

APHC010520752024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

Bench
Sr.No:-
49
[3483]

WRIT PETITION NO: 27318 of 2024

Angara Bhogavathi Lakshmi Tayaru and
Others

...Petitioner(s)

Vs.

The State Bank Of India

...Respondent

Advocate for Petitioner:

P RAJASEKHAR

Advocate for Respondent:

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**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : 2nd December, 2024.

P C :

An application was filed in terms of Section 22 2 & (h) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the DRT, Visakhapatnam, for setting aside the ex-parte Decree dated 19.05.2009. The said application was also accompanied with an application for condonation of delay of 134 days.

It is stated that while the explanation rendered in the application seeking condonation of delay was accepted by the DRT and the delay was condoned for setting aside the ex-parte Decree, the main application filed under Section 22 was rejected.

The order passed by the DRT then came to be challenged by the petitioner before the DRAT which too dismissed the appeal, holding that the explanation rendered for setting aside of the ex-parte Decree was not convincing.

It is stated that the view expressed by the DRT as also the DRAT in appeal are unsustainable in law inasmuch as the fora below failed to appreciate that the petitioners herein have not been served on the address where they were actually residing. It is stated that whereas the original address of the petitioners was in Rajahmundry, they had since shifted from the said place and moved to Visakhapatnam.

It is stated that the petitioners had caused their appearance before the DRT, however, the original application filed by the bank was dismissed for non-prosecution on 18.08.2008. It is further stated that after the bank had filed an application for restoring the said original application, the petitioners are stated to have been served on their address in Rajahmundry and also through publication in District Edition of newspaper, Eenadu.

It is stated that there was no question of service on the petitioners at their Rajahmundry address, inasmuch as the address which was with the bank had since been sold. The date of actual sale of the property has not been brought to our notice, in any case, it is stated that since 2003, the petitioners had been residing at Visakhapatnam.

Apart from this, it is stated that the substituted service which was through a District Edition of Newspaper, Eenadu, was limited in its circulation to Rajahmundry alone and therefore, the said publication cannot be presumed to be good service, as the petitioners are residing in Visakhapatnam. It is further stated that the view expressed by the DRAT is on those grounds unsustainable as the issue has not been considered at all in its correct perspective.

Issue notice to respondent, returnable in six weeks.

List on 20.01.2025.

In the meantime, the auction which is proposed to be held on 09.12.2024 shall remain stayed.

DHIRAJ SINGH THAKUR, CJ.

RAVI CHEEMALAPATI, J.

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