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

WRIT PETITION No.18968 of 2019

<u>O R D E R</u> : (per MSR, J)

The petitioners have assailed the docket order dt.22.07.2019 in I.A.No.3661 of 2018 in SAIR.No.273 of 2018 passed by the Debts Recovery Tribunal-I, Hyderabad (for brevity "the Tribunal") refusing to condone the delay of 84 days in filing S.A. under Section 17 of the SARFAESI Act, 2002 (for brevity "the Act").

The petitioners and others have formed a Partnership Firm on 02.04.2013 to set up and run Malls, Multiplexes, Shopping Complexes etc. under the name and style of 'Chandra Sarada Estates'.

The Firm borrowed a sum of Rs.7.50 Crores from respondent No.1 – Bank at Warangal Branch on 10.04.2015.

Respondent No.2 issued a Demand Notice dt.29.12.2017 under Section 13(2) of the Act, claiming a sum of Rs.7,53,14,347/- from the petitioners.

Thereafter, Possession Notice dt.08.08.2018 under Section 13(4) of the Act was also issued to the petitioners.

A Notice Prior to Sale under Rule 8(6) of the SARFAESI Rules, 2002 was issued to the petitioners by respondent No.1 on 24.08.2018.

Aggrieved by the said notice prior to sale dt.24.08.2018, the petitioners filed SAIR.No.273 of 2018 under Section 17 of the Act before the Tribunal, to declare the said notice dt.24.08.2018 and the Possession Notice dt.08.08.2018 as null and void and to set aside the same.

As the said SAIR.No.273 of 2018 was filed on 06.12.2018 with a delay of 84 days, the petitioners filed I.A.No.3661 of 2018 in SAIR.No.273 of 2018 under Section 5 of the Limitation Act to condone the delay of 84 days in filing the said SAIR.No.273 of 2018.

The petitioners contended that the father of petitioner Nos.1 and 2, who is the husband of petitioner No.3, had passed away on 16.09.2018 and the family was in grief and sorrow, therefore, they were unable to contact their advocate and file an application under Section 17 of the Act against the impugned measures initiated by the Bank within the prescribed period.

Counter affidavit was filed by the respondents opposing the said application. They pointed out that during the period in question, the petitioners were actively pursuing other remedies before the police and other Courts and, therefore, the reason offered by the petitioners is not genuine.

By a docket order dt.22.07.2019 in I.A.No.3661 of 2018 in SAIR.No.273 of 2018, the Tribunal observed that the father of the petitioner Nos.1 and 2 died on 16.09.2018 and the Possession Notice was issued on 08.08.2018, whereas Rule 8(6) notice was issued on 24.08.2018 i.e., four weeks before the alleged event of death and subsequently, the petitioners have issued legal notice dt.08.11.2018 to other partners for dissolution of Partnership. It also observed that the petitioners have been actively pursuing other legal proceedings before the Civil Courts and, therefore, the delay is not liable to be condoned.

Heard Sri B. Vijaysen Reddy, learned counsel for the petitioners and Sri Ambadipudi Satyanarayana, learned Standing Counsel for the respondents.

It is not in dispute that the petitioners had 45 days time to challenge the Possession Notice dt.08.08.2018 and notice prior to sale issued on 24.08.2018. The said period had not expired by the date of death of the father of petitioner Nos.1 and 2 and husband of petitioner No.3 on 16.09.2018. If the said period is counted from the date of receipt of the said notices, there would be a few days left for them to take steps. Therefore, the petitioners cannot be blamed for not immediately filing S.A. and the time taken by them to get over the sorrow and grief caused to them due to the death of the father of petitioner Nos.1 and 2 and husband of petitioner

No.3, has to be necessarily considered and excluded from the prescribed period.

In any event, the period of 84 days delay in filing the S.A. cannot be said to be inordinate.

In our view, the reasons assigned by the petitioners for non-filing of S.A. within the prescribed period and filing the same with a delay amount to 'sufficient cause' and are liable to be accepted.

Accordingly, the Writ Petition is allowed, the docket order dt.22.07.2019 in I.A.No.3661 of 2018 in SAIR.No.273 of 2018 passed by the Debts Recovery Tribunal-I, Hyderabad, is set aside, and the said I.A.No.3661 of 2018 is allowed. The Tribunal is directed to number the S.A. and decide the same on merits after hearing both the parties. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

28.11.2019.
Msr

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