

(2002) 04 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6091 of 2001

A.B. Joglekar and Another

APPELLANT

Vs

Debts Recovery Tribunal and Another

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21

Citation : (2004) 3 BC 41 : (2002) 5 MPHT 187 : (2002) 4 MPLJ 521

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : P.R. Bhave, for the Appellant; S. Khirwadkar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioners are challenging the judgment passed by the Debts Recovery Tribunal in T.A. No. 917/98 decided on 13th July, 2000 as per Annexure P/4.

An application was filed for setting aside the ex parte judgment which application was dismissed by Debts Recovery Tribunal on 15th October, 2001 as per order Annexure P/5.

It is the consistent view taken by this Court that in the judgment passed by the Debts Recovery Tribunal, interference has not to be ordinarily made in the writ jurisdiction of this Court, This Court has consistently followed the decision of Punjab National Bank Vs. O.C. Krishnan and Others, , in which it was emphasized by their Lordships that the Recovery Act has been enacted with a view to provide special procedure for recovery of debts due to the Banks and Financial Institutions, There is a hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the

Constitution or by filing a civil suit which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said provisions of the constitution. A Division Bench of this Court in *State Bank of India Vs. Shri Shyamji Sales and Others*, following the decision of *Punjab National Bank v. O.C. Krishnan*, (supra) has held that ordinarily when an appeal is provided, no interference should be made under Article 226/227 of the Constitution of India.

Learned Counsel for petitioners had placed reliance on a decision of the Supreme Court in *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, , to contend that this Court can interfere in the writ jurisdiction even in appropriate cases in order passed by the Tribunal.

Firstly final judgment has been passed; statutory remedy of appeal is available and I am not satisfied that there is any jurisdictional error committed by Debts Recovery Tribunal warranting any interference outrightly in the writ jurisdiction of this Court.

Learned Counsel for petitioners contend that Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an amount of 75% is required to be deposited as such it cannot be said to be an effective remedy. In my opinion, when legislature has considered in its wisdom that 75% of the amount of debt determined by the Tribunal should be deposited, that remedy cannot be given a go-by on the ground that it requires deposit of 75% of the amount. There is a power with the Appellate Tribunal, for the reasons to be recorded in writing, to waive or reduce the amount to be deposited u/s 21. Remedy of appeal is the proper and efficacious remedy; it aims at speedy recovery of public money.

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 u/s 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 and 227 should be discouraged when there is an alternative remedy,

Since the petitioner is having the remedy of filing an appeal u/s 20 of the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is equally efficacious, I am not inclined to make any interference in the writ petition of this Court. This writ petition is dismissed. Cost on parties.