

(1997) 10 AP CK 0077

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4350 of 1996

K. Dorai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-10-1997

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 3(2), 5(3)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22

Citation : (1997) 6 ALT 661

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : K.S. Gopalakrishnan, for the Appellant; S. Suryaprakasam Rao, for the Respondent

Final Decision : Dismissed

Judgement

T.N.C. Rangarajan, J.—This Civil Revision Petition seeks a direction to quash the proceedings in O.A.No. 52/1995 before the second respondent-Debts Recovery Tribunal.

2. The 3rd respondent namely Bank of India had filed the above Original Application (O. A.) before the Tribunal for recovery of debt of Rs. 49 lakhs and odd due from M/s. Sri Krishna Tube Wells and Drillers, Chittoor, first defendant in the application. The petitioner was the guarantor, and was imp led as second defendant in the O.A. According to the petitioner there was improper scrutiny of the application which was required to be typed in double space at one side of the paper under Rule 3(2) of the Debt Recovery Tribunal (Procedure) Rules, 1993 (for short "the Rules") and translated copies of the documents other than Hindi and English were not furnished. According to the petitioner under Rule 5(3) of the Rules the Registrar has to point out the defects and grant 15 days time to rectify the defects, and if the defects are not cured the application cannot be registered. The learned Counsel for the petitioner submits that by not making proper scrutiny of the Original Application it has been improperly registered and

notice has been issued to the defendants unnecessarily requiring them to defend the case. The learned Counsel therefore submitted that as a person who is interested in avoiding unnecessary litigation he is entitled to object to the lack of proper scrutiny and since the Tribunal had not done its duty in accordance with Rules and procedure this Court should interfere Under Article 227 of the Constitution of India and quash the entire proceedings. I am unable to accept this contention of the learned Counsel for the petitioner. Several decisions were also cited to indicate that the petitioner is a person interested in the outcome of the case and hence entitled to maintain this Civil Revision Petition. But the question is not whether this petition lies under Article 227 of the Constitution of India. The question is only whether the petitioner, as a defendant in the O.A. has a right to object to the lack of proper scrutiny of the O.A. before the registration. The 3rd respondent filed counter-affidavit stating that the application was properly typed in accordance with the Rules, and as the documents in Telugu were appended to the application, at the time of trial the translated copies will be furnished, if required. Assuming that the application was in fact defective and the Registrar of the Tribunal made an improper scrutiny of the application and had registered it, the defendant in the O.A. will certainly have a right to raise the issue relating to the defective application only inasmuch as it affects his right, to properly defend the matter. In this case Section 22 states that the Tribunal shall not be bound by the procedure laid down by the CPC (C.P.C.) but on principles of natural justice and subject to other provisions of this Act, and of any Rules, the Tribunal shall have the power to regulate its own procedure. It is under its own powers, that the Rules have been framed for scrutiny of the Original Application before the registration. If such scrutiny was inadequate and if the defendant was in any way handicapped in his defence, the defendant certainly has right to point out to the Tribunal that the application was defective. There is no necessity for any Rules for enabling the defendant to raise this issue. But what the learned Counsel for the petitioner submits is that when the defendant raises that issue, the Tribunal cannot exercise its power either to condone the defect or allow the applicant to cure the defect, but should immediately dismiss the Original Application as defective. According to the petitioner, though Rule 5 of the Rules enables the Registrar to give 15 days time for curing the defect it can be invoked only before the registration and cannot be invoked after the registration. This is a very curious argument. If the petitioner wants to rely on the Rules it would mean that once the application is registered the petitioner cannot raise such an issue at all. If the petitioner is allowed to raise the issue without reference to the Rules then it would follow that the applicant also should be given an opportunity to cure the defect without reference to the Rules. Such a power is inherent in the Tribunal because Section 22 itself says that the Tribunal should function in accordance with the principles of natural justice. Such principles are to be invoked only for the purpose of seeing that justice is done between the parties, and if the defendant was to show that his defence is handicapped by any defect in the application, then the proper course will be to allow the applicant to cure that defect to enable the defendant to properly defend the case. In the present

case the complaint of the petitioner is that translated copies of Telugu documents were not filed along with the application. The counter-affidavit itself states that at the time of trial the translated copies will be furnished. The power to condone the defect can be exercised by the Tribunal to see that the principles of natural justice are followed in the application. Since the Tribunal has followed its own procedure under such guiding principles, I am sure that it will not warrant any interference by this Court, as justice is not only done, but appears to have been done.

3. In the circumstances, I see no reason to entertain the Civil Revision Petition. It is accordingly dismissed. No costs.