

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.21737 of 2018**

**ORDER:** (Per Hon'ble Sri Justice Abhinand Kumar Shavili)

This writ petition is filed seeking a Writ of Certiorari calling for the records related to and connected with the orders dated 09.03.2018, passed in I.A.No.357 of 2018 in O.A.No.2513 of 2017, by the Debts Recovery Tribunal-II, Hyderabad and quash the same, holding it as illegal, arbitrary, perverse, vitiated by jurisdictional error and illegal exercise of power vested in it.

2. Heard Sri M.V.Durga Prasad, counsel for petitioners and Sri B.S.Prasad, Standing Counsel for the 2<sup>nd</sup> respondent-Bank.

3. It has been contended by the petitioners that the 2<sup>nd</sup> respondent-Bank had filed O.A.No.2513 of 2017 against the petitioners as well as respondent Nos.3 to 6 seeking a recovery certificate for recovery of a total debt of Rs.1,35,85,604/- together with interest and future interest @ 13.75% per annum. The petitioners contend that as far as prayers (a), (b) and (c) are concerned, they have no grievance, but their grievance is only in respect of prayer (d) made by the 2<sup>nd</sup> respondent-Bank before the Debts Recovery Tribunal to declare that the mortgage created over "A" to "C" schedule properties by defendant No.2 in favour of the Bank is valid as per the provisions of the Transfer of Property Act and the sale transaction between defendant No.2 and defendant Nos.5 to 9 is subject to rights of the Bank as a mortgagee

over the said schedule properties and the Bank has a right to proceed against the said schedule of properties for recovery of the debt due to it from defendant Nos.1 to 4. The petitioners contend that they are the purchasers of property from the borrowers of the Bank i.e. from respondents 3 to 6. The petitioners are aggrieved by the action of Bank in trying to include the properties of petitioners also in O.A.No.2513 of 2017. The petitioners further contend that the 2<sup>nd</sup> respondent-Bank had filed I.A.No.357 of 2018 in O.A.No.2513 of 2017 before the Debts Recovery Tribunal seeking permission to mark documents listed in the Annexure to the petition as secondary evidence, as the original documents are not available as the same were delivered to CBI during the course of investigation in connection with a crime registered against defendant No.1 before the Tribunal and respondent No.3 herein, in C.C.No.2 of 2014 on the file of Metropolitan Sessions Judge-cum-Special Court and the 2<sup>nd</sup> respondent-Bank had produced Photostat copies of said documents and prayed the Debts Recovery Tribunal to permit the 2<sup>nd</sup> respondent-Bank to file those documents as secondary evidence as the original documents were not available with it. The Debts Recovery Tribunal, after considering the said I.A., was pleased to permit the 2<sup>nd</sup> respondent-Bank to mark the Photostat copies of the original documents and allowed I.A.No.357 of 2018 vide orders dated 09.03.2018. Challenging the same, the present writ petition is filed.

4. Counsel for petitioners has contended that the list of documents, which were handed over to the CBI in respect of a case pending against the 3<sup>rd</sup> respondent does not disclose the documents in question pertaining to the petitioners and contends that as per the list of documents which were surrendered to the CBI during the course of investigation in respect of 3<sup>rd</sup> respondent as referred at Page Nos.22-A and 22-B, do not disclose that the original documents pertaining to the petitioners' properties were handed over to CBI and in view of the same, the Photostat copies of the original documents cannot be treated as valid documents and the same cannot be marked before the Debts Recovery Tribunal. Therefore, it is contended that the order dated 09.03.2018, passed in I.A.No.357 of 2018 in O.A.No.2513 of 2017 be set aside as it is contrary to the provisions of the Indian Evidence Act.

5. The learned Standing Counsel appearing for the 2<sup>nd</sup> respondent-Bank has contended that the Tribunal, after considering various judgments, has passed a reasoned order. The Tribunal, while allowing I.A.No.357 of 2018, has considered the fact that the 2<sup>nd</sup> respondent-Bank had to handover the original documents to the CBI in connection with a case pertaining to respondent No.3, in C.C.No.2 of 2014 and since Photostat copies can be accepted as a piece of evidence as per Section 65(c) of the Indian Evidence Act, has passed appropriate orders by allowing the I.A. and no prejudice has been

caused to the petitioners. There are no merits in the writ petition and the same is liable to be dismissed.

6. We have carefully considered the rival contentions. The main contention of the learned counsel for the petitioners is two fold, *viz.*, (a) that secondary evidence and that too Photostat copies of documents cannot be admitted in evidence without the person seeking to mark them in evidence establishing before the Court the steps taken by them to secure certified copies; and (b) that no secondary evidence of documents which were admitted before the Criminal Court to be fictitious release deeds, can be admitted in evidence.

7. But we are unable to uphold either of the contentions. It is not as though Xerox copies are completely barred from being marked in evidence. Section 22 (1) of the Recovery of Debts and Bankruptcy Insolvency Resolution and Bankruptcy of Partnership Firms Act, 1993, makes it clear that the Tribunal shall not be bound by the procedure laid down by Code of Civil Procedure, but shall be guided by the principles of natural justice. The Tribunal is entitled to regulate its own procedure. In exercise of the powers conferred by Section 36 (1) and (2) of the 1993 Act, the Central Government issued a set of Rules known as DRT (Procedure) Rules, 1993. Rule 9 of the Rules mandates that an application by the Bank filed under Section 19 shall be accompanied by a paper book contained all documents relied upon by the bank, neatly typed in double space on one side of the paper and

duly attested by a Senior Officer of the bank and numbered accordingly.

8. Section 63 of the Indian Evidence Act, 1872, speaks of five different types of secondary evidence. One of them is a copy made from the original by mechanical processes, which in themselves insure the accuracy of the copy. In fact, the Indian Evidence Act, 1872 is one of the colonial pieces of legislation which contains illustrations under some of the provisions and those illustrations also form part of the Statute. Illustration (a) under Section 63 of the Indian Evidence Act, 1872 reads as follows:

*“(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.”*

Illustration (b) under Section 63 of the Indian Evidence Act, 1872 reads as follows:

*“(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.”*

9. As rightly pointed out by the DRT, Section 65 (c) enables secondary evidence to be given of the existence, condition, or contents of a document in cases where **“for any other reason not arising from**

*his own default or neglect*, a person is unable to produce it in reasonable time”.

10. Two Receipt Memos issued by the Inspector, CBI, Hyderabad containing two different sets of documents, one relating to the sanctioning of the loans and the agreements and another relating to the properties, have been filed by the bank before the Tribunal. These two documents are filed by the petitioners in their own material papers. Therefore, we do not know how the marking of those documents in evidence, especially when the Criminal Case is going on, could be objected. It is not necessary that the bank should take certified copies of those documents from the Criminal Court and produce those certified copies before the Tribunal. When Illustrations (a) and (b) under Section 63 enable photographs to be produced, especially before a Tribunal to which the rigors of procedure prescribed by CPC does not apply, no exception can be taken to the order of the Tribunal.

11. The contention that the bank itself has taken a stand before the Criminal Court that security interest was created on the subject properties on the basis of fictitious release deeds, is something that the petitioners should advance before the Tribunal. If the contention of the petitioners before the Tribunal is that even the original release deeds are fictitious documents, we do not know how the marking of the original documents will advance the case of the petitioners.

12. Therefore, we find no merit in the writ petition and the same is liable to be dismissed, accordingly, dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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**V. RAMASUBRAMANIAN, J**

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**ABHINAND KUMAR SHAVILI, J**

7<sup>th</sup> March 2019

ajr

