

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No. 39353 of 2018

ORDER: (*per V. Ramasubramanian, J*)

1) Aggrieved by a condition imposed by the Debts Recovery Tribunal for payment of 25% of the original claim, for condoning the delay of 86 days in seeking to set aside an *ex parte* order, the borrowers have come up with the above Writ Petition.

2) Heard Mr.E.Madan Mohan Rao, learned counsel for the petitioners and Smt.T.Vidhya Rani, learned counsel for the second respondent-bank.

3) The petitioners who were the defendants in O.A.No.164 of 2011, which was filed by the bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, were set *ex parte* in the original application and a final order was passed on 24.05.2013. The petitioners filed two applications, one for setting aside the *ex parte* final order and another for condoning the delay of 86 days in filing the said application. I.A.No.3153 of 2013 for condonation of delay in filing the application to set aside the *ex parte* final order, was allowed by the Tribunal by an order dated 24.04.2018, subject to two conditions. The conditions were (1) that the petitioners should deposit 25% of the O.A. claim and (2) that the petitioners should pay costs of Rs.10,000/-. It is against this conditional order the petitioners are before us.

4) While the Tribunal has the discretion to condone or not to condone the delay, the discretion should be exercised in a manner prescribed by law. The discretion cannot be exercised in an arbitrary manner. A direction to deposit 25% of the O.A. claim, for condoning the delay in seeking to set aside the *ex parte* final order, is certainly an arbitrary exercise of discretion. If the delay is condoned and the *ex parte* order set aside, there is no decree in the eye of law. To make the defendants liable to pay 25% of the claim amount as made out in the suit, even to set aside an *ex parte* order or for condoning the delay in seeking to set aside the *ex parte* order, would make a decree precede a determination. Therefore, the condition imposed by the Tribunal is liable to be set aside.

5) Accordingly, the Writ Petition is allowed and the first condition imposed under the impugned order is set aside. The petitioners shall pay the costs as awarded by the Tribunal, on or before 10.04.2019. Upon such payment, the application for condonation of delay will stand allowed and the Tribunal then shall deal with set aside petition and proceed in accordance with law. As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 28, 2019
gkv



