
(2012) 07 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14412 of 2011

A.K. Sinha and Another

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2013 P&H 5 : (2013) 2 BC 325

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : C.S. Pasricha, for the Appellant; Alok Jagga, for the Respondent

Final Decision : Dismissed

Judgement

Gurmeet Singh Sandhawalia, J.—The petitioners have filed the present writ petition under Article 226/ 227 of the Constitution of India for quashing the order dated 4.7.2011 (Annexure P-1) passed by the Debt Recovery Appellate Tribunal, New Delhi (hereinafter called as "the DRAT") whereby the petitioners have been directed to deposit 50% of the amount of recovery certificate and with a further prayer for issuance of writ in the nature of Mandamus directing the DRAT to consider and decide the appeal filed by the petitioners against the order dated 18.6.2003 passed by the Debt Recovery Tribunal, Chandigarh (hereinafter called "the Tribunal"). From a perusal of the file, it would show that vide order dated 18.6.2003 recovery certificate was issued in favour of the respondent bank for a sum of Rs. 1,39,31,294/-along with pendente lite and future interest with quarterly rests from the date of filing of the case till its realisation under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called as "the Act"). The petitioners preferred an appeal before the DRAT against the said order which was dismissed in default on 20.2.2006 and application for restoration of the appeal was dismissed on 24.12.2009 as it had refused to condone the delay. The petitioners had thereafter preferred Civil Writ Petition No. 20258 of 2010 before this Court which was accepted on 12.1.2011 and the case

was remanded to the DRAT to consider whether there was any ground made out for waiving or modifying the deposit of the decretal amount before the appeal of the petitioner could be heard on merits by affording an opportunity to the petitioner-company to deposit Rs. 20 lacs within a period of 30 days. It was also clarified that no direction for hearing the appeal on merits were being issued therein. It was further provided that in case the amount was not deposited, the appeal was liable to be dismissed. In pursuance of the order of this court, the DRAT admitted the appeal on 18.2.2011 subject to the petitioner's deposit of 75% of the principal amount in the sum of Rs. 1,39,31,294/- minus pendente lite and future interest within four weeks. The petitioners were also entitled to adjust the amount of payment made after the certificate was issued including Rs. 20 lacs paid as per the order passed by this Court. Aggrieved against the said order, the petitioners again approached this Court by filing Civil Writ Petition No. 3987 of 2011. This Court vide order dated 14.3.2011 permitted the petitioners to withdraw the writ petition and to move a review application before the DRAT. Resultantly, the petitioners filed review application whereby they sought complete waiver of the requirement of pre-deposit in terms of provisions of Section 21 of the Act. The said application was opposed by the bank. The DRAT thereafter vide order dated 4.7.2011 allowed the review application and reduced the pre-deposit of amount to 50% of the principal amount and also adjusted Rs. 20 lacs which had been deposited in pursuance of the order of this Court. The amount was to be deposited within four weeks failing which the stay granted in their favour would stand vacated and bank could proceed against the petitioners as per law. Resultantly the present writ petition came to be filed.

2. It is pertinent to mention here that the bank also filed Civil Writ Petition No. 20871 of 2011 challenging the same order which has been dismissed as not pressed.

3. Counsel for the petitioner has submitted that the petitioner No. 2 had fallen in losses due to non grant of licence from the Department of Telecom (DOT) for which litigation had ensued and an Arbitrator had been appointed and thus there were financial constraints regarding deposit of the amount. The submission of the petitioners cannot be accepted as per the provisions of Section 21 of the Act wherein an appeal is to be preferred by the person regarding debt due to the bank, the Appellate Tribunal shall not entertain the appeal unless 75% of the amount due as determined by the Tribunal u/s 19 of the Act is deposited. The provision further provides that for the reasons recorded in writing, the amount can be reduced or waived. Section 21 of the Act reads as under:-

21. Deposit of amount debt due, on filing appeal:-- Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

4. This Court earlier also while setting aside the order of the Tribunal where it had declined to restore the case to test the bona fides of the petitioner had noticed that the right of appeal is a conditional one and the compliance of pre-deposit had to be made and to check the bona fides of the petitioners had directed the petitioners to deposit a sum of Rs. 20 lacs. The DRAT while admitting the appeal directed the petitioner to deposit 75% of the principal amount minus pendente lite and future interest after adjusting a sum of Rs. 20 lacs which was deposited in pursuance of the order of this Court. The petitioners had challenged the said order dated 18.2.2011 by filing Civil Writ petition No. 3987 of 2011 and had been relegated to the remedy of filing review. The DRAT has now further reduced the amount from 75% to 50% of the principal amount which is Rs. 1,39,31,294/-minus pendente lite and future interest after adjusting a sum of Rs. 20 lacs which was deposited in pursuance of the order of this Court. Thus, sufficient indulgence has been shown to the petitioners and the Appellate Tribunal has already given the benefit of the provisions and reduced the amount to 50%. The Tribunal had issued recovery certificate dated 18.6.2003 and the petitioners have been raking up the issue time and again and delaying the proceedings for almost a decade and taking advantage of the interim order. The discretion exercised by the DRAT thus cannot be held to be unjustified and interfered with by this Court as there is no special reason shown in the above facts and circumstances of the case.

5. Reliance upon the judgment of the Madras High Court in Chand Narain Langar Vs. Punjab and Sindh Bank and Others would not be of any help to the petitioners in the facts and circumstances of the present case as in that case, 100% pre-deposit was dispensed with on the ground that the petitioner therein was a senior citizen who was suffering from cancer having no source of income had undergone chemotherapy and was under severe financial constraints.

6. Accordingly, the present writ petition is dismissed. However, the petitioners are granted liberty to comply with the order dated 4.7.2011 within a period of six weeks from the receipt of a certified copy of this order failing which condition of vacation of stay ordered by DRAT would come into play. The writ petition is accordingly dismissed in the above said terms.