HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION NO.21598 OF 2019

ORDER:
(Per Hon'ble Sri Justice K. Lakshman)

1. This Writ Petition is filed by the petitioners seeking a Writ of Certiorari to call for the records pertaining to the order dt.27.08.2019 in I.A.No.2090 of 2019 in SAIR No.977 of 2019 of the Debts Recovery Tribunal-I, Hyderabad and to quash the same.

2. M/s.Sehgal Motors Private Limited, of which petitioner No.2 is Managing Director, availed credit facilities from the UCO Bank way back in the year 2003.

3. The account became a Non-Performing Asset in the year 2010 and the bank issued a demand notice dt.29.01.2011 under Section 13(2) of the Act.

4. It was followed by a possession notice dt.28.11.2011 under Section 13(4) of the Act.

5. An auction notice was issued on 04.02.2012 fixing the date of auction as 12.03.2012.

6. Challenging the auction notice, the borrower company alone filed S.A.No.134 of 2012. In the meantime, the debt was assigned by the UCO Bank in favour of the 1st respondent.

7. The main ground of challenge in S.A.No.134 of 2012 to the measures taken under Section 13(4) of the Act was that the property brought to sale was an agricultural land and that therefore there was a bar under Section 31(i) of the Act.

8. By a final order dt.12.07.2013, the Debts Recovery Tribunal allowed S.A.No.134 of 2012 on the short ground that the lands in question are agricultural lands exempt under Section 31(i) of the Act.

9. The UCO Bank/the 1st respondent filed an Appeal in Appeal No.282 of 2013 before the Debts Recovery Appellate Tribunal, Kolkata as against the order of Debts Recovery Tribunal. By an order dt.07.07.2014, the Debts Recovery Appellate Tribunal allowed the appeal and remanded the matter back to the Debts Recovery Tribunal on the short ground that there was no shred of evidence produced by the borrower company to prove that the land was an agricultural land and that therefore the Debts Recovery Tribunal should have a fresh look at the issue.

10. After remand, the 1st respondent filed a Certificate from the Village Revenue Officer to the effect that no agricultural operations are carried on in the lands for the past several years. Based upon the said Certificate, the Debts Recovery Tribunal dismissed S.A.No.134 of 2012 by an order dt.16.04.2018 holding that the lands are not agricultural lands.

11. Immediately thereafter, the 1st respondent secured an order from the Chief Judicial Magistrate on 26.04.2018 under Section 14 of the Act.

12. Challenging the order of the Debts Recovery Tribunal dt.16.04.2018 and the order of the Chief Judicial Magistrate dt.26.04.2018, the borrower company filed two Writ Petitions and one of the Directors of the company who is the owner of the land filed one Writ Petition. All these three Writ Petitions, W.P.Nos.16494, 18108 and 28301 of 2018, were disposed of by a Bench of this Court by a final order dt.04.09.2018. The effect of this order was to set aside the order of the Debts Recovery Tribunal dt.16.04.2018 and to remit the matter back to the Debts Recovery Tribunal with liberty to the parties to file documents. However, the order of the Chief Judicial Magistrate was not interfered with by this Court by order dt.04.09.2018.

13. The Debts Recovery Tribunal again took up S.A.No.134 of 2012 for hearing and the parties filed certain documents. Thereafter, the Tribunal passed final order dt.15.03.2019 dismissing S.A.No.134 of 2012 holding that the lands are not agricultural lands and that therefore the protection under Section 31(i) of the Act was not available.

14. It is against the said order of the Debts Recovery Tribunal dt.15.03.2019 that the borrower company has come up with W.P.No.8237 of 2019 and the owner of the land, who is also a Director of the borrower company and a guarantor of the loan, has come up with W.P.No.8234 of 2019 before this Court.

15. Both these Writ Petitions were dismissed by this Court by order dt.10.06.2019 stating as under:

> *"It is made clear that we have not pronounced any opinion on the merits of the case and hence, it will be open to the petitioners to approach the Appellate Tribunal as against the impugned order. The impugned order is dated 15.03.2019. The above writ petitions were filed on 10.04.2019 and 16.04.2019. Notice was taken by the learned counsel for the Asset Reconstruction Company in both the writ petitions on 18.04.2019 and the writ petitions have been pending in this Court for nearly two months. Therefore, the Debts Recovery Appellate Tribunal is directed to give the benefit of excluding the period from the date of filing of the writ petitions till the date of receipt of a copy of this order for computing the period of limitation for filing an appeal. Since the auction is scheduled to be held on 11.06.2019 viz., tomorrow, the Asset Reconstruction Company shall not confirm the auction for a period of fifteen (15) days to enable the petitioners to move the appellate Tribunal and seek stay."*

16. Thereafter, auction was held on 11.06.2019.

17. The petitioners then filed another Application under Section 17 of the Act *vide* SAIR No.977 of 2019 on 25.06.2019 challenging not only the auction notice dt.03.05.2019 but also the sale held on 11.06.2019 pointing out certain illegalities committed by the 1st respondent in conducting the auction.

18. Along with the said SAIR, an Application I.A.No.2090 of 2019 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of 10 days in filing the Securitization Application under Section 17 of the Act.

19. In the affidavit filed in support of the said Application, after referring to dismissal of the Writ Petitions, it is contended that since the petitioners were pursuing their remedy before the High Court, they could not approach the Debts Recovery Tribunal within time and so, there was delay in filing the SAIR No.977 of 2019 which may be condoned.

20. Though no counter affidavit was filed, the 1st respondent opposed the said Application.

21. The Debts Recovery Tribunal-I, Hyderabad dismissed I.A.No.2090 of 2019 in SAIR No.977 of 2019 observing that the High Court had given benefit of excluding the period from the date of filing of the Writ Petitions till the date of receipt of copy of its order for computing the period of limitation for filing an appeal against the order of the Debts Recovery Tribunal dt.15.03.2019 passed in S.A.No.134 of 2012; that the benefit of excluding the period of limitation was not granted to the petitioners to again approach the Debts Recovery Tribunal-I for filing S.A.; that the sale notice issued by the 1st respondent is dated 03.05.2019 but the petitioners filed SAIR No.977 of 2019 on 27.06.2019 beyond 45 days period stipulated under the SARFAESI Act, 2002 and that sufficient cause had not been shown by them to condone the said period of delay of 15 days in filing SAIR No.977 of 2019.

22. Assailing the same, this Writ Petition is filed.

23. Heard both sides.

24. No doubt, while dismissing W.P.Nos.8234 and 8237 of 2019 on 10.06.2019, this Court had granted exclusion of time from the date of filing of the Writ Petitions till the date of receipt of copy of the order for computing the period of limitation for filing an appeal before the Debts Recovery Appellate Tribunal challenging the order dt.15.03.2019 in S.A.No.134 of 2012.

25. It is also true that the petitioners did not file any further Appeal to the Debts Recovery Appellate Tribunal against the said order dt.15.03.2019 in S.A.No.134 of 2012.

26. But in the S.A.I.R. No.977 of 2019, the petitioners had questioned the auction conducted on 11.06.2019 pursuant to the sale notice dt.03.05.2019 issued by the 1st respondent on various grounds. The cause of action for filing the said S.A. is distinct and separate and it cannot be said that the delay of 15 days or 10 days which occurred in filing the S.A. challenging the sale notice dt.03.05.2019 or the auction held on 11.06.2019 cannot be condoned.

27. Though the counsel for the 1st respondent Ms. Rubaina S. Khatoon stated that no valid reason for condoning the period of delay of 15 days in filing the S.A. is explained, the delay being very short cannot be said to be so unreasonable as to warrant dismissal of the delay condonation petition particularly when valuable properties belonging to the petitioners are sought to be sold in the auction.

28. In our considered opinion, the Tribunal had totally misdirected itself in refusing to condone even the short period of delay of 15 days / 10 days in filing the S.A. on the basis of a subsequent cause of action, i.e., the auction held on 11.06.2019 pursuant to the sale notice issued on 03.05.2019, and it ought to have condoned the said period of delay.

29. Accordingly, the Writ Petition is allowed. No costs.

30. Pending miscellaneous petitions, if any, shall stand closed.

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M.S.RAMACHANDRA RAO, J

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K.LAKSHMAN, J

Date: 06-03-2020
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