
(2004) 08 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No. 511 of 2004

Ankit Steel and Others

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22(2)

Citation : (2005) 1 BC 534

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Piyush Mathur, for the Appellant; P.B.S. Nair, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—By filing this petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the order, dated 5.10.2003, passed by Debt Recovery Appellate Tribunal in Case No. R-315/2003 (Annexure P-3). Facts of the case lie in a narrow compass.

2. Respondent-Bank instituted a civil suit No. 49-B of 1994 against the petitioners before the District Judge, Indore for recovery of Rs. 49.23.754/-. During pendency of this suit, the Act called "The Recovery of Debts Due to Banks and Financial Institution Act, 1993" was enacted by the Parliament. In terms of the provisions of this Act, the aforesaid suit was transferred to Debt Recovery Tribunal being T.A. No. 945 of 1998. On 13.7.2000, the Tribunal decreed the claim (Annexure P-1) in respondents" favour by allowing the claim application. The petitioner then filed an appeal being Appeal No. A-29/2001 to Debt Recovery Appellate Tribunal u/s 20 of the Act against the aforesaid judgment of the Tribunal. By order, dated 26.5.2003 (Annexure P-2) the Appellate Tribunal dismissed the appeal and upheld the judgment of Tribunal.

3. It appears that petitioners not being satisfied by the appellate order

(Annexure P-2) filed an application (through post) purporting it to be a review application against an appellate order, dated 26.5.2003. This application is not on record of this petition. However, by impugned order (Annexure P-3) the Appellate Tribunal dismissed this application holding that in the absence of any provision for filing review application either in the Act or Rules, the application for review is summarily rejected. This is what was held:

"Learned Counsel for the applicant Shri Gujelay could not site any provisions of the Act or Rules, 1994 which authorises this Tribunal to entertain any such application either in shape of Misc. Application or of a Review Application. Application is summarily rejected."

It is against this order, the petitioners have filed this writ. Notice of the writ was issued to respondent. They are served and represented.

4. Heard Mr. Piyush Mathur, learned Counsel for the petitioners and Mr. P.B.S. Nair, learned Counsel for respondent.

5. Learned Counsel for the petitioners contended that the view taken by the appellate Tribunal that there is no provision in the Act to entertain the review application does not appear to be correct. According to learned Counsel Section 22(2)(e) of the Act in clear terms confer upon the Debt Recovery Tribunal as also appellate Tribunal a power to entertain the Review application. Learned Counsel, therefore, contended that the application made by the petitioner should have been entertained as being maintainable for the purpose of finding out whether a case for review is made out or not. In reply, learned Counsel for the respondent contended that the application made by the petitioner itself was misconceived and had no substance whatsoever. Learned Counsel also made attempt to urge the issue on the merits of the case.

6. Having heard the learned Counsel for parties and having perused record of the case, I find force in the submission of learned Counsel for the petitioner.

7. Section 22 of the Act which is relevant for the disposal of this writ reads as under:

"Section 22. Procedure and powers of the Tribunal and the Appellate Tribunal- (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2) of 1974)."

8. Mere perusal of aforequoted section would indicate that Clause (e) of Sub-section (2) empowers the Tribunal as also the appellate Tribunal to entertain the review application. In other words, Section 22(2)(e) in clear terms invests not only the Tribunal but also the appellate Tribunal to review their decisions alike the Civil Court as a necessary corollary provisions of Order 47 Rule 1 of C.P. Code will apply to the cases decided by Tribunal and also by appellate Tribunal. Indeed, intention of the Legislature appears clear when one reads Sub-section (2) of Section 22 *ibid*.

9. In view of aforesaid, I am of the view that appellate tribunal was not justified in rejecting the application made by the petitioner seeking review of the appellate order, dated 26.5.2003 (Annexure P-2) when it held that there is no provision to entertain review application.

10. Accordingly and in view of aforesaid discussion, the petition succeeds and is allowed. Impugned order, dated 5.10.2003, passed by Debt Recovery Appellate Tribunal in Case No. R-315 of 2003 (Annexure P-3) is set aside. The Appellate Tribunal is at liberty to decide the application made by the petitioner on its merits with a view to find out whether any case for review on facts as contemplated under Order 47 Rule 1 of C.P. Code is made out, or not?

No costs.