

(1999) 02 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 357 of 1999

Agarwal Tubes (P.) Ltd.

APPELLANT

Vs

Debt Recovery Tribunal

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20, 20(6)

Citation : (2002) 110 CompCas 633 : (1999) 2 RLW 735 : (1999) 3 WLC 106 : (1999) 1 WLN 250

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Relying upon the judgment of the Madras High Court in the case of Gemini Arts (P.) Ltd. v. Indian Bank [1999] 95 Comp. Cas. 345, it was submitted by the learned counsel Shri Kothari that though this petition is filed against the interlocutory order this Court should entertain this petition as the post of Presiding Officer of Debt Recovery Appellate Tribunal is vacant and, therefore, his appeal could not be decided till date.

2. Before dealing with the aforesaid submission, a few facts are required to be stated in this matter, which are as under :

The petitioner is a private limited company and respondent No. 3, the State Bank of Bikaner and Jaipur filed a suit for recovery before the Debt Recovery Tribunal--respondent No. 1 against the petitioner for recovering huge amount of more than one crore which was taken by the petitioner from the bank by way of loan under the provisions of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 ("the Act") which was registered as O.A. No. 302 of 1996 pending before respondent No. 1 Tribunal.

3. During the pendency of that suit, the petitioner filed an application on 11-12-1997, stating that the bank had made certain material alterations in the revenue documents which are sought to be relied upon by the bank in the suit filed by the bank, therefore, the said documents be called from the office of the Registrar of Companies, Jaipur, and produce it before the Tribunal. The said interim application for production of document was rejected by the Tribunal vide order dated 4-3-1998 (Annexure 1} on the grounds that: (i) on earlier occasions also such applications made by the company were rejected, (ii) the evidence is also led by the parties on 31-3-1997, and the matter was kept for final arguments on 2-5-1997, and (iii) the company in its reply admitted about the term loan of Rs. 47 lakhs and the loan document, therefore, the application was without any basis. The learned Tribunal further held that the bank had also accepted the fact in its reply, therefore, there is no question of calling for the loan papers of the contract from the Registrar of Companies nor any enquiry is required to be made in the matter.

4. The Tribunal also observed that for hearing such applications a brief procedure is prescribed under the Act but the petitioner had already taken six adjournments for the purpose of final arguments and on seventh adjournment such application was submitted by the company, but the Tribunal made it clear that the application was not rejected on that ground. The Tribunal also made it clear that so far the question regarding stamp duty, the matter will be heard on that point at the time of final arguments. Accordingly, the matter was fixed on 4-5-1998, by the Tribunal.

5. Aggrieved by the aforesaid order at Annexure 1 passed by respondent No. 1-Tribunal, the petitioner-company preferred an Appeal No. 347 of 1998 before the Debt Recovery Appellate Tribunal, Bombay, on 31-7-1998. The petitioner has also produced the copy of rojnama (Annexure 3) of the Appellate Tribunal and the copy of the notice dated 12-10-1998 (Annexure 2) issued by the Appellate Tribunal. From the rojnama (Annexure 3) it appears that the post of Presiding Officer fell vacant only from 15-10-1998, therefore, the appeal before the Appellate Tribunal was adjourned on that ground on 15-10-1998, 9-11-1998, and lastly on 11-1-1998.

6. The learned counsel Shri Kothari submitted that the appeal filed by the petitioner before the Appellate Tribunal was required to be decided on or before 31-1-1999, but the same could not be decided, therefore, he is remedyless. He submitted that u/s 20(6) of the Act, the appeal is required to be disposed of as expeditiously as possible finally within six months from the date of receipt of appeal.

7. In the case of Gemini Arts (P.) Ltd. (supra), the Madras High Court made the observation that, "the High Court may entertain the petition against interlocutory orders, however, since the petitioners had filed writ petitions against ex parte interim orders, the High Court observed that after final orders were passed by the Tribunal on such applications, the aggrieved parties were free to approach

the High Court again on the merits of each case".

8. There are a number of cases decided by the Apex Court, wherein, it has been held by the Apex Court that the High Court should not entertain the petition against the interlocutory order. At the most it can be said that the Madras High Court made passing observations that the High Court may entertain petition against the interlocutory orders. However, in that very case the Madras High Court refused to entertain the petition against the interlocutory order and only made observations that, "the aggrieved parties were free to approach the High Court on the merits of each case". Thus, the aforesaid judgment of the Madras High Court has no relevance to the facts of this case.

9. That apart, the conduct of the petitioner-company is required to be condemned in strongest words. It appears from the order at Annexure 1 passed by the Tribunal that on as many as six occasions adjournment was sought by the company for arguing the matter finally and on the seventh occasion, i.e., on 4-5-1998, instead of arguing the matter finally before the Tribunal, the petitioner-company submitted an application for production of documents from the Registrar of Companies. Thus, it appears that the petitioner-company has adopted the delay tactics in disposal of the suit filed by the other side. From the order at Annexure 1 it also appears that while rejecting the application for production of documents from the Registrar of Companies the Tribunal fixed the case for final arguments on 4-5-1998. However, there is nothing on record to show that what happened on 4-5-1998, and thereafter before the Tribunal. The order at Annexure 1 passed on 4-3-1998, by respondent No. 1 -Tribunal is purely an interlocutory order against which the petitioner has filed appeal only on 31-7-1998, before the Appellate Tribunal, Bombay. There also the petitioner-company has adopted the delaying tactics which is clear from the rojnama at Annexure 3. It appears that some order was passed by the Presiding Officer of Appellate Tribunal on 31-7-1998, but the same was not complied with till 25-8-1998. On that day, ie., 25-8-1998, the time was prayed for by the advocate of the petitioner-company to comply with the order dated 31-7-1998, and accordingly once again time was granted. However, on 7-9-1998, the advocate of the petitioner-company was not present and once again time was asked for to comply with other objections by Shri Nagarmal Agarwal, who appeared in person for the company. Once again time was granted by the Presiding Officer till 9-10-1998. After complying with the objection, notice was issued on 12-10-1998, by the Appellate Tribunal in appeal against the bank. Thus, more than two months time was taken by the petitioner-company itself in clearing the objections before the Appellate Tribunal. The matter could not be heard from 15-10-1998, till today because the post of Presiding Officer of Appellate Tribunal fell vacant. In that view of the matter, no grievance can be made by the petitioner-company that the appeal was not disposed of early, which ought to have been decided as expeditiously as possible preferably within six months as provided u/s 20(6). It does not stand good. The petitioner should blame itself for adopting such delay tactics before the Appellate Tribunal. Even if the writ petition

was maintainable against such interlocutory order passed by respondent No. 1 Tribunal then on the merits also the petition was required to be dismissed. When I asked the learned counsel Shri Kothari that should I decide the matter on merits or not, at that time the learned counsel submitted that it may not be decided on the merits by this Court because the impugned order at Annexure 1 passed by respondent No. 1 is already challenged by the petitioner-company before the Appellate Tribunal in appeal. He submitted that if this Court decides the petition on the merits then this appeal before the Appellate Tribunal would become infructuous and meaningless. He, therefore, requested that this petition may not be decided on the merits. Under the circumstances, I refrained myself to decide the matter on the merits, even if it is to be assumed that the petition was maintainable on the merits.

10. This is a petition under Article 227 of the Constitution of India, the scope of which is very narrow and limited as held by the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, that even error on law cannot be corrected by this Court, and this is a petition against the interlocutory order and this Court cannot entertain such petition.

11. At this stage, the learned counsel Shri Kothari submitted that office should have treated this petition as a D.B. civil writ petition and placed it before the Division Bench of this Court and not before the single Bench of this Court in view of the Supreme Court judgment in the case of L. Chandra Kumar Vs. Union of India and others,

12.1 must state that after arguing the matter for quite some time and at the end of judgment this prayer was made by Mr. Kothari, which is too late in the day. I am of the view that if at all the petition was maintainable before the Division Bench then the learned counsel should have immediately mentioned this fact as soon as the matter was called out.

13. In view of the above discussion, I do not find any substance or merit in this petition and accordingly it fails and is hereby dismissed.