

(2014) 07 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 52172 of 2009

Anand Kumari

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(1),
19(8), 22(2)(g), 29, 30

Citation : (2014) 124 RD 814

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : M.P. Sarraf and A.K. Sharma, Advocate for the Appellant; P.R. Chaubey, Advocate for the Respondent

Judgement

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Sudhir Agarwal, J.—Heard Sri M.P. Sarraf, learned Counsel for petitioner and perused the record. The dispute relates to fee payable on an application filed before Debt Recovery Tribunal under section 22(2)(g) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "Act, 1993") read with Order IX, Rule 9 C.P.C. The Tribunal in the impugned order dated 17.9.2009 has taken the view that under Rule 5 of Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as "Rules, 1993"), the application of the nature as above is an interlocutory application and a fee of Rs. 250/- would be payable thereon under Rule 7 (2) Clause (4) of Rules, 1993.

2. The facts giving rise to present dispute are as under:

3. Petitioner is employed as Development Officer in Bank of Baroda, Branch G.T. Road (Main), Fatehpur. The Bank granted Cash Credit Limit of Rs. 10 lacs to M/s. Ganga Tat Vikas Evam Nirman (Pvt.) Limited through its Managing Director Hare Krishna Srivastava, on 2.1.1993. Petitioner with three others, namely, Mayur Man Singh, Gurudeo Singh and Chandra Bhushan stood guarantor. On account of

default, a sum of Rs. 19,71,765/- was found recoverable from the loanee and hence respondent No. 1, Bank, instituted Suit No. 5 of 1996 in the Court of Civil Judge (Senior Division) for recovery of Rs. 19,71,765/- along with interest at the rate of 24.5 per cent per annum, with quarterly rests together with cost and other usual benefits. Therein petitioner was also impleaded as defendant No. 7.

4. The suit was transferred to Debt Recovery Tribunal, Jabalpur whereupon it was re-registered as T.A. 444 of 2000 and was allowed vide judgment dated 3.1.2007 holding defendants No. 1 to 5 and 7 liable for payment of amount claimed in the suit. The Tribunal authorized the Bank to recover a sum of Rs. 19,71,765/- along with pendente lite interest etc. from defendants No. 1 to 5 and 7 and they were also restrained from transferring their property etc.

5. After a recovery certificate was issued, petitioner appeared before Tribunal and filed objection under Rule 11 of Second Schedule to the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") stating that recovery certificate is nullity and without jurisdiction under U.P. Act No. 23 of 1972 since a fraud has been played by Bank. He said that under Act, 1993 there is no separate procedure for initiating recovery proceedings and instead section 29, Second and Third Schedule of Act, 1961 and Income Tax (Certificate Proceeding) Rules, 1962 (hereinafter referred to as "Rules, 1962") would apply to the recovery proceedings, initiated before Tribunal. For ready reference, section 29 of Act, 1993 may be reproduced as under:

"29. Application of certain provisions of Income Tax Act.--The provisions of the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961), and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time Shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income Tax Act:

Provided that any reference under the said provision and the Rules to the "assessee" shall be construed as a reference to the defendant under this Act."

6. Petitioner also filed an application under section 22(2)(g) of Act, 1993 for recall of order dated 3.1.2007 passed by Tribunal. This application was registered as M.A. 17 of 2008 but was dismissed for want of prosecution on 29.7.2009. Another application dated 7.9.2009 was filed by petitioner purported to be under section 22(2)(g) of Act, 1993 read with Rule 19 of Rules, 1993 and Order DC, Rule 9 C.P.C. requesting Tribunal to recall order dated 29.7.2009. Stay application was also filed along with it. The Tribunal said that Stay Application should bear a fee of Rs. 250/- but no fee has been paid on recall application and, therefore, such application was not registered by registry stating that there is deficiency of fee. The Tribunal took the view that petitioner is liable to pay Rs. 250/- under Rule 7(2) Serial No. 4 of Rules, 1993 and he must pay the same. It is this order which has been challenged.

7. Under Rule 7, fee payable before Tribunal has been prescribed in respect to

following items:

- i. Application under section 19(1) and (2)
- ii. Counter claim under section 19(8)
- iii. Application for Review
- iv. Application for Interlocutory Orders
- v. Appeals under section 30
- vi. Vakalatnama

8. Counsel for petitioner, Sri M.P. Sinha, contended that Tribunal has treated the application in question as an application for "interlocutory order" though it is not correct inasmuch it was for recall of an order whereby a Misc. Application of petitioner was dismissed for want of prosecution. It is said that the application could not have been treated to be for an interlocutory order and since there was no specific provision for fee in respect to the relief sought in the application, no fee could have been demanded from petitioner. He placed reliance on Apex Court's decision in Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others, , Kerala High Court's Judgment in Dhileep and Others etc. Vs. Debt Recovery Tribunal and Others, , and Division Bench Judgment of Andhra High Court in Kapluru Subbarayudu v. Kammara Rangiah 1961 (1) AWR 212 (A.P.).

9. The term "interlocutory" has been explained in Black's Law Dictionary, 9th Edition at page 889 as under:

"Interlocutory.--adj. (of an order, judgment, appeal etc.) interim or temporary; not constituting a final resolution of the whole controversy."

10. The term "interlocutory order" has also been explained in Black's Law Dictionary, 9th Edition at page 1207 as under:

"interlocutory order - an order that relates to some interim matter in the case; any order other than a final order. Most interlocutory orders are not appealable until the case is fully resolved. But by rule or statute, most jurisdictions allow some type of interlocutory orders (such as preliminary injunctions and class-certification orders) to be immediately appealed - Also terms interlocutory decision, interim order, intermediate order."

11. In Concise Law Dictionary With Legal Maxims, Latin Terms & Words and Phrases, Third Edition, the term "interlocutory order" has been explained on page 615 as under:

"An interlocutory order is one which is made pending the cause and before a final hearing on the merits.

An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit, and generally collateral to the issues formed

by the pleadings and not connected with the final judgment."

12. In Encyclopedic Law Dictionary (Legal and Commercial) 3rd Edition, the term "interlocutory order" has been explained on page 854 as under:

"An interlocutory order is one that is passed during the pendency of a proceeding which does not finally determine the proceeding."

13. Apex Court also had the occasion to consider the term "interlocutory order" in *Amar Nath and Others Vs. State of Haryana and Another*, , and has said that term "interlocutory" merely denotes orders of a purely interim or temporary nature, which do not decide or touch the important rights or liabilities of parties.

14. In *V.C. Shukla Vs. State through C.B.I.*, , the "interlocutory order" has been considered in the context of final order. It means not a final order but an intermediate order. It is made between the commencement of an action and the entry of judgment.

15. The order taking cognizance of an offence by a Court was held to be "interlocutory order" in *Madhu Limayee v. State of Maharashtra* 1978 (15) ACC 184 (SC).

16. In *Smith v. Cowell* (1880) 6 QBD 75, it was held that "interlocutory" is not necessarily confined to an order made between writ and final judgment but it means an order other than a final order or judgment.

17. An "interlocutory order" therefore is one which is made pending the cause and before final hearing on merits. Such an order is made to secure some end and purpose, necessary and essential for progress of the suit.

18. In my view, the nature of order in the case in hand which was passed dismissing the application in default, was an interlocutory order and when petitioner sought to recall the same again, the order which could have been passed therein would also satisfy the description of "interlocutory order". None of the decisions cited by petitioner deals with this issue, hence lend no help to the petitioner. The Tribunal, therefore, has rightly taken the view that petitioner was liable to pay Court fee of Rs. 250/- under Rule 7 (2) Serial No. 4 of Rules, 1993.

19. In view of above, the writ petition lacks merit. Dismissed. No costs.