

HONOURABLE SRI JUSTICE M. S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.23755 AND 23799 OF 2019

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

Petitioner in both these Writ Petitions is one and the same.

2. O.A. No.469 of 2018 was filed by the 2nd respondent in W.P. No.23755 of 2019 i.e. IDBI Bank Limited against the petitioner and others under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the Act'), for recovery of a sum of Rs.84,41,25,045.42 ps., from the petitioner and others jointly and severally with costs and future interest at 18.5% per annum as monthly rests from 02.07.2018 and for other reliefs.

3. Counter affidavit was filed by the petitioner opposing grant of the relief to the said Bank in the O.A. Thereafter evidence was recorded. The matter underwent adjournments and then it was posted to 22.10.2019 for hearing arguments of the counsel for the petitioner. On that day, Senior Counsel appearing for the petitioner could not appear and a request was made by the junior counsel appearing for the petitioner for an adjournment. The Debts Recovery Tribunal – I refused to give adjournment and reserved the matter for orders on the same day. On 23.10.2019 an application under Section 22 (e) & (h) of

the Act was filed by the petitioner to set aside the order dt.22.10.2019 as against the petitioner and permit petitioner to advance arguments.

4. The said application was given IA IR No.2825 of 2019. Without adverting to the same, on 23.10.2019, the O.A. was allowed observing that the counsel for the petitioner did not advance any arguments inspite of opportunities being afforded to him and that their right of advancing arguments was forfeited. Challenging the same, W.P. No.23755 of 2019 was filed.

5. Likewise, the State Bank of India had filed O.A. No.223 of 2018 against the petitioner and others for recovery of a sum of Rs.280,68,37,439.49 ps., from the petitioner and others. Written statement was filed by the petitioner opposing the claim in the O.A. made by the State Bank of India (2nd respondent in W.P. No.23799 of 2019). After the arguments of the counsel for the Bank was heard, the case was posted to 22.10.2019 for hearing of arguments of the petitioner and other counsel. At that time, the Senior Counsel for the petitioner was held up in another Court and could not address arguments when the matter was called and the junior counsel for the petitioner requested for an adjournment. The Court refused it and reserved the matter for orders. On the next day, IA IR No.2824 of 2019 was filed by the petitioner to set aside the order dated 22.10.2019 and permit the counsel for the petitioner to advance arguments.

6. Without adverting to it, the O.A. was allowed on 23.10.2019 recording that no arguments were advanced despite affording of opportunity to the petitioner and that the right of the petitioner to advance arguments was forfeited. Assailing it, W.P. No.23799 of 2019 is filed.

7. Learned counsel for the petitioner contended that when huge amounts are sought to be recovered from the petitioner and the Senior Counsel for the petitioner could not appear on 22.10.2019, the Debts Recovery Tribunal – 1 could not have forfeited their chance to advance arguments on the pretext that earlier adjournments had been sought and should have accommodated the petitioner's counsel by taking up the applications filed to set aside the orders passed in both the O.As. on 22.10.2019 forfeiting the right of the petitioner to advance the arguments and then decided the O.As., on merits.

8. Learned counsel also placed reliance on the judgments of the Supreme Court in **G.P. Srivastava v. R.K. Raizada and Ors.**¹ and **A. Murugesan v. Jamuna Rani**².

9. In **G.P. Srivastava's case (1 supra)**, the Supreme Court observed as under:

“Under Order 9, Rule 13, C.P.C. an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case

¹ 200 (3) SCC 54

² 2019 (2) ALT 159

on the date of hearing, the Court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The Courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non-appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

10. This judgment was followed in **A. Murugesan's case (2 supra)** and it was observed that when an application is filed for setting aside ex-parte decree under Order - IX Rule - 13 of Code of Civil Procedure, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called and the court cannot take into consideration past conduct of the party and should confine consideration only to the question whether the party did not show sufficient cause for not appearing on the date on which the ex-parte decree was passed.

10. In the instant case, while it may be true that the petitioner's counsel could not address arguments on earlier dates when the matter was listed for hearing, the said ground cannot be taken into account and the Court should only consider why on 22.10.2019 the counsel

could not appear. Also prior conduct of the petitioner could not have been taken into account by the Tribunal. When IA IR No.2825 of 2019 in O.A. No.469 of 2018 and IA IR No.2824 of 2019 in O.A. No.223 of 2018 were filed before the Tribunal, the Tribunal did not bother even look into what grounds were raised therein, and pronounced the orders in both the O.As., immediately on the day next on which the right of the petitioner to address the arguments were forfeited in both the O.As.

11. We are unable to understand the tearing urgency which compelled the Tribunal to decide the matter on the very next day when applications to recall the order dated 22.10.2019 filed by the petitioner in both O.As. were pending before the Tribunal.

12. We are satisfied that in the facts and circumstances of these two writ petitions, the petitioner had shown sufficient cause for not appearing in the matter on 22.10.2019 because the counsel for the petitioner was held up in another Court; and in matters of such high-stakes normally the Senior Counsel would be engaged to address the arguments and the junior counsel cannot address the arguments. The Tribunal, therefore, ought to have allowed both the applications and fixed the date within a short while and heard the matter on merits before deciding both the O.As. Its failure to do so, in our opinion, is arbitrary and cannot be sustained.

13. Accordingly, both the Writ Petitions are allowed and the orders dated 23.10.2019 passed in O.A Nos.469 of 2018 and 223 of 2018 are set aside; the matter is remanded back to the Debts Recovery Tribunal – I, Hyderabad to fix a date for hearing the arguments of the petitioner. It shall proceed to decide the matter and after hearing the arguments of the petitioner and the respective 2nd respondent in both the writ petitions, it shall pass orders in accordance with law. If on the date fixed by the Tribunal the petitioner's counsel does not address arguments, then these two Writ Petitions would stand dismissed.

No order as to costs. The miscellaneous petitions, if any pending, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

November 19, 2019
KTL