

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

WP.No. 26332 of 2019

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

1. Heard counsel for the petitioner and Sri S.Mujeeb Kumar, Counsel for the respondent-Bank.

2. This Writ Petition is filed assailing the order dt.18.10.2019 in I.A.No.2186 of 2019 in OA.No.90 of 2019 of the Debt Recovery Tribunal-I, Hyderabad refusing to condone the delay of 25 days in filing the application to set aside the *ex-parte* order dt.01.05.2019 passed against the petitioner.

3. In the affidavit filed in support of said application I.A.No.2186 of 2019, petitioner stated that though he received summons, he did not engage any advocate as he is not aware of the OA proceedings; that he enquired about the case but his counsel told him to file a petition. He also stated that he is staying far away from Peddapally and doing business; so he was not aware about the legal issues and could not properly give instructions to the advocate; and therefore could not contest the matter on merits. Other defences are also mentioned therein.

4. The respondent-Bank denied the said allegations and took the plea that the petitioner, having received summons, is aware of the pendency of OA and cannot plead ignorance of it. It also contended that ignorance of law is no excuse.

5. By order dt.18.10.2019, the Debt Recovery Tribunal-I dismissed the said I.A.No.2186 of 2019 on the ground that summons sent to the petitioner were returned with postal endorsement 'unclaimed' and it is deemed as sufficient service and the petitioner himself admitted the service of summons on him and therefore there is no merit in the application.

6. Challenging the same, this Writ Petition is filed.

7. It is important to note that in the OA, a sum of Rs.10,74,450/- with interest @ 14 % per annum was sought against the petitioner and the OA itself was filed on 15.01.2019.

8. Petitioner is a resident of Dongaturthy Village, Dharmaram Mandal, Peddapally District and claimed that his village is far away from Peddapally and he was not aware of the legal issues.

9. In this background and having regard to the fact that the application for condonation of delay was filed only with a short delay of 25 days, we are of the opinion that the Debt Recovery Tribunal-I ought to have condoned the said short period of delay instead of dismissing it, as it did under the impugned order.

10. Normally cases are to be adjudicated on merits and only if the delay is unusually long in seeking to set aside an *ex-parte* decree and the explanation offered is not *bonafide*, applications for condonation of delay will be liable to be rejected, but not otherwise.

11. Therefore, the Writ Petition is allowed; the order dt.18.10.2019 in IA.No.2186 of 2019 in OA.No.90 of 2019 of the Debt Recovery Tribunal-I, Hyderabad, is set aside and the said IA is allowed; the order dt.01.05.2019 passed in the OA is also set aside and the OA is restored to the file of the Debt Recovery Tribunal-I, Hyderabad. The said Tribunal is directed to give opportunity to the petitioner to contest the OA by fixing time for filing written statement and for trial and the petitioner is directed to cooperate with the early disposal of the OA. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

28th November, 2019.

gra