(2018) 01 KL CK 0056

In the High Court Of Kerala

Case No : 150 of 2017

C. JAYAKUMAR & ORS — APPELLANT

Vs

UCO BANK & ANR — RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Constitution of India, Article 227 - Power of superintendence over all courts by the High Court

Recovery of Debts Due to Banks and Financial Institutions Act, 1993, <a href=6659-19>Section

Citation : (2018) 01 KL CK 0056

Hon'ble Judges : P.B.Suresh Kumar

Bench : Single Bench

Advocate : VARUGHESE CHERIAN, E.T.NANDAKUMAR, BIJU HARIHARAN, DEEPAK JOY K, N.NAGARESH

Final Decision : Dismissed

Judgement

1. Petitioners are the defendants in O.A.363 of 2012 on the file of the Debts Recovery Tribunal - II, Ernakulam. The said proceedings was

instituted by the first respondent, hereinafter referred to as ''the bank'' for short, under Section 19 of the Recovery of Debts due to Banks and

Financial Institutions Act (the Act) for realisation of amounts due to them from the petitioners as outstanding in the accounts of the various credit

facilities extended by the bank to the petitioners. Ext.P4 is the original application. Ext.P4 original application was filed on 24.7.2012. Summons

was issued on the application by the Tribunal to the petitioners directing them to appear before the Tribunal on 7.12.2012. On 7.12.2012, the

lawyer engaged by the petitioners entered appearance and sought time for filing written statement in the matter on behalf of the petitioners. The matter was, accordingly, adjourned to 4.1.2013. On 4.1.2013, the Tribunal noticed that the lawyer who appeared for the petitioners in the

proceedings on 7.12.2012, has not filed vakkalath in the matter. Consequently, the matter was adjourned to 18.4.2013 and then to 7.6.2013 for

proof affidavit of the bank. On 7.6.2013, the matter was further adjourned to 28.6.2013 and then to 16.8.2013. The matter was again adjourned

on 16.8.2013 to 23.8.2013 and then to 18.10.2013 and then to 25.10.2013. There was no representation/appearance for the petitioners on all

those days. Consequently, the petitioners were set ex parte on 25.10.2013 and thereafter, the original application was disposed of ex parte on

2.12.2013. After about 3 months, the petitioners preferred two interlocutory applications, one to set aside the ex parte order passed in the

proceedings and the other to condone the delay of 118 days in filing the application to set aside the ex parte order. The Tribunal, on an elaborate

consideration of the facts and circumstances of the case, found that there is absolutely no justification for the delay in preferring the application to

set aside the ex parte order. Consequently, the Tribunal dismissed both the interlocutory applications. Ext.P11 is the common order passed in this

connection. Ext.P11 is under challenge in the original petition.

2. Heard the learned counsel for the petitioners as also the learned counsel for the bank.

3. The learned counsel for the petitioners vehemently contended that among the credit facilities mentioned in the original application, the liability in

respect of one facility has been completely liquidated by the petitioners and the claims in respect of the remaining facilities are barred by limitation.

According to the learned counsel, had the Tribunal considered the matter on merits, the original application would have been dismissed. It was also

pointed out that the delay in moving the Tribunal to set aside the order being only 118 days, a lenient view should have been taken by the Tribunal

and the petitioners should have been granted an opportunity to contest the matter on merits.

4. It is, however, conceded by the learned counsel for the petitioners that the impugned order, Ext.P11 is appealable before the Debts Recovery

Appellate Tribunal under Section 20 of the Act. The first and foremost question, therefore, is as to whether an original petition challenging Ext.P11 order can be entertained by this court under Article 227 of the Constitution. On an exactly identical situation, the Apex Court in Punjab National

Bank v. O.C.Krishnan and others (2001 KHC 1142) held that the Act has been enacted with a view to provide a special procedure for recovery

of debts to the banks and financial institutions; that there is a hierarchy of appeal provided in the Act and that therefore the High Courts shall not

permit derailment of the said fast track procedure by entertaining proceedings under Article 227 of the Constitution. Paragraph 6 of the judgment

reads thus :

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There

is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be

derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred.

Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution,

nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under

the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the

Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

In the light of the aforesaid judgment of the Apex Court, I do not think it appropriate to entertain this original petition. The original petition, in the

circumstances, is dismissed without prejudice to the right of the petitioners to prefer appeal against the impugned order.