

(2006) 12 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No. 16749 of 2003

Canara Precision Instruments and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Debt Recovery Tribunal (Procedure) Rules, 1993 — Rule 7

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19 (1), 19 (2), 19 (8), 20

Citation : (2007) 1 KCCR 462

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : G. Krishnamurthy, for the Appellant; Aravind Kumar, for Respondents 1 to 3 and Prabhu, for M.S. Tukaram S. Pai, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

H.V.G. Ramesh, J.—In this writ petition, have challenged the vires of the amendment Rules provided for imposing of fees and also the Rule made exercising power u/s 36 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Petitioners restrict their prayer only to declare that the Debt Recovery Tribunal (Procedure) Amendment Rules 2003 dated 21.1.2003 in so far as levy of fees ranging from Rs. 12,000/- to Rs. 30,000/- on appeals to be filed against the order of the Recovery Officer as provided in Item 8(d) of the amended Rules-Annexure-F as ultra vires being violative of the purport and object of the Act.

2. The Petitioners, being aggrieved by the order of the Recovery Officer in bringing the property into auction on the basis of the order passed by the Debt Recovery Tribunal, assailed the said order before the 2nd Respondent-Tribunal as is permitted under law contending that the proceedings held based on the Recovery Certificate issued is in connivance with the third party and for a paltry sum as against the market value of the property which was under auction.

3. According to the Petitioners, the auction was fixed on 5.2.2003 and the same was postponed and fixed for 5.3.2003. Meanwhile, they preferred appeal before the Debt Recovery Tribunal in IR 121/2003. The Tribunal had granted an interim order staying the confirmation of the sale and permitted the auction to be proceeded. Of course, the said order is not under challenge. Later, due to subsequent developments where the Petitioners have agreed for certain fresh conditions put forth by the Bank towards discharge of its dues due to it, they withdrew the appeal filed by them. Meanwhile, the auction scheduled for 5.3.2003 was proceeded with. Noting several irregularities and illegalities committed by the Recovery Officer in conducting the auction, Petitioners filed appeal before the Tribunal seeking to set aside the order of confirmation of sale made by the Recovery Officer in favour of Respondents 5 and 6. The said appeal has not been entertained by the 2nd Respondent/Tribunal on the ground that Petitioners have to pay Court fee in a sum of Rs. 30,000/-. Hence, the Petitioners have come up in this petition challenging the vires of the Act and the Rules framed u/s 36 of the Act as being ultravires.

Heard the Counsel for the Petitioners and the Respondents.

5. It is the submission of the Petitioners' Counsel that as per Section 36 of the Act, the power to make Rules does not necessarily indicate imposing of fee as there is no specific provision provided under the Act for prescribing such fee for entertaining applications of this nature viz., which is described as an application/appeal for the purpose of Section 30 and the act/auction under challenge is that of the Recovery Officer and it is neither the order of the Debt Recovery Tribunal nor has he preferred an appeal before the Appellate Tribunal as per Section 20 of the Act. It is his further submission that the Petitioner has not preferred an application to the Tribunal as per Section 19 of the Act aggrieved by the order of the Debt Recovery Tribunal and it is only in the form of an interlocutory application challenging the action of the Recovery Officer for which no such fees is prescribed under the Act and, since there is no enabling provision provided u/s 36 of the Act, the rule framed thereunder as per the amendment dated 21.1.2003 under notification published in the Gazette of India extraordinary purports to the applicability of fiscal aspect and is the absence of any such enabling provision, such a rule enacted is ultravires of the Act and is also arbitrary.

6. In support of his argument, learned Counsel relied upon the decision of the Supreme Court in the case of Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, to contend that in the absence of any express provision, delegated authority cannot impose fees and in fiscal matters such things cannot be either implied and there shall be express provision provided. The delegated authority must act strictly within the parameters of the authority delegated to it and it will not be proper to bring the theory of implied intend or the concept of incidental and ancillary power in the matter of exercise of fiscal power.

7. Further, learned Counsel has also relied upon the decision in the case of Kerala

State Electricity Board Vs. The Indian Aluminium Co. Ltd., to contend that the executive authority is given power to frame sub-ordinate legislations within the stated limits and the rules made by such authority if found outside the scope of the rule making power, shall not be deemed to be valid merely because such rules have been placed before the Legislature and that sub-ordinate legislation cannot be said to be valid unless it is within the scope of rule making power provided under the Statute.

8. Per contra, it is argued by the Counsel representing the Respondents that, Section 30 of the original unamended Act provided for any orders made by the Recovery Officer in exercise of powers under Sections 25 to 28 as deemed to have been made by the Tribunal and appeal against such orders was lying to the Appellate Tribunal. But, by amendment to Section 30 on 17.1.2000, a provision has been introduced for appeal against the order of the Recovery Officer that notwithstanding anything contained in Section 29 any person aggrieved by the order of the Recovery Officer made under this Act, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal and as a matter of procedure, it is further provided in Clause (2) of the said section that, on such appeal, the Tribunal may give an opportunity of being heard and after making such enquiry, to pass orders either modifying or setting aside the order made by the Recovery Officer. In this regard, Counsel for the Respondent submitted, as per the enabling provision under the amended Section 30 there is a clause provided to appeal against the order of the Recovery Officer as it was originally treated as an appeal to the appellate Tribunal but, against the order of the Recovery Officer now a provision has been provided to appeal to the Tribunal itself and that has to be treated as an application for the purpose as per Sub-clause (1) of Section 30 of the amended Act. Accordingly, it was submitted that when there being such a provision to enable to carry out the purpose of the Act, the Central Government may make such Rules in furtherance of the same by virtue of Section 30(1) and a notification is issued in this regard. It is also submitted that the enabling provision provided u/s 30(1) of the Act itself is clear that such rules are framed imposing fees for dealing with such matters in modification of the earlier amount fixed and not in disregard of the provisions of the Act rather it is contemporaneous and in conformity with the provisions of the Act and that the amended provision imposing fees to be paid by way of Court Fee is neither arbitrary nor ultravires the legislation.

9. In the light of the arguments advanced, let me consider whether the impugned rules framed exercising powers u/s 36 of the Act are ultravires and unconstitutional.

10. The unamended Section 30 of the Act provided for appeal to the appellate tribunal against the order of the recovery officer as if it is an order passed by the Tribunal exercising power under Sections 25 to 28 which dealt with the modes of recovery of dues and issuance of certificate. Subsequently, by amendment to the said provision during January 2000, to challenge the order of the recovery officer,

the Tribunal is empowered to entertain the matter as an appeal. In this regard, I may refer to Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993 which reads thus:

Application fee: Every application u/s 19(1), or Section 19(2) or Section 19(8) or Section 30(1) of the Act or interlocutory application or application for review of decision of the Tribunal shall be accompanied by fee provided in the Sub-rule (2) and such fee may be remitted through a cross bank demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place where the tribunal is situate.

11. The very rule framed as per the Act provided for imposing of fees for such application to be filed before the Tribunal or the appellate tribunal depending upon the quantum to be recovered or claimed.

12. It is the argument of the Petitioners' Counsel that the very order passed by the Recovery Officer is neither an order passed by the Tribunal nor it is an order that could be challenged before the appellate tribunal. According to him, it is only an interlocutory application for review of the order of the Recovery Officer which shall not be accompanied by any fees. In other words, the challenge to the order of the recovery officer is interlocutory in nature against which the fee he has to pay is only Rs. 250/- and not the amount as claimed i.e., Rs. 30,000/-. It is further contended, the amendment to Section 30 of the Act makes it clear that what is sought to be challenged by the Petitioners is in the form of an appeal to the Tribunal as against the order of the Recovery Officer in conducting the auction of the property which is far below the market value and as such, the order of the Recovery Officer is under challenge by way of an interim application or interlocutory order and it can neither be treated as an appeal or an application.

13. Sections 19 and 20 of the Act prescribe the procedure for filing of application to the Tribunal as well as to the appellate Tribunal. Both the sections have to be read along with Section 30 of the Act for better appreciation. Section 19 provides for application to the Tribunal and Section 20 provides for appeal to the appellate Tribunal. Section 30 provides for appeal against the order of the Recovery Officer. The amended Section 30 makes it clear that the order of the Recovery Officer should be challenged only by way of an appeal before the Tribunal. The appeal / application for the purpose of Section 19 is one and the same and it cannot be interpreted as an interlocutory application much less the order under challenge i.e., the auction conducted by the Recovery Officer, cannot be necessarily treated as an interlocutory order. Section 30 of the Act is very much clear that when the Petitioners prefer an appeal to the Tribunal as required u/s 19, then he has to pay the necessary fees. What is exempted u/s 19 of the Act is regarding transfer of certain cases from the Civil Court to the Debt Recovery Tribunal on the basis of pecuniary jurisdiction wherein Sub-clause (3) provides that every application under Sub-section (1) or (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed and further, provided that the fee may be prescribed having regard

to the amount of debt to be recovered and provided further that nothing contained in Sub-section (3) relating to fee shall apply to cases transferred to the Tribunal under Sub-section (1) of Section 31, that is to say, Section 31 as an enabling provision at the time of inception i.e., enactment and all those matters pending for recovery before the Civil Court were sought to be withdrawn to be dealt with by the Debt Recovery Tribunal. As such, it did not insist upon payment of Court Fees.

14. The argument of the Petitioners' Counsel is that, as per Section 19 of the Act, it is only the recovery process which is to be dealt with by the Tribunal and under such circumstance, fees sought to be paid on the said quantum is to be based on the fees provided under Rule 7 of the Rules and does not apply to the case on hand before the Tribunal. According to him, the same cannot be implied and read into in the absence of specific provision as to prescribing fees.

15. When Section 30 of the Act itself makes it specific that such an application/appeal be filed before the Tribunal as against the order of the Recovery Officer is in the form of an appeal for the purpose of Section 19, then the Petitioner may have to pay the prescribed fee as is provided u/s 19(3) and for the purpose of Section 19, appeal u/s 30 of the Act has to be treated as an application. The words "may be prescribed" in Sub-clause (3) of Section 19 enables the authority to prescribe fees by an executive order, might be in the form of an delegated legislation. When such prescription of fees is empowered under the Act itself necessarily it indicates discretion much less the power of the Central Government to prescribe such fees from time to time and in exercise of the said power, if such fees is fixed as a matter of rendering service to the party, it should not be treated as a matter of gratis rather, it requires imposing of certain fees to meet the contingencies as well as to maintain the system.

16. In the instant case, according to the Petitioners, property worth more than Rs. 5 crores is being sold for Rs. 98 Lakhs. After filing of the application/appeal before the Debt Recovery Tribunal, since it was insisted that the Petitioner pays an amount of Rs. 30,000/- as fees, this Court in order to examine the validity of the Rules so framed, by an interim order dated 24.6.2003 enabled the Petitioner to go ahead with the application / appeal filed before the Tribunal. Be that as it may, the fact remains that when such a challenge is made by the Petitioners by filing an application as provided u/s 20, it has to be treated as an application, before the Tribunal and in that context if an amount of Rs. 30,000/- is imposed as fees, the same cannot be said to be arbitrary or ultravires of the Act. Even the rules framed thereunder by the Central Government exercising powers u/s 36 of the Act, cannot be held to be either arbitrary or ultravires the Act.

17. For the foregoing reasons, the writ petition is dismissed. The Petitioners to pay the requisits fees contemplated under the Act and Rules within eight weeks before the concerned Tribunal. No costs.