THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.25128 of 2019

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

Heard Sri S.Ravi, learned Senior Counsel appearing for Sri M.V. Pratap Kumar, learned counsel for petitioner and Sri G.Sanjeev Reddy, learned counsel appearing for 1st respondent.

2. In this Writ Petition, the petitioner assails the order dt.17-10-2019 in O.A.No.2274 of 2017 of the Debts Recovery Tribunal-II at Hyderabad (Old O.A.No.234 of 2012 of Debts Recovery Tribunal-I, Hyderabad).

3. Petitioner is a guarantor of the loan advanced by the 1st respondent Bank to the 2nd respondent pursuant to Ex.A-1 sanction letter dt.08-05-2007. Petitioner executed Ex.A-11 deed of guarantee dt.11-07-2007. As primary security, 30% of the shares standing in the name of the promoters were pledged.

4. As the loan amounts were not repaid in time, the 1st respondent Bank issued Ex.A-28 legal notice dt.16-08-2011 and then filed O.A.No.234 of 2012 before the Debts Recovery Tribunal-I, Hyderabad, which was later transferred to the Debts Recovery Tribunal-II, Hyderabad and renumbered as O.A.No.2274 of 2017.

5. Written statement was filed by petitioner/5th defendant in O.A. taking several defences including a specific defence that he was not connected with the borrower Company since 29-04-2010 and was not involved in the day-to-day affairs of the said Company and to his knowledge, no notice of default was issued to the 2nd respondent borrower by the 1st respondent Bank or to the Directors of the borrower. It was also contended that letter dt.24-02-2012 was issued by the 1st respondent Bank to the borrower specifically referring to the sudden decrease in value of stocks from Rs.18.98 croes as on 31-03-2011 to Rs.5.68 crores as on 31-05-2011; that the petitioner, on 09-08-2011, had addressed a letter to one Mr.Rama Rao, Manager of the 1st respondent Bank about petitioner's resignation as Director from the Board of Directors of the borrower Company w.e.f. 29-04-2010 and also requested the 1st respondent Bank to furnish information about regular stock reports submitted by the borrower to the 1st respondent Bank from 01-03-2010.

6. It is contended that in spite of petitioner notifying the 1st respondent Bank to provide relevant records as sought from time to time, the 1st respondent Bank did not furnish the same and did not reply to the letters addressed by the petitioner to the 1st respondent Bank.

7. It was alleged that the 1st respondent was in hand-in-glove with the borrower Company and even though it knew fully well of sudden decrease in value of stocks from Rs.18.98 crores as on

31-03-2011 to Rs.5.68 crores as on 31-05-2011, it had failed to take possession of the stocks and recover dues/debts or other measures to further control the loss/damage. It was contended that no liability can therefore be fastened on the petitioner/5th defendant by the Bank.

8. In effect, the petitioner is therefore relying on the defences available to him under Section 141 of the Indian Contract Act, 1872, which states:

> *"141. Surety's right to benefit of creditor's securities.- A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such surety, the surety is discharged to the extent of the value of the security."*

9. Thus the defence of the petitioner appears to be that since 1st respondent Bank has lost or allowed depletion in the value of the stocks given as security, the petitioner/5th defendant in the O.A. is discharged to that extent.

10. This is an alternative plea taken by the petitioner to his principal plea that he resigned as Director of the 1st respondent Bank and therefore he is not liable as guarantor to the dues of the borrower/2nd respondent.

11. It is the contention of the learned Senior Counsel for petitioner that it was urged before Tribunal that the borrower had colluded with the 1st respondent Bank and permitted depletion of the

stocks and it was the duty of the Bank to provide necessary information to the petitioner to enable him to appropriately defend his case.

12. A reading of the impugned passed on 17-10-2019 in O.A.No.2274 of 2017 by the Debts Recovery Tribunal-II, Hyderabad does not show that the Tribunal has considered the alternative plea of the petitioner with reference to depletion in stocks which was specifically raised in the written statement by the petitioner. It merely considered the plea of petitioner about his resignation as Director of the 2nd respondent Company borrower and held that such resignation had no effect on the liability under the guarantee agreement signed with the 1st respondent Bank. It merely stated that 'non-furnishing of stock statement cannot be a ground to discharge the petitioner from the liability as a guarantor.'

13. It is obvious that the Tribunal had not taken note of the contention of the petitioner with regard to applicability of Section 141 of the Indian Contract Act, 1872 in spite of the fact that the said point was pleaded by the petitioner in his written statement.

14. Though the petitioner has an alternative remedy before the Debt Recovery Appellate Tribunal under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993, admittedly, the Debts Recovery Appellate Tribunal for the State of Telangana is located in Calcutta. It is not disputed that there is no Chairperson appointed for the said

Appellate Tribunal as of date, and though appeals are required to be filed in Calcutta, the appellants have to then proceed to the Debt Recovery Appellate Tribunal at Allahabad, which is the in-charge Appellate Tribunal, to get interim orders.

15. In view of this difficulty being faced by the persons aggrieved by the order of the Debt Recovery Tribunal, this Court had been entertaining Writ Petitions on the ground that remedy of appeal under the above Act is not an adequate and affective alternative remedy.

16. Since this Court is convinced after hearing both sides that the applicability of Section 141 of the Indian Contract Act, 1872 has not been adverted to or decided by the Debts Recovery Tribunal-II at Hyderabad in the impugned order in O.A.No.2274 of 2017, the said order is set aside as regards petitioner herein and the matter is remitted back to the said Tribunal for consideration of this aspect of the matter and for passing of a fresh reasoned order in accordance with law within eight (8) weeks.

17. It is made clear that this Court has not expressed any opinion on the plea sought to be raised by the petitioner before the Tribunal.

18. Accordingly, this Writ Petition is allowed; the order dt.17-10-2019 in O.A.No.2274 of 2017 of the Debts Recovery Tribunal-II at Hyderabad is set aside; and the said O.A. is remitted back to the said Tribunal for consideration of applicability of

Section 141 of the Indian Contract Act, 1872 and for passing a fresh reasoned order in accordance with law within eight (8) weeks. No costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 18-11-2019
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