

**HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
HONOURABLE SMT JUSTICE P. MADHAVI DEVI**

W.P.No.37057 of 2021

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. V.V.Ramana, learned counsel for the petitioner.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the docket order dated 06.10.2021 passed by the Debts Recovery Tribunal-I at Hyderabad (for short 'the Tribunal') in I.A.No.1 of 2021 in O.A.No.604 of 2016.

3. Before adverting to the impugned docket order, we may briefly mention that petitioner had availed financial assistance from respondent No.2/Bank of India and other consortium banks and financial institutions. For failure to repay the dues, respondent No.2 filed a petition under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (briefly 'the 1993 Act' hereinafter) before the Tribunal for recovery of an amount of Rs.4,28,33,59,439.94 as on 17.03.2016 plus future interest. The same was registered as O.A.No.604 of 2016.

4. O.A.No.604 of 2016 was decreed *ex parte* on 09.11.2018.

5. For recall of the aforesaid *ex parte* decree, petitioner filed an application before the Tribunal. Since there was delay of 755 days in filing such application, I.A.No.1 of 2021 was filed for condoning such delay. By the impugned docket order dated 06.10.2021, Tribunal

declined to condone the delay and dismissed I.A.No.1 of 2021. Aggrieved, present Writ Petition has been filed.

6. Before we advert to the submissions of learned counsel for the petitioner and the impugned docket order dated 06.10.2021, we may briefly refer to certain provisions of the 1993 Act.

7. Under Sub-Section (1) of Section 19 of the 1993 Act, a bank or a financial institution may make an application to the jurisdictional Debts Recovery Tribunal for recovery of any debt.

8. Sub-Section (5) thereof provides that the defendant shall file written statement within thirty days from the date of receipt of summons. As per the proviso thereto, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the period of filing written statement by a further period but not exceeding fifteen days.

9. As per Sub-Section (5A) of Section 19, once written statement is filed or on expiry of time granted for filing written statement, the Tribunal shall proceed with the hearing of the application.

10. Sub-Section (20) of Section 19 says that Tribunal shall pass interim or final order within thirty days of conclusion of hearing.

11. As per Sub-Section (22) of Section 19, the Presiding Officer shall issue a certificate for recovery of the debt specified therein.

12. Under Section 20 of the 1993 Act, any person, aggrieved by an order made by a Tribunal, may prefer an appeal before the jurisdictional Appellate Tribunal. Limitation for filing such appeal is thirty days, but

the same can be extended by the Appellate Tribunal, if sufficient cause is shown.

13. At this stage, we may mention that the *ex parte* decree dated 09.11.2018 passed in O.A.No.604 of 2016 has not been placed on record by the petitioner.

14. From a perusal of the docket order dated 06.10.2021, we find that petitioner had entered appearance in O.A.No.604 of 2016 before the Tribunal on 19.08.2016. Since petitioner (defendant No.1 in OA.No.604 of 2016) failed to file written statement, Tribunal decided to proceed *ex parte* on 31.08.2017. Though thereafter Tribunal granted further opportunity to the petitioner to file written statement, the same was not filed. Consequently, another order was passed on 14.03.2018 by the Tribunal to proceed *ex parte* against the petitioner. Finally OA.No.604 of 2016 was disposed of on 09.11.2018.

15. 755 days later, petitioner filed an application for setting aside the *ex parte* decree. Tribunal dismissed the said application by declining to condone the delay in the following manner:

“On perusal of the record, it is clear that in the above O.A., summons were duly served on the Petitioner and one Mr.V.V.Ramana, advocate filed vakalat on behalf of the Petitioner/defendant No.1, however even after availing several adjournments, the Petitioner failed to file their written statement and as such, the Petitioner was set exparte and further, this Tribunal after examining the witness of Applicant bank and upon considering the material documents filed by the Bank, passed exparte orders on 09.11.2018. The Petitioner was given ample opportunities to appear and file their written statement and despite the same, he failed to file their WS, as such, the Petitioner was set

exparte. Furthermore, the Petitioner has failed to explain the delay much less, the reasons for condoning the huge delay of 775 days in filing the set aside petition even after receipt of summons/notices in the OA and during the recovery proceedings initiated by the Recovery Officer. In view of the above, I concur with the contention of the Respondent Bank that the Petitioner has not made out any case for condoning the delay, much less, the delay from the date of receipt of summons in the O.A.

In view of the above facts and circumstances of the case, I am of the considered opinion that the present petition is filed only to delay and frustrate the recovery proceedings and there is no sufficient cause to condone the huge delay of 775 days and as such, the I.A. is liable to be dismissed.

Accordingly, I.A.1/21 is dismissed as devoid of merits.”

16. Thus, from the above, we find that the Tribunal had taken the view that the petitioner and its counsel were fully aware of pendency of OA.No.604 of 2016. In fact, petitioner had appeared in the said proceeding, but did not file written statement, which compelled the Tribunal to proceed *ex parte* not once but twice. Tribunal further found that delay of 755 days was not at all explained.

17. Learned counsel for the petitioner submits that petitioner was pursuing respondent No.2 for One Time Settlement (OTS) and that was the reason why there was delay in filing the application for setting aside *ex parte* order.

18. We have perused the application for condonation of delay. We do not find any averments made therein explaining the delay of 755 days. It is trite that each and every day's delay is not required to be explained, but there must be a good and sufficient cause to justify

condonation of delay, that too of 755 days. There is no explanation for the delay post 09.11.2018.

19. Facts are staring at the face and are self explanatory. That apart, we do not find any error or infirmity in the view taken by the Tribunal. No case for interference is made out.

20. Writ Petition is, accordingly, dismissed. Related interim application is also dismissed.

21. No costs.

UJJAL BHUYAN , J

P.MADHAVI DEVI, J

Date: 29.12.2021
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