

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

WP.No. 25159 of 2019

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

1. Petitioners assail in this Writ Petition a Docket Order dt.30.10.2019 in IA.No.2651 of 2019 in SA.No.133 of 2018 before the Debt Recovery Tribunal-I, Triveni Complex, Abids, Hyderabad(for short 'the Tribunal').

2. They had filed the said I.A. to direct the 1st respondent-bank to produce original correspondence letters dt.06.11.2018 and 03.11.2018 issued by the respondents 3 and 5(auction purchasers) and reply letter dt.06.11.2018 issued by the 1st respondent, in order to send the same to the expert to secure an expert opinion as to the exact date of generation/execution of these documents.

3. By the impugned order dt.30.10.2019 the Tribunal dismissed the said application opining that there were no irregularities alleged in the amendment petition filed by the petitioners in SA.No.133 of 2018 with regard to extending time for payment of balance amount to respondents 3 to 5 by the 1st respondent-Bank and the plea of the petitioners that the letters referred to above were fabricated and created, is not proved. It held that the documents mentioned above appear to have been generated in normal course of business.

4. Counsel for the petitioner contends that in para 30 (introduced by way of amendment in SA.No.133 of 2018) a specific plea had been raised with regard to the auction purchasers having violated the provisions of Rules 9(2) to 9(4) of the Security Interest Enforcement) Rules, 2002, and that without noticing this plea, an observation was made by the Tribunal that no irregularities were alleged in the amendment petition and this observation requires to be deleted. It is also contended that there was no necessity for the Tribunal to go into this aspect at all in IA.No.2651 of 2019 and the Tribunal could have gone into the said issue only while hearing the SA.

5. Sri Sethu Madhava Rao, Counsel appearing for the 1st respondent-Bank does not dispute about the plea taken by the petitioners regarding violation of compliance of Rules 9(2) to 9(4) of the above Rules. He also does not dispute the fact that whether Rules 9(2) to 9(4) of the Rules have been followed or not is irrelevant in I.A.No.2651 of 2019.

6. Therefore the observation made with regard to alleged irregularities in granting extension of time to the borrower in the impugned order passed by the Tribunal on 30.10.2019 in SA.No.133 of 2018, are set aside.

7. Coming to the main plea of the petitioners in the said IA that the documents in question are required to be sent to an expert because they are fabricated by the 1st respondent-Bank in

collusion with the auction purchaser is concerned, a perusal of the letter dt.03.11.2018 addressed by the 5th respondent to the 1st respondent-Bank and letter dt.06.11.2018 addressed by the 1st respondent-Bank to the 5th respondent show that they have been printed on a printer attached to a computer, and they do contain the signatures of the 5th respondent and the Manager of the 1st respondent-Bank, respectively. The other letter dt.06.11.2018 addressed by the 3rd respondent to the 1st respondent is a handwritten letter signed by the 3rd respondent.

8. The plea of the petitioners is that the expert opinion is required to know the exact date of generation/execution of these letters.

9. It is common knowledge that the date of manufacture of the ink and date of filling of the said ink in a pen or in the cartridge used in a printer attached to a printer, and the date of use of the pen or the printer, would all be different.

10. Therefore it would be impossible for anybody to say when exactly the pen used to sign a document or the ink used in a printer cartridge to print a particular document was actually used to create a document, though it might be possible to find out when the ink used in the pen or the ink used in the printer cartridge was manufactured. Therefore, no useful purpose would be served by sending these three letters to an expert to decide when exactly these documents were generated/executed.

Therefore, to that extent, no fault can be found with the order dt.30.10.2019 passed in IA.No.2651 of 2019 in SA.No.133 of 2018 by the Tribunal.

11. Therefore, the Writ Petition is allowed partly; the order dt.30.10.2019 in IA.No.2651 of 2019 in SA.No.133 of 2018 to the extent that the Tribunal made an observation that “*no irregularities were alleged in the amendment petition*” is set aside and the rest of the order insofar as that the Tribunal did not wish to refer the letters dt.06.11.2018 and 03.11.2018 to an expert, is confirmed. The further observation made in the order that ‘*the documents in question were generated in the normal course of business*’, is also an observation which is outside the scope of the application IA.No.2651 of 2019, and the said observation is also set aside. No order as to costs.

12. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

18th November, 2019.

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