

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

[3418]

THURSDAY ,THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION NO: 22920 OF 2024

Between:

1. M/s.Neelam Enterprises, Rep. by its Proprietor N.Ghanshyam Chanakya, R/o. B-5, Anchillary, Bhanur Mandal, Patancheru, Medak-502305.
2. N.Ghanshyam Chankya, S/o. N.B.Chanakya, Aged about 51 years, Occ. Business, R/o. G2, Plot No. 887, HMT, Swarnapuri Colony, Miyapur, Hyderabad.

...PETITIONERS

AND

The Bank of India, rep. by its Authorized Officer Having its Head Office at Star House, C-5, Block, Bandra Kurla Complex, Bandra East Mumbai and Branch Amongst other places at Madhapur Branch, Plot No. 38, D.No. 98/11/3, Next to Amantran Hotel, Arunodaya Colony, Madhapur, Serilingampally, Hyderabad.

...RESPONDENTS

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, Order Or Direction more in the nature of Writ of Certiorari to call for the records pertaining to the order dated 11th July 2024 in IA No. 317 of 2024 in Miscellaneous Appeal Dy No. 546 of 2024 on the file of the Debt Recovery Appellate Tribunal, Kolkata in dismissing the appeal filed by the Petitioner under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 confirming the order dated 8th May 2024 passed by Debt Recovery Tribunal-2, Hyderabad in IA no. 502 of 2024 in OA no. 702 of 2019 and quash the same and consequently allow IA No. 502 of 2024 into OA No. 702 of 2019 on the file of Debt Recovery Tribunal-2, Hyderabad

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 stay all further proceedings in OA No. 702 of 2019 on the file of Debt Recovery Tribunal-2, Hyderabad, pending the present Writ Petition

Counsel for the Petitioner: SRI. SRIKANTH HARIHARAN

Counsel for the Respondent: --

The Court made the following: ORDER

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT PETITION No.22920 of 2024

ORDER: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. Srikanth Hariharan, learned counsel appears for the petitioners.

2. In this Writ Petition, the petitioners have assailed the validity of the order dated 11.07.2024 passed by the Debts Recovery Appellate Tribunal, Kolkata, by which the appeal preferred by the petitioners under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'the 1993 Act'), has been dismissed and the order dated 08.05.2024 passed by the Debts Recovery Tribunal-II, Hyderabad, by which the right of the petitioners to file the written statement was closed, has been upheld.

3. Facts giving rise to filing of this Writ Petition briefly stated are that Bank of India initiated a proceeding, namely, O.A.No.702 of 2019 against the petitioners under Section 19 of the 1993 Act. In the aforesaid proceeding, notices were issued to the petitioners and summonses were served.

However, within the prescribed time limit, the petitioners did not file the written statement. The petitioners thereafter filed an application, namely, I.A.No.502 of 2024 for setting aside the order dated 28.10.2022 *inter alia* on the ground that the petitioners had engaged a counsel who had assured petitioner No.2 that he would file the written statement. However, the learned counsel did not file the written statement. The petitioners thereafter engaged a new counsel and therefore, the delay has occasioned. The Debts Recovery Tribunal by an order dated 08.05.2024 rejected the aforesaid Interlocutory Application.

4. Being aggrieved, the petitioners filed an appeal. The Debts Recovery Appellate Tribunal in an appeal preferred by the petitioners under Section 20 of the 1993 Act, by an order dated 11.07.2024 *inter alia* held that the provisions of Section 19(5)(i) of the 1993 Act are mandatory in nature and the Debts Recovery Tribunal has the authority to permit filing of written statement within a period of thirty days and thereafter, only in exceptional cases and in special circumstances, the Debts Recovery Tribunal can extend the time limit by another period

of fifteen days. Admittedly, the petitioners did not file the written statement within the time limit prescribed under Section 19(5)(i) of the 1993 Act. In the aforesaid factual background, this Writ Petition has been filed.

5. Learned counsel for the petitioners submitted that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') were interpreted by the Supreme Court in **Kailash v. Nanhku and others**¹ which have been held to be directory in nature and it is further submitted that the provisions of Section 19(5)(i) of the 1993 Act and Order VIII Rule 1 of CPC are *pari materia* and therefore, the Debts Recovery Appellate Tribunal grossly erred in holding that Section 19(5)(i) of the 1993 Act are mandatory in nature. It is further submitted that suitable conditions be imposed on the petitioners and the written statement which has already been filed by the petitioners on 14.02.2024 be taken on record.

¹ (2005) 4 SCC 480

6. We have considered the submissions made by the learned counsel for the petitioners and have perused the record.

7. The 1993 Act is a special Act and has been enacted by taking into account the fact that the banks and financial institutions were experiencing considerable difficulties in recovering the loans and enforcement of securities charged with. The Parliament has also conscious of the fact that the procedure for recovery of debts due to banks and financial institutions which is being followed has resulted in significant portion of the funds being blocked. With the aforesaid object in mind, the Parliament has enacted the 1993 Act. Chapter IV of the 1993 Act deals with procedure of Tribunals. Section 19 of the 1993 Act provides for application to the Tribunal. Section 19(5)(i) of the 1993 Act which is relevant for the purposes of controversy involved in the instant case is extracted below for the facility of reference.

“19(5)(i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with

original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence.”

8. Thus, on perusal of Section 19(5)(i) of the 1993 Act, it is evident that the defendant in a proceeding has to file a written statement within a period of thirty days from the date of summons. Under proviso appended to Section 19(5)(i) of the 1993 Act, if the defendant fails to file the written statement within the period of thirty days, the Presiding Officer may in exceptional cases and in a special circumstances to be recorded in writing extend the said period by such further period not exceeding fifteen days to file the written statement of his defence. Thus, the authority of the Tribunal to grant the time to file written statement is limited to forty-five days. The Tribunal cannot extend the time beyond the period of forty-five days.

9. The provisions of Section 19(5)(i) of the 1993 Act were considered by Delhi High Court in **Anita Garg v. State Bank of**

India² and it was held that the provisions of Section 19(5)(i) of the 1993 Act which insofar as it prescribes that the time limit for filing the written statement on behalf of the defendant is mandatory even though no consequences for non-compliance are provided. In paras 30 and 32, it was held as under:

“30. The objective of the 1993 Act is expeditious disposal of cases for recovery of debts due to banks and financial institutions. A reading of 19(5) clearly shows that the written statement/counter-claim is required to be filed mandatorily within 30 days from the ‘date of service of summons’. Another period of 15 days maximum can be granted, only in exceptional cases and in special circumstances, which are to be found and recorded in writing by the Presiding Officer while granting extension by upto 15 days. These strict timelines of 30 days, and 15 days thereafter, as mandated in section 19(5) are in consonance with the objective sought to be achieved by the Recovery of Debts and Bankruptcy Act, 1993. The strict timelines for filing written statement and counter claim is account of the fact that DRT is adjudicating on disputes involving huge amounts of public money, and if any delay is permitted in the adjudication of those disputes, the same will result in locking up of huge amounts of public money which further would prevent utilization and recycling of those funds for the development of the country. The use of the pre-emptory words “not exceeding fifteen days” in the proviso of Section 19(5)(i), limits the discretion of the DRT to extend the time for filing the written-statement/counter claim, not beyond fifteen days and, that too, in strict compliance of the conditions viz. “in exceptional cases and in special circumstances to be recorded in writing”. The condition has been laid down, so as to guide the DRT not to condone the delay in a routine manner, liberally or casually only “in the interest of justice”. The bar set by the Parliament for

² 2021 SCC OnLine Del 4311

exercise of discretion by the Presiding Officer to condone delay in filing the written statement/counter-claim/set-off is higher than mere existence of "sufficient cause".

32. Though, Section 19(5)(i) does not, in terms, provide for the forfeiture of the right to file the written statement, if it is not filed within the stipulated time, or the extended time that could and may be granted, in our view, the consequence would be the same, as the written statement filed beyond the stipulated time, or extended time which could legally be granted for that purpose, cannot be brought on record. The intention of the Parliament can be gathered not only from the Statement of Objects and Reasons set out hereinabove, but also from the outer limit of time, for which extension may, in a deserving case - by following the guideline laid down in the Section, be granted. The proceedings before the DRT are also proceedings arising out of commercial dealings and the disputes are commercial disputes. It would not stand to reason, that while the Parliament sought to enforce strict timelines for expeditious disposals of commercial disputes by enacting the Commercial Courts Act, it did not do so in respect of disputes of the same kind, decided by the Debt Recovery Tribunals. The only reason for not incorporating the forfeiture clause in Section 19 is, that the existing provision contained in Section 19 leads to the same conclusion."

10. Similar view has been taken by a Division Bench of Madhya Pradesh High Court in **M/s. Crest Steel and Power Private Limited vs. Punjab National Bank**³ and in paras 13, 19, 20 and 21, it has been held as under:

"13- A reading of the Act would show that it is a complete Code providing for a Forum for adjudication of claim of the

³ 2019(1) MPLJ 703

secured creditors and also to the procedure to be followed by the Adjudicating Authorities under the Act. It also mandates to ensure that there is expeditious disposal of the claim of the secured creditors, as huge public money is locked up on account of defaults of borrowers. Sub-section (4) of Section 19 of the Act provides for a show cause within thirty days of service of summons as to why relief prayed for should not be granted. In terms of sub-section (5), the defendant has to file written statement of his defence within a period of thirty days, including claim for set-off under sub-section (6) or a counter-claim under sub-section (8). The first proviso contemplates that the Presiding Officer in exceptional cases and in special circumstances can extend the period for filing of written statement, but not exceeding 15 days. In other words, the time prescribed for filing of written statement is normally thirty days, but can be extended in certain circumstances by another fifteen days. The argument of petitioners is that such provisions are directory relying upon Kailash's case.

19- Therefore, not only there was earlier Larger Bench judgment in Dr. J.J. Merchant's case (supra), but later Three Judges Bench while considering somewhat similar provisions contained in the Consumer Protection Act, 1986, held that the time fixed for filing written statement cannot be extended. Therefore, in view of the order passed by the Supreme Court in Hilli I (supra), the period of thirty days is mandatory keeping in view the object of the Act for expeditious disposal of the claim of the secured creditors. The intention for expeditious disposal is implicit, when sub-section (24) of Section 19 mandates the Tribunal to conclude the proceedings within two hearings.

20- Therefore, keeping in view the object and purpose of the statute, we find that written statement was required to be filed within thirty days, which could in exceptional cases or in special circumstances be extended by the Tribunal by another fifteen days. In the present case, the petitioners' were informed by show-cause notice that they have to file their written statement within thirty days. The claim of the Bank is for recovery of over Rs.1400 Crores. Therefore, the provisions of the Act have to be assigned the meaning which is keeping in view the objective of the Act rather than to frustrate the object.

21- Therefore, we find that the petitioners have lost their right to file written statement, having failed to do so within thirty days and also in the additional fifteen days.”

11. Admittedly, the petitioners filed the written statement on 14.02.2024 i.e., nearly after a period of 1½ years from the date of expiration of the time limit prescribed under Section 19(5)(i) of the 1993 Act. The timeline provided for under Section 19(5)(i) of the 1993 Act is in consonance with the object sought to be achieved by enactment of the 1993 Act. The Debts Recovery Tribunal while dealing with the disputes under the 1993 Act deals with huge amounts of public money and if any delay is permitted in adjudication of the disputes, the very object and purpose of the enactment shall be defeated. Therefore, we are in respectful agreement with the view taken

by Delhi and Madhya Pradesh High Courts. The decision relied on by the learned counsel for the petitioners in **Kailash** (supra) has no application to the facts of the case as the CPC is a general law whereas the 1993 Act is a special law and therefore, its provisions are to be construed differently.

12. For the aforementioned reasons, the order dated 11.07.2024 passed by the Debts Recovery Appellate Tribunal does not suffer from any infirmity warranting interference of this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

13. In the result, the Writ Petition fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

SD/- P. PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. One CC to SRI. SRIKANTH HARIHARAN, Advocate [OPUC]
2. Two CD Copies
B M
GJP

me.

HIGH COURT

DATED:22/08/2024



ORDER

WP.No.22920 of 2024

**DISMISSING THE WRIT PETITION AS
WITHDRAWN WITHOUT COSTS**

④ PMG.
28/9/24.