(2009) 12 AHC CK 0120

In the Allahabad High Court

Case No : Writ Petition No.67300 of 2009

Atul Kapoor and Another — APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others — RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:
Contract Act, 1872 — Section 134, 135

Citation : (2009) 12 AHC CK 0120

Hon'ble Judges : Dilip Gupta, J

Final Decision : Disposed Of

Judgement

Dilip Gupta, J.—The petitioners have sought the quashing of the order dated 4th September, 2009 passed by the Debts Recovery Appellate Tribunal, Allahabad (hereinafter referred to as the ''Appellate Tribunal'') by which the matter has been adjourned to 18th December, 2009 and an observation has been made that the Appellant may inform the Recovery Officer, Debt Recovery Tribunal that the High Court has not yet given clarification of the order dated 2nd July, 2003 passed in Misc. Company Application No.5 of 1996.

2. A perusal of the records indicates that respondent no.4 M/s. Asha Edible Oils Pvt. Ltd. availed cash credit facility from the respondentUnion Bank of India in the year 1994. In the year 1994, the Company became sick and ultimately winding up orders were passed on 5th October, 1999. Thereafter the assets of the Company were handed over to the Official Liquidator who sold them for a sum of Rs.78,16,428.42.

3. This Court, in Misc. Company Application No.5 of 1996 on 2nd July, 2003 passed an interim order which is as follows:

?The Official Liquidator in his report No.301 of 2002 has submitted that he may be allowed to disburse the amount of Rs.7816428.42 p. to the Union Bank of India towards full and final settlement of the claim of the bank submitted before the O.L. The Union Bank of India by its application No.83970 of 2003 dated

6.5.2003 has agreed to accept the amount towards full and final settlement of its claim. In view of this situation and lack of objection by any other party the Official Liquidator is directed to make the said payment to the bank.?

4. After a gap of almost four years, the Union Bank of India filed an application under Section 19 of The Recovery of Debts Due to the Bank and Other Financial Institutions Act, 1993 (hereinafter referred to as the ''Act''). This application was subsequently transferred to the Debts Recovery Tribunal, Allahabad and was registered as Application No.1415 of 2000. By the order dated 10th August, 2005, the application against the principal borrowers was rejected but it was allowed against the guarantors who are the petitioners in the present petition. A recovery certificate was issued pursuant to the order dated 10th August, 2005 and recovery proceedings No. DRC 125 of 2005 is pending before the Recovery Officer.

5. On 12th December, 2005 the petitioners filed an appeal under Section 20 of the Act before the Appellate Tribunal which is numbered as Appeal No. 663 of 2006.

6. The grievance of the petitioners is that the interim relief prayed for in the appeal has not been considered by the Appellate Tribunal and the matter had been adjourned. It is pointed out that as no interim relief was granted in the Appeal, the Recovery Officer is proceeding with the matter and has passed an order on 17th November, 2009 directing the petitioners to appear before the Recovery Officer on 10th December, 2009 to show cause why should they not be committed to civil prison in execution of the certificate.

7. Sri R.P. Agarwal, learned counsel for the petitioners submitted that in view of the order dated 2nd July, 2003 passed by this Court in Misc. Company Application No.5 of 1996, no further amount was required to be paid to the Union Bank of India as it had received the amount of Rs.78,16,428.42 towards full and final settlement of the claim. He, therefore, submits that after the passing of the order, the Union Bank of India was not justified in pressing its claim against the guarantors before the Debts Recovery Tribunal in view of the provisions of Sections 134 and 135 of the Contract Act.

8. Sri J.L. Srivastava, learned counsel appears for the respondentBank and Sri K.M. Asthana appears for respondent no.2. Respondent no.1 is the Appellate Tribunal while respondent nos.5 and 6 are proforma respondents.

9. Learned counsel appearing for the respondents have stated that it will not be necessary to file any counter affidavit and the petition may be disposed of at this stage.

10. Sri J.L. Srivastava, learned counsel for the respondentBank submits that the order dated 2nd July, 2003 passed by this Court in Misc. Company Application No.5 of 1996 does not prohibit the Bank from recovering the remaining amount from the guarantors. He, therefore, submits that the Bank was justified in filing

the suit before the Debts Recovery Tribunal for recovery of the balance amount.

11. The issue is whether the Bank can recover any amount from the guarantors even after the order dated 2nd July, 2003 was passed in Misc. Company Application No.5 of 1996. The Court is not expressing any opinion as the matter is pending before the Appellate Tribunal which shall examine it on merits. However, as the recovery certificate had been issued and the Recovery Officer was proceeding in the matter, the Appellate Tribunal should have, in the facts and circumstances of the case enumerated above, passed an interim order. In the absence of any interim order, the Recovery Officer has now fixed 10th December, 2009 for the petitioners to appear and show cause why they should not be committed to civil prison.

12. It is, therefore, ordered that during the pendency of the Appeal, the recovery proceedings in DRC No.125 of 2005 (Union Bank of India v. M/s. Asha Edible Oil Pvt. Ltd.) pending before the Recovery Officer, Debts Recovery Tribunalrespondent No.2 shall remain stayed. The Appellate Tribunal shall, however, make all endeavours to decide the Appeal expeditiously, preferably within a period of four months from the date a certified copy of this order is filed by either of the parties before the Appellate Tribunal.

13. The writ petition is, disposed of subject to the observations made above.

