

(2002) 04 MP CK 0042

In the Madhya Pradesh High Court

Case No : Writ Petition No. 503 of 2002

Aartech Solonics Ltd. and Others

APPELLANT

Vs

The Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22

Citation : AIR 2003 MP 27 : (2002) 4 MPLJ 124

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; Rajesh Mandiretta, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Present Writ Petition is preferred against the order dated 2nd January, 2002 passed by the Debts Recovery Tribunal rejecting the prayer of the petitioners for cross-examining the witnesses.

The petitioners have taken a defence that the application filed by the Bank is not within the limitation; the revival letters dated 17-3-1994 and 12-2-97 have been obtained by mis-representation and coercion as such these documents cannot be acted upon. Defendant No. 1 and its Directors were misled; no agreement was executed to create mortgage; the officials of the Bank were in a position to dominate the Will of the defendant No. 1 and its Directors and got several documents signed which were blank at the time of signing the documents. Several documents were not properly executed.

Petitioners filed an application that the above questions can be threshed out in cross-examination. Right of cross-examination is the part of rules of natural justice. Evidence of witnesses can be said to be complete only when there is

examination and cross-examination; the Bank opposed the application; the Tribunal has rejected the application on 2nd January, 2002; present writ petition has been preferred against the same.

Learned counsel appearing for the petitioners submits that the Tribunal has gravely erred in law in rejecting the application; the Tribunal has erred in law in relying upon the objects of the Act; unnecessary and unwarranted observations with regard to the persons who had borrowed loans from the Banks and Financial Institutions have been made by the Tribunal. The order passed is most untenable. The decision of the Apex Court with regard to importance right of cross-examination has not been considered. In *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, the Apex Court has held that proceeding before the Tribunal is in the nature of civil suit. It is also submitted that when a witness has stated in examination-in-chief and the same has not been challenged by way of cross-examination, the same is deemed to be an admitted fact. Reliance is placed on *Punjab Rao v. D. P. Meshram*, 1965 MPLJ 257, *Kishore Singh v. Bhanwarlal*, 1966 MPLJ 563, and *Sri Baru Ram Vs. Prasanni and Others*, . Because deponents have filed their affidavits, it would be treated as examination-in-chief, thus, opportunity of cross-examination ought to have been afforded. In case opportunity of cross-examination is not afforded, then examination-in-chief cannot be read into evidence and a decree passed on affidavit evidence would be a nullity. The Tribunal further erred in imposing cost of Rs. 5,000/- on the petitioners,

Learned counsel appearing for the Bank submits that the recovery application was filed by the Bank on 2-2-2000. The tactics adopted by the petitioners are that of delaying the matter and derailing the fast-track procedure. No Interference is called for in the writ jurisdiction of this Court.

It be noted that application for recovery was filed by the Bank on February 2nd, 2000; initially the appearance was put by petitioners; time was sought for filing counter-affidavit. An application under Rule 12 (6) the Debts Recovery Tribunal (Procedure) Rules, 1993 was filed for direction that the affidavits of Shri R.S. Chauhan, Shri Mukesh Khare, Shri Gopal Rathore, Shri R. K. Jain and Shri A. M. Khan filed on behalf of the Rank be ignored. This application was heard and dismissed on August 7th, 2000. An application was filed before the Debts Recovery Tribunal to give time to file an appeal against the order dated 7th August, 2000 which was allowed; thereafter the present application was filed after more than one year on 20th July, 2001; after one year from the date of filing reply to the original application.

Tribunal has come to the conclusion that delay in filing the application has not been explained. The Tribunal has given the detailed reasons for not allowing the application. The Tribunal has also observed that Tribunal is under obligation to make an endeavour to dispose of the application within six months.

The first submission raised by the petitioners is that an affidavit cannot be

considered to be an evidence. Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993") clearly provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice; they are having power under Clause (c) of Sub-section (2) of Section 22 to receive evidence on affidavit. They have also power to summon and enforce the attendance of any person and examining him on oath. The Debts Recovery Tribunal is a Tribunal constituted with special purpose and legislature has provided for just procedure for adjudication of such application relating to recovery of public money. Section 22 of the Act of 1993 clearly provides that provisions of CPC are not binding on the Tribunal, but the guiding principles are principles of natural justice. The affidavit is a tangible piece of evidence under the Act of 1993. The provisions of the Act of 1993 aims at providing fast track procedure to the applications filed by the Banks and other Financial Institutions. It is open for the Tribunal to receive the evidence by affidavits; ordinarily affidavit is a piece of evidence. Simply by the fact that the Tribunal has not allowed the application for the reasons stated in the order, it cannot be said that the Tribunal has acted in utter violation of law. There is jurisdiction with the Tribunal to allow such an application or to disallow it; the discretion has to be properly exercised on sound principles. Rule 12(6) of Debts Recovery Tribunal (Procedure) Rules, 1993 reads as under :--

"12(6) The Tribunal may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Tribunal thinks reasonable;

Provided that where it appears to the Tribunal that either applicant or defendant desires the production of a witness for cross-examination, and that such witness can be produced an order shall not be made authorising the evidence of such witness to be given by affidavit."

Reliance placed by the petitioners on the decisions with respect to right of cross-examination is riot of any help at all. Apprehension of the petitioners that in case no cross-examination is made on affidavit, it has to be taken to be an accepted fact is not true. What is evidentiary value of the affidavit is to be considered by the Tribunal while passing the final judgment, and whether the petitioners have been able to make out a case for disbelieving the affidavit. The only question adverted to by the Debts Recovery Tribunal at this stage is whether cross-examination is required as to the contents of the affidavits.

This Court need not go into the merits of the order at all as it is an interlocutory orders. In Punjab National Bank Vs. O.C. Krishnan and Others, , it was emphasised by the Apex Court that Act of 1993 has been enacted with a view to provide special procedure for recovery of debts due to Banks and Financial Institutions. As emphasised by Apex Court the fast-track procedure cannot be allowed to be derailed by taking recourse to the proceedings under Articles

226/227 of the Constitution against interlocutory orders or by filing a civil suit when Act of 1993 provides complete procedure, Legislature mandate which is proper has to be given full meaning and effect.

It is settled law that in the matters involving interlocutory orders ordinarily this Court need not interfere until and unless gross jurisdictional error has been committed by the Tribunal. In *State Bank of India Vs. Shri Shyamji Sales and Others*, it was laid down by Division Bench of this Court that in the context of the Act of 1993 at an interlocutory stage and when remedy of appeal is provided, no interference should be made. In the instant case clearly an attempt was made in scuttle the hearing of the matter and decision by the Debts Recovery Tribunal and to derail the procedure from fast track prescribed u/s 19 of the Act of 1993. The decision of ICICI Ltd. (supra) lays down that even an interim order of Tribunal can be looked into in certain circumstances, but I do not find that any such circumstance is available in the instant case.

The sufficiency of the reasons adopted by the Tribunal cannot be a ground which can be allowed to be raised in the writ petition particularly when if a final judgment is ultimately passed against the petitioner; the remedy of filing an appeal is available. Simply by the fact that on such an appeal being preferred, legislature has provided right of appeal on deposit of certain amount cannot be considered to be an oppressive condition. Section 21 of the Act of 1993 provides that an amount of 75% has to be deposited but at the same time there is power with the appellate Tribunal for reasons to be recorded in writing to waive or reduce the amount to be deposited u/s 21.

In *Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay*, the Apex Court considered similar provision under the Customs Act and observed that right of appeal contemplated under Sections 129A and 129E is a conditional one and the legislature in its wisdom has imposed that condition of depositing duty demanded or penalty levied. The right is a conditional one and the Legislature in its wisdom has imposed that condition. No question of whittling down that right by an alteration of procedure arises. In para 9 their Lordships held that right to appeal is neither an absolute right nor an Ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

In *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, , the Apex Court considered the provisions of appeal u/s 170(b) and observed that resort to Articles 226/227 should be discouraged when there is an alternative remedy.

The order impugned is an interlocutory order; no final judgment has been passed; against the final judgment remedy of appeal is provided and it is open to the petitioners to raise such question ultimately in an appeal which may be filed against the final order. In my opinion, this Court should refrain from exercising

the jurisdiction under Articles 226/227 of the Constitution of India.
I find no merit in the writ petition. It is dismissed. Cost on parties.