(2000) 11 KAR CK 0084

In the Karnataka High Court

Case No : Writ Appeal No. 6295 of 2000

Anamika and Another APPELLANT

Vs

The Debt Recovery Appellate Tribunal and Others RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 23 (1A)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21, 31

Citation : (2001) 1 KCCR 5

Hon'ble Judges : Ashok Bhan, J;A.V. Sreenivasa Reddy, J

Bench : Division Bench

Advocate : Vasta Associates, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—For expeditious disposal of cases regarding recovery of money due to the Financial Institutions and the Banks, the Parliament of India passed an Act called the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the Act). Under the Act, Debt Recovery Tribunals (for short, the Tribunal) were created at various levels to try the suits filed by the Banks and Financial Institutions in which the claim was more than Rupees Ten Lakhs. By operation of law, various cases which were pending in different Civil Courts in the country were ordered to be transferred to the Tribunals.

2. The 2nd Respondent-Corporation Bank (for short, the Bank), at Bangalore filed a suit in O.S. No. 4037 of 1989 for recovery of a sum of Rs. 15,76,654/- against the Appellants in the City Civil Court, Bangalore. Soon after coming into force of the Act and keeping in view of the mandate contained therein, the proceedings in the suit were transferred to the Tribunal which was registered as O.A. 1170 of 1995. The Tribunal, on final adjudication passed an order on 31.1.2000 determining the amount payable by the Appellants to the Respondent-Bank.

3. Against the order passed by the Tribunal, the Appellants filed an appeal before the Appellate Tribunal constituted under the Act. u/s 21 of the Act, the judgment Debtor is required to deposit 75% of the amount due to the Respondent-Bank for the appeal to be registered. Appellant filed an appeal u/s 21 of the Act without depositing 75% of the amount due to the Bank. The Appellate Tribunal permitted the Appellant to deposit the amount on or before 19th October, 2000 which was later on extended to 4.12.2000.

4. Appellants filed the writ petition seeking a declaration that the requirement of pre-deposit of 75% of the debt as determined by the Tribunal as a condition precedent to the maintaining of an appeal as contained in Section 21 of the Act was inapplicable to cases which were first instituted in Civil Courts and thereafter transferred to the Tribunal for determination of the liability. This declaration was sought on the ground that the right of appeal granted u/s 96 of the CPC was a vested right which could not be taken away by transfer of the case from the Civil Court to the Tribunal. That the condition imposed by Section 21 requiring the judgment Debtor to deposit 75% of the amount due as condition precedent for maintainability of the appeal would not be applicable to the cases which were first instituted in the Civil Court and thereafter transferred to the Tribunal. The right of appeal being a vested right, it could not be taken away by the provisions of the Act. In support of the proposition canvassed, the learned Counsel for the Appellants relied upon two judgments of the Supreme Court in the case of Hoosein Kasam Dada (India) Limited v. State of Madhya Pradesh and Ors. AIR 1953 SC 121 and K.S. Paripoornan Vs. State of Kerala and Others, .

5. Learned Single Judge did not accept this contention and held that once the suit was transferred to the Tribunal u/s 31 of the Act, then the order of the Tribunal would be subject to an appeal under the provisions of that Act alone and no appeal would lie u/s 96 Code of Civil Procedure.

6. We agree with the view taken by the Single Judge. Once the case was transferred to the Tribunal by operation of law and the final adjudication is made by the Tribunal, then the right of appeal or revision would be governed under the provisions of that Act alone. The Appellant at no point of time had questioned the validity of transfer of proceedings to the Tribunal. After the transfer of the case to the Tribunal, right of appeal or revision would be covered under the provisions of that Act alone and not under any other Act or provision of law. The judgments cited before the Single Judge which were referred before us as well, are clearly distinguishable. The same would not be applicable to the facts of the present case. The case before the Supreme Court in Hoosein Kasam Dada (India) Limited case (supra) pertained to amendment of Sales-Tax Act making the right of appeal subject to deposit of tax. The Supreme Court took the view that right of appeal being a vested right, could not be taken away and permitted the Assessee to file an appeal without depositing the tax determined by the Assessing Authority. In K.S. Paripoorna''s case (supra), the Constitution Bench was considering as to whether the provisions of Section 23(1A) of the Land

Acquisition Act was retrospective in its operation. It was held that the benefit u/s 23-(1A) of the Land Acquisition Act would not be applicable with retrospective effect to the proceedings which were pending. It was prospective in operation. Neither of these cases pertain to the transfer of cases from one jurisdiction to another. The case before us is transfer of cases from the jurisdiction of one Court to the jurisdiction of the Tribunal. After the transfer of the cases, the procedure prescribed under the Act would be applicable to the parties which would include the right of appeal and revision as well. The Appellants cannot claim that they continue to be governed in so far as the right of appeal is concerned under the Code of Civil Procedure. All conditions coupled with the right of appeal as provided under the provisions of the Act has to be necessarily complied with.

7. No merit, dismissed.