

(2010) 02 DEL CK 0200
In the Delhi High Court
Case No : C.M. (M) 829 of 2005

C. Rama Krishnan and Another	Vs	APPELLANT
Oriental Bank of Commerce and Others		RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 2 BC 409

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Shyamliha Pappu, D.N. Rao and R. Krishnaamorthi, for the Appellant;
Mahesh K. Chaudhary and M.K. Manav, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner way of present petition assailed an order dated 6th December, 2004 passed by Appellate Tribunal in Appeal No. 70/2002 (in O.A. 603 of 1996) whereby the learned Tribunal set aside the order passed by learned Debts Recovery Tribunal dated 26th December, 2001 insofar as it related to appellants i.e. defendant Nos. 3 and 4 therein and the O.A. was remanded back to DRT directing DRT to hold further inquiry into the issue of creation of mortgage in respect to the property of appellant (appellant No. 3) (defendant No. 3) and the bank was also given liberty to move an appropriate application before the learned DRT for proving the mortgage.

2. This petition has not been filed by the appellant before the Appellate Debts Recovery Tribunal nor by the bank in whose favour the original order was passed by the Debts Recovery Tribunal. Rather the present petition has been filed by the respondent in whose respect the order was not disturbed by the learned Appellate Tribunal.

3. The contention of the learned Counsel for the petitioner is that the petitioner was not given an opportunity of hearing during the appeal and the order was

passed by the learned Appellate Debts Recovery Tribunal without hearing the petitioner herein. It is submitted that though the petitioner was made a respondent in the appeal but no notice was served upon the petitioner. It is submitted by Counsel for the petitioner that the impugned order adversely affected the petitioner since in the original order of the DRT, DRT had directed recovery of the amount on selling the mortgaged immovable property and hypothecated goods first and had not given directions for recovery of any amount from the petitioner herein.

4. The arguments advanced by learned Counsel for petitioner are misconceived. The appeal has been allowed only to the limited extent and the case has been remanded back to DRT also to the limited extent of recording evidence qua creation of mortgage and issue of standing as a guarantor by the appellant therein i.e. defendant Nos. 3 and 4. The rest of the order passed by learned Debtors Recovery Tribunal has not been disturbed. The order passed by the Appellate Debts Recovery Tribunal does not in any way prejudice the case of the present petitioner.

5. Even otherwise, I find no force in the arguments of the Counsel for the petitioner that the original order of DRT provided that no recovery should be made from the petitioner. The operative portion of the order passed by learned DRT dated 26th December, 2001 reads as under:

11. In the light of above submissions, I direct defendant Nos. 1 and 6 to pay jointly and severally a sum of Rs. 17,75,908/- together with costs and pendente lite and future interest @ 21 % per annum with quarterly rests to the applicant bank within 30 days from today. In case of default this amount be recovered from the sale of mortgaged immovable property and hypothecated goods and in case entire amount is not realized from the sale proceeds balance amount be recovered from the sale of other assets/properties of defendant Nos. 1 to 6.

6. It is settled law that in a petition under Article 227 of the Constitution of India the Court while exercising supervisory jurisdiction cannot correct mere error of facts or of law, unless it is shown that a grave injustice and gross failure of justice has occasioned thereto. The High Court has to exercise this Supervisory Jurisdiction in furtherance of justice and not to satisfy a litigant. The exercise of this power is guided by judicial consciousness and the Court has to refuse to exercise this power in favour of a party if no prejudice or injustice was being caused to the party.

7. In this case in hand, the order passed by learned DRT qua petitioner here has not been disturbed and only a limited aspect of the matter has been referred back to Appellate Tribunal to DRT concerned with the appellant before the learned Appellate Debts Recovery Tribunal.

8. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.