
(2011) 01 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20258 of 2010

A.K. Sinha and Another	Vs	APPELLANT
Canara Bank and Another		RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

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

Citation : (2011) 162 PLR 795 : (2011) 5 RCR(Civil) 852

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.

1 Department of telecommunication has invited open fresh tenders for grant of franchise licences for the establishment/installation/commissioning of

radio paging services in 27 major cities of India. The bid of Petitioner No. 2-Company was objected, which was impugned through writ petition

No. 3774 of 1992 before the High Court of Delhi. The said writ petition was decided in favour of the Petitioner-Company and the Department of

the Telecommunication issued letter of intent in favour of the Petitioner-Company. Licence agreements for 8 cities, accordingly, were signed by the

Petitioner-company with the Department of Telecommunication. The bank guarantees were also issued for the purpose of grant of licence, which

were to be governed in accordance with the specific terms and conditions of the Draft Licence Agreements and Indian Contract Act.

2. The grievance of the Petitioner is that the Respondent-Bank released the bank guarantees to the Department of the Telecommunication and

simultaneously encashed the deposit receipts deposited with the bank. The litigation ensued between the parties. The company requested the bank

to restore the FDRs. Some criminal complaints were also filed. In the meantime, the Respondent-Bank filed original application for recovery where

the Debts Recovery Appellate Tribunal has passed an order for recovery of certain dues claimed by the bank. It is stated that the Debts Recovery

Appellate Tribunal adjudicated upon the civil as well as the criminal liability.

3. The Petitioner-Company filed an appeal against the order passed by the Debts Recovery Appellate Tribunal, where another counsel was

engaged. As per the provisions of Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act"), the

appeal filed by the Petitioner can be heard only if 75% of the decretal amount is deposited. The predeposit of decretal amount, however, can be

reduced/waived by the Appellate Tribunal.

4. No. reduction or waiver was granted. The appeal was ultimately dismissed on 20.2.2006. As per the Petitioner-Company, this order did not

come to knowledge of the Petitioner as its counsel never informed the Petitioner about the same. As averred, this order came to the notice of the

Petitioner on 24.9.2008. Thereafter, the Petitioner-Company had filed an application for restoration of the appeal, which has been dismissed on

24.12.2009. Against this order, the Petitioners have now filed this writ petition.

5. Counsel for the Respondent-bank has drawn my attention to the impugned order, where reasonable opportunities were given to the Petitioner-

Company to deposit some amount to show bonafides but the Petitioner-Company failed to do so and its application for restoration of the appeal

was dismissed. Conceded position is that the Petitioner-Company has not deposited any part of the decretal amount so far. It is also not disputed

that as per Section 20 of the Act, the appeal of the Petitioner-Company can be heard and adjudicated only if either 75% of the decretal amount is

deposited or it is reduced/waived and the amount is, accordingly, deposited. Thus, the Petitioner can seek adjudication of the appeal only if 75%

of the decretal amount is deposited unless the same is modified or waived in any manner. No. modification or waiver of this amount has so far been

ordered.

6. Considering that normally a party has a right to seek adjudication on merits, the counsel for the Petitioners was given an option to deposit some

amount to show his bonafides. The counsel, on receipt of proper instructions,

submits that the Petitioners are prepared to deposit a sum of Rs. 20 lacs, for being heard and then the Appellate Tribunal can consider the plea of the Petitioner for modification or waiver of the amount required as pre deposit for hearing of the appeal on merits. Though the counsel for the bank has opposed this prayer on the ground that crores of rupees of decretal amount is due against the Petitioner-Company and the litigation is pending since 2003 with decree standing in favour of the bank since 2003, so the Petitioners should not be shown any concession.

7. I have considered the rival contention raised before me. I am of the considered opinion that the Petitioner-Company may deserve on chance to make plea in appeal. The right of appeal has been made conditional and the appellate authority is given a discretion to either waive or modify the payment of decretal amount before the appeal is heard on merits. The right of appeal is available but a conditional one. Unless the Petitioners comply with the condition or alternatively the same is waived or modified in any manner, the Petitioners may not be entitled to be heard on merits. Since the Petitioners have shown some bonafides, by making offer to deposit an amount of Rs. 20 lacs, the Petitioners may deserve one chance by remanding the case back to the Appellate Tribunal to consider whether there is any ground made out for waiving or modifying the deposit of decretal amount before the appeal of the Petitioner is heard on merits. That discretion is of the Appellate tribunal and should be exercised in view of the parameters of law as laid down. It is only another chance or right or opportunity is being granted to the Petitioner to raise all the pleas in this regard. It would be entirely in the discretion of the Appellate Tribunal to modify or to waive of the decretal amount and to hear the appeal if the Petitioners comply with any such direction for depositing the amount.

8. With the above observation, the impugned order setting aside the application for restoration of appeal, is set aside and the case is remanded back to the Debts Recovery Appellate Tribunal, for affording an opportunity to the Petitioner-Company only if it deposits an amount of Rs. 20 lacs before the Tribunal within a period of 30 days from today. It is made clear that No. direction for hearing the appeal on merits is being issued. Only right to hear the prayer for waiving or reducing the deposit of decretal amount is granted. In case, the amount is not deposited by the Petitioners,

the appeal shall be liable to be dismissed. In case the Petitioners deposit this amount within the specified period before the Tribunal, his case for being heard for reducing or waiving the decretal amount for finally hearing the appeal on merits may be considered. The Bank would be at liberty to move an application before the Debts Recovery Appellate Tribunal for depositing the amount of Rs. 20 Sacs against the liability of the Petitioners towards the bank. The writ petition is, accordingly, disposed of.