

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.No.18178 of 2007

Dated:31.08.2007

Between:

Tirumala Co-operative Urban Bank Ltd., Abids, Hyderabad, rep. by
its Branch Manager.

..Petitioner.

and

B. Surender Reddy and others.

..Respondents.

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ORDER:

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One M/s. Burger King, represented by 3rd respondent herein, obtained a loan of Rs.5,00,000/- on 08.12.1999 from the petitioner Bank. The loan was not repaid. It is stated that in the year 2003, at the instance of 3rd respondent, it was converted into another loan for a sum of Rs.6,00,000/- with the participation of respondents 1 and 2 herein, and by execution of mortgage deed. Since there was default in payment of this amount also, the petitioner initiated proceedings before the 4th respondent and obtained a recovery certificate, dated 01.03.2005 for a sum of Rs.7,08,627/-. Aggrieved thereby, respondents 1 to 3 filed CTA No.91 of 2007 before the Andhra Pradesh Co-operative Tribunal, Hyderabad. They also filed I.A. No.627 of 2007 for stay. After hearing both the parties, the Tribunal granted stay on condition that respondents 1 to 3 deposit a sum of Rs.2,00,000/- . The same is challenged in this writ petition.

Heard the learned counsel for the petitioner and the learned

counsel for the respondents.

There is some dispute as to whether the loan has been re-scheduled or it was converted into another independent loan. However, the fact that the 3rd respondent borrowed a sum of Rs.5,00,000/- on 08.12.1999 in the name of M/s. Burger King, and that by 2003, a sum of Rs.6,00,000/- and that he did not repay the same, is not disputed. Even assuming that the second loan was not either processed or advanced, the liability of 3rd respondent to pay a sum of Rs.6,00,000/- in the year 2003 is no way disputed. With the accrued interest, it became Rs.7,08,627/- by 01.03.2005,

For all practical purposes, the recovery certificate issued under the Andhra Pradesh Co-operative Societies Act, 1964 is a decree for money. While granting stay of execution of the decree, the appellate Court has to protect the interests of both the parties. Normally, such a decree is stayed pending appeal, on condition that half of the disputed amount covered by the decree is deposited. Any deviation from this must be supported by strong reasons. No such reasons exist in the instant case. Therefore, the Tribunal ought to have ensured that half of the amount involved, is to be paid as a condition for granting stay.

For the foregoing reasons, the Writ Petition is disposed of, modifying the order under challenge to the effect that respondents 1 to 3 shall deposit Rs.3.5 lakhs instead of Rs.2,00,000/- subject to the same terms and conditions on or before 30th September, 2007. There shall be no order as to costs.

L. NARASIMHA REDDY, J

Dated:31.08.2007

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