HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 39891of 2018

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

Aggrieved by the refusal of the Debts Recovery Tribunal to condone the delay of 494 days in seeking to set aside an *ex parte* order, the borrowers have come up with the above Writ Petition.

2. Heard Mr.Damodar Reddy, learned Counsel for the petitioners, Mr.N.V.Subba Raju, learned Counsel appearing for the 1st respondent/Bank and Mr.Siva Bhami Reddy, learned Counsel appearing for the 2nd respondent.

3. The 2nd respondent claims to be the holder of agreement for the sale of the property from the petitioners. Though their suit as against the petitioners appears to have been dismissed for non-prosecution, they are made parties here for effective adjudication. But in this case their role is very limited, as they have to sail or sink along with the petitioners.

4. The 1st respondent/Bank filed an application in O.A.No.841 of 2015 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It was later re-numbered as O.A.No.186 of 2017. The petitioners were set *ex parte* on 25.04.2017 and a decree passed. Thereafter, the Recovery Office issued notice to the petitioners in R.P.No.1818/2017.

5. Contending that they came to know about the *ex parte* order, dated 25.04.2017 only on 16.07.2018, the petitioners moved an application in I.A.No.4701 of 2018 in September, 2018 for

condoning the delay of 494 days in seeking to set aside the *ex parte* order. This application was dismissed by the Tribunal forcing the petitioners to come with the above Writ Petition.

6. The case of the petitioners is that the summons in the Original Application were never served on them and that they came to know about the *ex parte* order dated 25.04.2017 only on 16.07.2018.

7. But the Tribunal found that the petitioners had already approached the Tribunal by filing an appeal in S.A.No.110 of 2013 questioning the proceedings initiated under the Securitization Act and that in the said appeal, the Bank had filed a reply statement. Thereafter the appeal was dismissed on 23.12.2016.

8. In view of the same, the Tribunal came to the conclusion that the petitioners had knowledge of the *ex parte* order. More over, the Tribunal was persuaded to impute knowledge to the petitioners in view of a Civil Suit in O.S.No.1369 of 2013 filed by the 2^{nd} respondent herein on the basis of being an agreement holder.

9. But the core issue as to whether suit summons were served on the petitioners, actually got side-tracked in the light of the other litigations. It is seen from the impugned order of the Tribunal that the original application was filed on 03.08.2015. The summons sent by post did not return, even as per the Order of the Tribunal. Therefore, the Tribunal allowed paper publication to be made. This is how the petitioners were set *ex parte*.

10. Once it is admitted that the notices sent by Registered Post were not served on the petitioners and the service was deemed to

be completed only on the basis of paper publication, the Court cannot simply overlook the contentions that the summons were not served.

11. The real test for finding out whether the delay required to be condoned or not, is the actual service of summons. Since it is an admitted case that the summons sent by Registered Post were not served and that only paper publications were made, the petitioners cannot be attributed with the actual knowledge, though not the deemed knowledge.

12. The proceedings initiated under the Securitization Act, 2002, stand on a different footing. We are not here for a moment impeding the progress of the proceedings under the Securitization Act. It is settled long ago that the proceedings under the 1993 Act stand apart from the proceedings under the 2002 Act. All that the petitioners now want is an opportunity to defend themselves in the Original Application. It has got nothing to do with the Securitization Appeal.

13. In the light of the above, we are of the considered view that the Tribunal ought to have condoned the delay in filing the application to set aside the *ex parte* order.

14. Hence, the Writ Petition is allowed, the impugned Order is set aside and I.A.No.4701 of 2018 is allowed condoning the delay in filing the application. The Tribunal may now take up the petition to set aside the *ex parte* order and after passing orders, shall proceed to dispose of the Original Application within a period of three months.

Consequently, Miscellaneous Petitions, if any, pending in the Writ Petition shall stand dismissed. No Order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

January 30, 2019
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