

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

WRIT PETITION NO.22521 OF 2019

ORDER

(Per Honourable Sri Justice M.S.Ramachandra Rao)

Heard the learned counsel for the petitioners and Sri Ambadipudi Satyanarayana, learned counsel for the respondent.

2. The petitioners in this Writ Petition have challenged the Docket Order dated 26.09.2019 in I.A.No.2441 of 2019 in O.A.No.151 of 2019 of the Debts Recovery Tribunal-I at Hyderabad refusing to set aside the order dated 26.06.2019 setting the petitioners *ex parte* and denying to the petitioners an opportunity to contest the O.A. on merits.

3. The respondent bank had filed the said O.A. for recovery of a sum of Rs.59.84 Crore along with interest.

4. After receiving the summons in the O.A., the first petitioner entered appearance through counsel on 18.04.2019 and the second petitioner on 01.05.2019.

5. Thereafter, the Tribunal granted time to the petitioners to file counters on 03.06.2019, 13.06.2019 and on 26.06.2019. But the petitioners did not turn up and so their right to file written statement was forfeited and they were set *ex parte* on 26.06.2019.

6. The petitioners then filed I.A.No.2441 of 2019 to set aside the said order alleging that the representative of the petitioners, who was

handling the matter, was suffering from viral fever at the relevant point of time and so the counter/written statement could not be filed on 26.06.2019.

7. Counter affidavit was filed by the respondent opposing the same pointing out that no medical certificate is filed to prove the contention of the petitioners that the representative of the petitioners was ill.

8. By the impugned order dated 26.09.2019, the Tribunal dismissed the said I.A. It held that sufficient opportunities had been given to the petitioners, that they were deliberately trying to prolong the proceedings before the Tribunal, and the maximum period of 45 days permissible under the provisions of the Recovery of debts and Bankruptcy Act, 1993 had expired.

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

10. The learned counsel for the petitioners contends that there is a huge claim of almost Rs.60.00 crore raised in the O.A. by the respondent against the petitioners and though there was a delay on the part of the petitioners to file written statement, sympathetic view may be taken in the matter and an opportunity be given to the petitioners to contest the O.A. on merits. It was further pointed out that written statement/counter in the O.A. was in fact made ready on 26.06.2019 itself but before it could be presented to the Tribunal, the Tribunal set the petitioners *ex parte* on 26.06.2019.

11. Though the learned counsel for the respondent bank sought to sustain the order passed by the Tribunal, having regard to the fact that the claim against the petitioners is almost Rs.60.00 crore, we feel that an opportunity should be given to the petitioners to contest the claim of the respondent in the O.A. on merits subject to the petitioners paying costs to the High Court Legal Services Committee.

12. Accordingly, the Writ Petition is allowed; order dated 26.09.2019 in I.A.No.2441 of 2019 in O.A.No.151 of 2019 of the Debts Recovery Tribunal-I, Hyderabad is set aside; I.A.No.2441 of 2019 in O.A.No.151 of 2019 is allowed on payment of costs of Rs.5,000/- (Rupees five thousand only) by the petitioners to the High Court Legal Services Committee within one week from the date of receipt of a copy of this order and also subject to the petitioners' filing counter/written statement in O.A.No.151 of 2019 before the Tribunal within one week from the date of receipt of a copy of this order. In default of complying with either of these conditions, the Writ Petition shall stand dismissed.

13. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

16th OCTOBER, 2019

Note: Issue C.C. in three days.

B/o Svv