.13 to 26 and A.28 and A.31 are required to be de-exhibited as they do not relate to the cash credit /

Over-draft account and the Debts Recovery Tribunal-II, at Hyderabad erred in rejecting the petitioner's application.

32. Accordingly, the Writ Petition is allowed. The order dt.03.07.2019 passed in I.A.I.R.No.6020 of 2018 in O.A.No.378 of 2017 is set aside. The said I.A.I.R.No.6020 of 2018 in O.A.No.378 of 2017 is allowed, and Exs.A.13 to 26 and A.28 and A.31 are directed to be de-exhibited by the Tribunal.

33. The Tribunal shall over decide I.A.No.4645 and 4646 of 2019 uninfluenced by any observations made by this Court in this order.

34. Accordingly, the Writ Petition is allowed as above. No order as to costs.

35. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 26.11.2019
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