

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WP. No. 23483 of 2019

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

1. This Writ Petition is filed challenging the order dt.26.09.2019 in IA.No.2271 of 2019 in OA.No51 of 2017 of the Debt Recovery Tribunal-I, Hyderabad refusing to condone the delay of 789 days in filing the petition to set aside the ex-parte order dt.25.05.2017 passed in OA.No.51 of 2017.

2. The said OA was filed by the 2nd respondent against the petitioners for recovery of amounts advanced by the 2nd respondent to the petitioners to the tune of Rs.1,24,10,809.05 paise.

3. Summons were issued by the Debt Recovery Tribunal-I for service on the petitioners.

4. Summons were not served on the petitioners 1 and 2. Only 3rd petitioner received summons on 07.03.2017.

5. Thereafter, it appears that publication was ordered in Praja Shakthi News Paper and such publication was carried out as regards petitioners 1 and 2.

6. Petitioners were then set *ex-parte* on 09.05.2017 and an *ex-parte* decree/order was passed on 25.05.2017 in the OA.

7. On 23.07.2019, the petitioners filed I.A.No.2271 of 2019 invoking Section 5 of the Limitation Act, 1963 to condone the delay of 789 days in making the application to set aside the *ex-parte* decree/order dt.25.05.2017 in OA.No.51 of 2017 and also to set aside the said *ex-parte* decree.

8. In the affidavit filed in support of the said application they contended that no summons in the OA were served on them; that they came to know about the OA only when they received notices along with warrant copy issued by the Recovery Officer of the 2nd respondent-Bank in RP.No.848 of 2017 on 12.07.2018 asking them to vacate the OA schedule premises; they then approached their counsel and came to know about the passing of the *ex-parte* order dt.25.05.2017 on 22.07.2019 only. They contended that the news paper 'Praja Shakthi' wherein paper publication was made has very little circulation and publication of notice of the hearing of the OA in the said newspaper cannot be termed to be a proper service. They therefore prayed for condonation of the delay in filing the IA to set aside the *ex-parte* order dt.25.05.2017 in OA.No.51 of 2017 and also to set aside the same.

9. Petitioners specifically contended that the 2nd respondent-Bank was fully aware of the correct address of the petitioners, but chose to send the notices to previous addresses of the petitioners and the 2nd respondent has not acted fairly. According to them, the petitioners are resident of H.No.1-5-117, Kandoji Bazar, Park lane, Secunderabad, but a different address was shown in the OA.

10. Counter affidavit was filed by the 2nd respondent opposing this application and contending that the petitioners intentionally and deliberately avoided service of summons; service of notice by way of paper publication was carried out; and the decree therefore cannot be set aside. It is therefore denied that no notice was served on the defendants pending the OA. It is also contended that after receiving the notices issued by the Recovery Officer in RP.No.858 of 2017 on 12.07.2018, the petitioners deliberately waited till 23.07.2019 to file IA.No.2271 of 2019 and this delay is not properly explained.

11. By order dt.26.09.2019, the Court below dismissed the IA.No.2271 of 2019 in OA.No.51 of 2017. It held that the 3rd petitioner had received the summons on 07.03.2017 and the 2nd petitioner was residing in the same address and therefore the 2nd petitioner is deemed to be aware of the OA proceedings. It also criticized the petitioners for filing the present IA on 23.07.2019 when the Demand Notice was received by them from the Recovery Officer on 22.12.2017. It therefore held that inordinate delay occurred in filing the application and the same is not liable to be condoned.

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

13. From the facts narrated above, admittedly, the summons in the OA were not served on the petitioners 1 and 2, and they were only served on the 3rd petitioner.

14. Merely because the petitioners 2 and 3 are said to be residing in the same address, it cannot be presumed that the 2nd petitioner is also aware of the summons, though he was not actually served with the summons. In any event, borrower is the 1st petitioner and the 1st petitioner has not been served with the summons.

15. 'PRAJA SHAKTHI' Newspaper in which publication of notice was directed by the Debt Recovery Tribunal has extremely poor circulation and it is not known why the 2nd respondent-Bank did not choose to publish notice on the petitioners in a newspaper having larger circulation in the city of Hyderabad. The 2nd respondent-bank cannot therefore place reliance on the said publication to contend that the petitioners are deemed to have knowledge about the pendency of the OA on account of the said publication in Praja Shakti Newspaper.

16. When the recovery sought to be made from the petitioners is more than Rs.1 Crore, the least which is to be expected is that they should have notice of the proceedings in the OA, so that they can properly contest the same.

17. Merely because the petitioners received demand notice from the Recovery Officer on 22.12.2017, it cannot be presumed that they would know about what transpired in the OA. This presumption of the Tribunal cannot be accepted because, the notice would only indicate to the petitioners that they should

vacate the premises, but would not disclose about the events which occurred during the pendency of the OA.

18. We are therefore of the opinion that grave prejudice has been caused to the petitioners by the action of the 1st respondent-Tribunal in refusing to condone the delay of 789 days in filing the application to set aside the *ex-parte* decree/order dt.25.07.2017 in OA.No.51 of 2017.

19. Accordingly, this Writ Petition is allowed; the order dt.26.09.2019 in IA.No.2271 of 2019 in OA.No51 of 2017 of the Debt Recovery Tribunal-I, Hyderabad is set aside and the said IA is allowed; the *ex-parte* decree/order dt.25.05.2017 in OA.No.51 of 2017 is also set aside; the said OA is restored to the file of the 1st respondent-Tribunal; the said Tribunal shall give opportunity to the petitioners to file counter to the pleadings of the 2nd respondent-Bank in the OA; allow both parties to lead evidence and then decide the matter in accordance with law, within a period of four (04) months. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD

28th January, 2020.

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