

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
MONDAY, THE SECOND DAY OF DECEMBER,
TWO THOUSAND AND TWENTY FOUR



:PRESENT:

HONOURABLE SRI JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
AND

HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 27318 OF 2024

Between:

1. Angara Bhogavathi Lakshmi Tayaru, W/o late Saibabu aged about 73 years, Housewife, residing at Kirlampudi Layout, Visakhapatnam.
2. Angara Rajesh, S/o late Saibabu, aged about 52 years. Business, residing at Kirlampudi Layout, Visakhapatnam.
3. Angara Ravindra, S/o late Saibabu, aged about 50 years, residing at Kirlampudi Layout, Visakhapatnam.

..Petitioners

AND

The State Bank of India, Bazaar Branch, Rajamahendravaram East Godavari
District Rep. by its Branch Manager.

...Respondent

WHEREAS the Petitioners above named through their Advocate Sri P Rajasekhar, presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a WRIT OF CERTIORARI calling for records leading up to passing the impugned order, dated 30.04.2024 (served through letter, dated 05.06.2024) in Appeal No.246/2017, on the file of Debt Recovery Appellate Tribunal, Kolkata (for short DRAT) confirming the order dated 01.08.2017 passed in M.A.No.91/2010 in O.A.No.101/2005 on the file of Debt Recovery Tribunal, Visakhapatnam (for short DRT) as illegal, arbitrary,

unconstitutional and without jurisdiction and contrary to Rule 22 (2)(h) of RDDV Act and quash the same, in the interest of justice.

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri P Rajasekhar, Advocate for the Petitioners, directed issue of notice to the Respondent, returnable in six weeks, herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

The Branch Manager, State Bank of India, Bazaar Branch,
Rajamahendravaram East Godavari District.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this Writ Petition should not be admitted, on or before 20.01.2005, on which date the case stands posted for hearing.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant STAY of all further proceedings in R.P.No.84/2009 in O.A.No.101/2005, on the file of Debt Relief Tribunal, Visakhapatnam, in the interest of justice, pending disposal of WP No. 27318 of 2024, on the file of the High Court.

The Court made the following

ORDER:

"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."

//TRUE COPY//

Sd/- U. SRI DEVI
ASSISTANT REGISTRAR


SECTION OFFICER

For ASSISTANT REGISTRAR

To,

1. The Branch Manager, State Bank of India, Bazaar Branch, Rajamahendravaram, East Godavari District. (by RPAD- along with a copy of petition and memorandum of grounds)
2. One CC to Sri P Rajasekhar, Advocate [OPUC]
3. Two spare copies.

CVSS

HIGH COURT

HC,J & RC,J

DATED:02/12/2024

LIST ON 20.01.2025.

NOTICE BEFORE ADMISSION

WP.No.27318 of 2024

DIRECTION

