(2004) 04 CHH CK 0001

In the Chhattisgarh High Court

Case No : Writ Petition No. 194 of 2004

Amit Kumar Singh — APPELLANT

Vs

Union Bank of India and Others — RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 20, 22, 25

Citation : (2004) 1 CGLJ 331 : (2004) 3 MPHT 48

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Bhishm Kinger, Vivek Sharma, for the Appellant; Prashant Mishra, for the Respondent Nos. 1 to 3 and Roop Naik, for the Respondent No. 4, for the Respondent

Judgement

Fakhruddin, J.—Heard.

The petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India being aggrieved by the orders passed by respondent No. 3, the Recovery Officer, Debts Recovery Tribunal, Jabalpur, on 28-8-2003 and 15-10-2003 in O.A. Ex. No. 131/2000, rejecting the objection and ordering sale of the house.

2. Counsel for the petitioner contends that on 15-5-2003, the petitioner filed a written objection before respondent No. 3/Recovery Officer, Debts Recovery Tribunal in O.A. Ex. No. 131/2000 (Union Bank of India v. Raipur Luggage Pvt. Ltd.). On 28-8-2003, the objection was rejected without assigning any legal reason. Again on 15-10-2003, respondent No. 3 directed the said House to be sold by public auction for recovery of the said debts. On 10-12-03, an auction notice was published in Hindi daily, i.e., Dainik Bhaskar, Raipur. On 8-1-2004, another notice was published in Nav Bharat, Raipur and the same were resisted and rebutted by the petitioner in Nav Bharat on 10th and 12th January, 2004.

3. Shri Kinger, learned Counsel for the petitioner submitted that the house property No. A-1, Shailendra Nagar, Raipur was sold by public auction on 12-1-2004 by the respondent Nos. 1 to 3 and the same has been purchased by respondent No. 4 - Satya Prakash Jhunjhunwala. The said property has been sold for recovery of debts due from M/s. Raipur Luggage Pvt. Ltd. Counsel for the petitioner submits that the said sale is illegal as the sale took place illegal and contrary to law. He further submits that on 15-5-2002 the petitioner had filed a written objection before the respondent No. 3/ Recovery Officer, Debts Recovery Tribunal, in the Case No. O.A. Ex. 131/2000 of Union Bank of India v. Raipur Luggage Pvt. Ltd. It is submitted in the written objection that he had stated that the objector had purchased the aforesaid house (immovable property from (i) Shri Mehendi Mohemmad s/o Shri Didar Ali Farista, (ii) Smt. Asaraf Bani w/o Shri Mehendi Mohemmad Farista, (iii) Shri Murad s/o Shri Mehendi Mohammed Farista, and (iv) Shri Malik Mohemmad s/o Shri Mehendi Mohammed Farista (jointly) on 21-12-1993 for Rs. 8,10,500/- and since then the objector is residing in the said house alongwith his family members peacefully, having the valid title, possession and interest thereof. It is further submitted that on 11-5-2002 the objector found an order of attachment pasted on the wall of his house, containing that the house of the objector is being attached in the aforesaid execution case and the said order prohibits and restrains (i) Shri Mehendi Mohemmad, s/o Shri Didar Ali Farista, (ii) Smt. Asaraf Bano w/o Shri Mehendi Mohemmad Farista, (iii) Shri Murad s/o Shri Mehendi Mohemmad Farista and (iv) Shri Malik s/o Shri Mehendi Mohemmad Farista, from doing any transfer of charging the above mentioned property in any way to any person. Counsel for the petitioner further contends that the certificate debtors are not the owner - title holder of the aforesaid property as they have sold the same to the objector for a valuable consideration of Rs. 8,10,500/- and the delivery of peaceful and vacant possession of the aforesaid house was given to the objector on 21-12-1993. This has been purchased by the objector - Amit Kumar Singh.

4. The Court considered the objection. Reply was filed by the Bank and the contentions filed in objection application were denied. It was Contended that even if the objectors are in possession of the said house, in question, the same is mortgaged with the Bank by virtue of the special Power of Attorney executed on 28-3-2002, as such the Bank has got the first charge over the property and may sale the same for realization of the outstanding dues. On 28-8-2003 the Court noted that even after repeated reminders given to the Counsel for objector by the Counsel for Bank, none appeared on behalf of the objector to argue the objection and the burden to prove the bona fide falls on the objector that he has got absolute title of the property in question. The Court found that though the objector in his application mentioned that the acknowledgment of receipt of sale consideration amount and deed of sale dated 12-12-1993 is marked as Annexure O-1, but no such document was ever filed by the objector and the contentions of the objector were not corroborated through any documentary evidence. Therefore, there is no reason to disbelieve the reply and argument of the Bank

on the said objection.

5. The Bank Counsel appeared and prayed for auction, submitted form etc. The Court after considering everything directed the auction. In pursuance of the said direction the petitioner instituted a Civil Suit No. 5-A/2002 in the Court of learned IVth Additional District Judge, Raipur for specific performance, declaration and permanent injunction. The challenge to the order dated 28-8-2003 on what ground has been made in the written statement. The relief sought is quoted below :--

"The Hon''ble Court may be pleased to kindly issue a writ of mandamus, certiorari, direction or any other appropriate writ to set aside and quash both the impugned orders dated 28-8-2003 and 15-10-2003 (Annexure P-7) with costs through and restrain the respondents from alienating, transferring or recovering possession of the said house property in any manner from the petitioners and also acting in any manner derogatory to the title and possession of the petitioner in respect of the house."

6. Return has been filed on behalf of the respondent Nos. 1 and 2 in which it has been mentioned that in view of the law laid down by the Hon''ble Supreme Court in the case of Punjab National Bank Vs. O.C. Krishnan and Others, , the instant petition challenging the orders passed by the Debts Recovery Tribunal is not maintaiable in view of remedy of appeal available to the petitioner u/s 20 of the R.D.B. Act, 1993. It has been further submitted that in view of the scheme under R.D.B. Act, 1993 no other Court has jurisdiction for adjudication of liability and recovery of the amount by execution of the certificate which are within the exclusive jurisdiction of the Debt Recovery Tribunal and the Recovery Officer and for this reason also the instant petition is not maintainable and also contended that the Civil Suit No. 5-A/2002 preferred by the petitioner himself in the Court of District Judge, Raipur is pending adjudication and, therefore, the instant petition is not maintainable.

7. Return on behalf of respondent No. 4 has also been filed in which it has been mentioned that at the outset he purchased the property, i.e., house bearing No. A-1, Shailendra Nagar, Raipur (CG) in auction, auctioned by Union Bank of India, SSI Branch, Raipur. This purchase was made in pursuance to the auction notice dated 15-11-2003 issued by Recovery Officer, Debt Recovery Tribunal, Jabalpur. The respondent No. 4 has deposited the entire sale price, i.e., Rs. 30,26,000/- and a sale certificate has been issued in favour of the answering respondent after confirmation of the sale on 17-2-2004.

8. The contention of the respondent No. 4 is that the petitioner has raised the objection before Debts Recovery Tribunal but he did not adduce any evidence in support of his claim. The objection was rejected on 28-8-2003. On 15-10-2003 the Court again passed an order after hearing parties who were present. On both occasions petitioner was not present.

9. The order dated 28-8-2003 passed by the Recovery Officer is pertinent and

reads as under :--

"One Shri Amit Kumar Singh has filed an objection application through his Counsel Shri Manoj Sanghi before this Authority. It is inter-alia submitted that in the said application that the property bearing House No. A-1, Shailendra Nagar, Raipur, attached by this Tribunal, was purchased by him on 21-12-1993 and since then the objector that he holds the absolute title over the property and has purchased the same before the alleged mortgage of the said house made by the certificate. Debtors in favour of the Bank. He has further prayed to remove the attachment of the said house and stay the further proceedings against the objector who is the bona fide purchaser.

The CH Bank has filed their reply and denied the contentions of the objectors. It was submitted by the Bank that even if the objector is having the possession since the same is mortgaged with the bank and by virtues of Special Power of Attorney executed on 28-3-2002, the CH Bank has got the first charge over the property and can sell the same for realization of the outstanding dues.

Arguments on behalf of CH Bank heard and record perused. It is pertinent to mention that none appeared for the objector even after repeated reminder given to his Counsel by the Counsel for CH Bank to argue the objection. The burden to prove the bona fide falls on the objector that he has got absolute title of the property in question. On perusal of the record it is found that though the objector in his application mentioned that the acknowledgment of receipt of sale consideration amount and deed of sale dated 21-12-1993 is marked as Annexure O-1, but no such document was ever filed by the objector. Thus, the contentions of the objector is not corroborated through any documentary evidence. Therefore, there is no reason to disbelieve the reply and argument of the CH bank on the said objection. Accordingly, I pass the following order.

ORDER

In the result, the objection application is considered but has got no merit and is dismissed accordingly. CH Bank to take steps for auction of the property."

The case was listed on 15-10-2003. The Tribunal passed an order is relevant and quoted below :--

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9. Learned Counsel for the petitioner submits that the Tribunal has no jurisdiction. He relied upon the judgment of the Supreme Court in the case of Ranchhoddas Chhaganlal v. Devaji Supdu Dorik and Ors., reported in AIR 1977 SC 1517. This case relates to specific performance of the contract in which it is held that :--

"The pre-eminent question in this appeal is whether the respondent has been ready and willing to perform the agreement entered into with the appellant. The case of the appellant is that there was an oral agreement for sale of property consisting of agricultrual land admeasuring 23 acres approximately for a sum of Rs. 17,000/-. The respondent from time to time paid Rs. 12,000/- to the appellant. The respondent was also in possession of the property. The appellant called upon the respondent to pay the full amount of purchase price. The respondent failed to do so. The plaintiff, on respondent''s refusal to perform the agreement, filed the suit."

He further relied upon the judgment in the case of The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, . That was the case where ICICI filed an application u/s 19 of the Act claiming an amount of over thirty six and a half crores against respondent Nos. 1 and 2 jointly and severally in that case on that very day the Tribunal granted an order of injunction and restrained the respondents from transferring or alienating the properties hypothecated to ICICI and further appointing a Special Officer for making an inventory of the assets and properties hypothecated and mortgaged by the respondents in favour of ICICI. By the same order, a show-cause notice was also issued by the Tribunal to the respondents calling upon them to show cause within 15 days why temporary injunction should not be granted. The respondents moved the High Court under Article 227 of the Constitution praying for setting aside the ex parte order of the Tribunal.

10. Hon''ble Supreme Court held that the Tribunal constituted under the Act has jurisdiction to grant an ad- interim ex parte order of injunction or stay against the defendant on an application filed by the bank or the financial institution for recovery of debt as defined under Clause (g) of Section 2 of the Act. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a Court as contained in the CPC. Rather, the Tribunal can travel beyond the CPC and the only fetter that is put on its powers is to observe the principles of natural justice. Meaning has to be given to Section 22 of the Act as here the Tribunal is exercising powers of a Civil Court while

trying a money suit. Further when power is given to the Tribunal to make an interim order by way of an injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of the Supreme Court in Morgan Stanley Mutual Fund Vs. Kartick Das, . Hon''ble Supreme Court did not interfere with the impugned judgment of High Court setting aside the order of Tribunal. But that is only because of passage of time and without the Supreme Court knowing the stage of proceedings before the Tribunal on the application filed by ICICI u/s 19(1) of the Act. The Hon''ble Supreme Court further held that it will however be open to the Tribunal to pass an interim order on the plea of ICICI if the matter is still pending before it. In Para 16 of the said judgment Hon''ble Supreme Court held that while not agreeing the views expressed by the High Court, we will not interfere with the impugned judgment in view of the circumstances narrated above.

The Hon''ble Apex Court in the matter of Allahabad Bank v. Canara Bank, reported in AIR 2000 SC 1347, held that :--

"At the stage of adjudication u/s 17 and execution of the certificate u/s 25 etc. the provisions of the R.D.B. Act, 1993 confer exclusive jurisdiction in the Tribunal and the Recovery Officer, in respect of debts payable to Banks and financial institutions."

11. So far as the present case is concerned, in the case of Kowa Spinning Ltd. and Others Vs. Debt Recovery Tribunal and Others, , it is held that ah appeal lies to the Tribunal against any order or an order which substantially affect some rights or liabilities of the party and is not confined to the final order alone and it is further held that under Article 226 of the Constitution of India, statutory remedy is provided under statute for preferring appeal.

12. Chapter III of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 deals with the jurisdiction, powers and authority of Tribunals. Section 17 of the Act reads as under :--

"17. Jurisdiction, powers and authority of Tribunals.-- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions."

Section 17A of the Act reads as under :--

"17-A. Stipulates power of Chairperson of Appellate Tribunal and Section 18 deals with bar of jurisdiction."

Section 20 of the Act reads as under :--

"20. Appeal to the Appellate Tribunal.-- (1) Save as provided in Sub-section (2) any person aggrieved by an order made, or deemed to have been made by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter."

Section 21 deals with deposit of amount of debt due, on filing appeal. The said provision reads as under :--

"21. Deposit of amount of 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."

Section 22 of the Act reads as under :--

"Powers of Tribunal.-- Tribunal can exercise powers of Civil Court as contained in Civil P.C.-- Only fetter put on its powers is to observe principles of natural justice."

13. In the instant case the petitioner submitted an objection application and the same was entertained but he did not file any sale deed and the Court has considered the objection.

14. Learned Counsel for the respondent Nos. 1 to 3, on the other hand, relied upon decisions in Punjab National Bank Vs. O.C. Krishnan and Others, , Union of India and Another Vs. Delhi High Court Bar Association and Others, , Hira Lall and Sons and Others Vs. Lakshmi Commercial Bank, and Mrs. Janki Vashdeo Bhojwani and Anr. v. Indusind Bank Ltd. and Ors. AIR 2004 SC 964.

15. Everything has been considered by Kowa Spinning Ltd. and Others Vs. Debt Recovery Tribunal and Others, (Full Bench) in the matter of Kowa Spinning Ltd. and Ors. v. Debt Recovery Tribunal and Ors.

16. Having considered the facts and circumstances of the case, material on record, in the opinion of this Court, no case is made out warranting interference by this Court in the impugned orders dated 28-8-03 and 15-10-2003 in exercise of jurisdiction under Article 226 of the Constitution of India.

17. Counsel for the petitioner lastly submitted that the petitioner may be allowed to prefer an appeal before the Appellate Tribunal u/s 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

18. The petitioner may prefer an appeal within a period of 30 days from the date of this order before the Appellate Tribunal under provisions contained in Section 20 of the Act and on such appeal being filed, the Appellate Tribunal shall decide the same on its own merits in accordance with law without being influenced by any of the observations made in this order.

19. With the aforesaid observations and directions, this petition stands disposed

of.