
(1996) 08 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 22931 of 1996

Baby Sebastian

APPELLANT

Vs

Vijaya Bank and others

RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:

Citation : (1998) 93 CompCas 826 : (1996) ILR (Kar) 3529 : (1996) 7 KarLJ 570

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant;

Judgement

R.V. Raveendran, J.—The petitioner is one among the eight defendants in O.A. No. 36 of 1996, on the file of the Debts Recovery Tribunal (ninth respondent), filed by the first respondent, in January, 1996. After issuing notice to the defendants and granting opportunity to the defendants to file objections, the Tribunal, by order dated June 24, 1996, set down the case for evidence on July 22, 1996. On that day, the bank examined three witnesses. Defendants Nos. 1 and 5 to 8 were absent. On behalf of defendants Nos. 2 to 4, time was sought for cross-examination. It was refused and the case is posted to August 14, 1996, for the defendants' evidence. According to the petitioner (the third defendant in the suit), when a request for an adjournment was made, the Tribunal ought to have adjourned the matter, as the case was coming up for evidence for the first time, or at least passed over the matter and kept it by for being taken up later in the day; and the refusal by the Tribunal to grant an adjournment, is in negation of the basic principles of natural justice. It is contended that unless sufficient accommodation is granted when adjournments are sought by a defendant, grant of hearing becomes an empty formality. Hence, the petitioner has filed this petition for (a) a declaration that the order dated July 22, 1996, passed by the Tribunal refusing the request for grant of time for cross-examination of A. Ws.-1 to 3 is illegal and to quash the same; and (b) a direction, to the Tribunal to permit the petitioner to cross-examine the said witnesses.

2. The Act provides for a remedy by way of appeal, if a person is aggrieved by an order made, or deemed to have been made by the Tribunal, under the Act. A writ petition, under articles 226 and 227, will not be entertained in regard to interlocutory orders made by the Tribunal, unless it is shown that such order has resulted in a grave miscarriage of justice, either as a result of violation of any statutory provision or on account of bias or mala fides or arbitrariness, or violation of the principles of natural justice.

3. The petitioner's contention is that when a case comes up for cross-examination of witnesses, for the first time, if a request for an adjournment is made, the principles of natural justice require grant of time even though no ground may be made out for an adjournment. Acceptance of such a proposition would amount to extending the principles of natural justice beyond the reasonable limits. Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the Act" for short), provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of the Act and the Rules, shall have the power to regulate its own procedure. The principles of natural justice in matters that are brought before the Tribunal, may require issue of a notice and grant of reasonable opportunity to (a) file objections and to let in evidence, both oral and documentary; (b) to cross-examine the witnesses of the other party; and (c) to submit arguments, either written or oral. But, grant of adjournments merely for the asking, to cross-examine the witnesses, in the absence of valid reasons for adjournment, is not a part of the principles of natural justice. The Tribunals under the Act have been constituted to ensure expeditious adjudication and recovery of debts due to banks and financial institutions. The first respondent's application has been pending before the Tribunal for more than six months. Unless the defendants make out a reasonable ground to seek adjournment, they are not entitled to an adjournment, merely because the matter had come up for evidence for the first time or because the defendants did not find it convenient to proceed with the matter, or because the defendants or their counsel were not ready to proceed with the matter; and in such circumstances refusal by the Tribunal to grant an adjournment would not amount to violation of the principles of natural justice. Litigants may be accustomed to routinely seeking and obtaining adjournments in civil courts, which itself is a matter to be deprecated. But the same cannot be made a convention or custom or a right, in recovery proceedings before the Tribunal. If adjournments are to be routinely granted by the Tribunal, and the cases are to be kept pending for several years, the very purpose of establishing such exclusive Tribunals will be defeated and the Act will be rendered nugatory.

4. In this case, no application was made in writing before the Tribunal setting out the reasons for seeking an adjournment. The date of evidence was fixed as July 22, 1996, on June 24, 1996, and thus four weeks' time had been granted for evidence. I do not, therefore, consider that the order has resulted in a

miscarriage of justice, calling for interference.

5. The petitioner's counsel states that the matter is posted to August 14, 1996. He states that on July 22, 1996, after an adjournment was refused, counsel for the petitioner had alternatively sought a pass over so that he can examine the affidavits of the witnesses and documents marked and then cross-examine the witnesses; and even such an opportunity has been refused. As pointed out above, Tribunals can regulate their own procedure; and so long as the procedure adopted by the Tribunal is not contrary to the provisions of the Act or Rules, and is not opposed to the principles of natural justice, and is not arbitrary or unreasonable, this court, in exercise of its power under articles 226 and 227 of the Constitution of India will not interfere with the procedure adopted. But the Tribunals may do well to remember the object of granting a hearing, as observed by the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, :

"While applying the rule of *audi alteram partem* (the primary principle of natural justice) the court/tribunal/authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them."

6. What is to be achieved is expeditious disposal after fair hearing and not expeditious disposal resulting in failure of justice.

7. I am sure that if the petitioner had immediately made an application for recalling the applicants' witnesses, by expressing his readiness to cross-examine them without seeking adjournments, and explained the reasons for not proceeding with the cross-examination on July 22, 1996, the Tribunal would have considered his application in the right perspective and disposed of it in accordance with law, in a manner furthering the cause of justice. Even now it is not too late.

8. With these observations, this petition is rejected.