(1998) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : C.R. No. 348 of 1998

Darshan Singh and Another — APPELLANT

Vs

Central Bank of India and Others — RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17(2), 3(1), 31, 31(1), 8(1)

Citation : (1999) ILR (MP) 158 : (1999) 1 MPLJ 644

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; M.M. Agrawal, for non-applicant No. 1, for the Respondent

Judgement

S.C. Pandey, J.

This revision is directed against the order dated 19-1-1998, passed by Vth Additional District Judge, iDurg, in Civil Suit No. 1-B/97.

The applicants submitted that the trial Court was right in holding that the loan in question was sufficiently secured by the non-applicant No. 1- Central Bank of India because it obtained documents of hypothecation and mortgage from the applicants and consequently there was no occasion for grant of temporary injunction restraining the applicants from transacting their business with the non-applicant No. 3-State Bank of India from depositing and withdrawing the amount according to their requirements. It was urged that despite the above conclusion the trial Court wrongly required to the applicants to furnish a solvent security of Rs. 20,00,000/- (Rupees Twenty Lakhs) and a personal bond in the like amount.

In the opinion of this Court, there is merit in the argument of learned counsel for the applicants that there was no reason for directing the applicants to file a personal bond of Rs. 20,00,000/- (Rupees Twenty Lakhs) and a solvent security in the like amount. Even according to the trial Court, the loans in question were already secured and, therefore, there is no question of further securing the amount by giving additional security.

Learned counsel for the non-applicant No. 1, however, tried to argue that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (henceforth ''the Act'') has already come into force with effect from 24-6-1993 and, therefore, this revision did not lie. There is no merit in this argument. Section 2(c) of ''the Act'' defines appointed day in relation to a Tribunal to be a date on which such Tribunal is established under sub-section (1) of Section 3 of ''the Act''. The Tribunal was established under sub-section (1) of Section 3 of ''the Act'' for the States of Madhya Pradesh and Uttar Pradesh at ''Shanti Kunj'', H. No. 797-11, South Civil Lines, Jabalpur (MP)-482001. The notification regarding establishment of the Tribunal was published in the Gazette of India (Extraordinary) on 7-4-1998 from New Delhi . The impugned order is dated 19-1-1998. The revision was filed on 10-2-1998. The jurisdiction and power of the authority of the Tribunal would be deemed to have been conferred on it on the appointed day i.e. 7-4-1998 in Madhya Pradesh. Consequently, on 19-1-1998, the Civil Court had jurisdiction to decide the case and the revision against the order, which was pending in this Court on 7-4-1998. It was, therefore, not transferred by operation of Section 31(1) of'' the Act''.

It is true that in the Chapter III of ''the Act'' Section 17(1) authorises a Tribunal to exercise its power from the appointed day. Section 17(2) of ''the Act'' provides that from the appointed day the Appellate Tribunal shall begin to function. The appointed day for Appellate Tribunal shall be the date on which it is constituted u/s 8(1) of ''the Act'' by a notification. The Appellate Tribunal is required to hear appeals from the order passed by Tribunals in relation to cases they exercise their jurisdiction. Section 18 of ''the Act'' bars any court or authority to exercise its jurisdiction in respect of powers conferred by Section 17(2) read with Section 20(1) of ''the Act''. The powers of High Courts under Articles 226 and 227 of the Constitution and that of the Supreme Court under Article 136 of the Constitution are, however, saved. It is, thus, clear that this bar applies to all statutory powers and not those covered by the Constitution. It is sought to be argued that the Constitution of an Appellate Tribunal would clothe it with powers to entertain appeals against any order made or deemed to have been made by the Tribunal. This Court is of the view that an order can be made by the Tribunal only after the appointed day. The order passed by the civil Court cannot be deemed to have been passed by Tribunal. Section 17(2) of ''the Act'' would be prospective in operation. If there was any intention to transfer revision or appeal to the Appellate Tribunal, it could be made express as in the case of civil suits u/s 31 of ''the Act''. On the other hand, the proviso to Section 31(1) of ''the Act'' bars transfer of an appeal.

Learned counsel for the applicants, however, argued that the proviso to sub-section (1) of Section 31 of ''the Act'' does not mention specifically a revision as it mentions merely that the appeal shall not be transferred. In the opinion of this

Court, the word "appeal" used in the proviso, should be given a wider connotation to include a civil revision filed u/s 115 of the Code of Civil Procedure. In the case of Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , it has been held that the revisional power exercised by the High Court u/s 115 of the CPC is akin to exercise of power in an appeal on limited grounds. Therefore, apart from the formal nomenclature, a revisional power is the exercise of appellate jurisdiction on limited grounds mentioned u/s 115 of Civil Procedure Code. Therefore, it would be appropriate to give a wider connotation to the word "appeal" under sub-section (1) of Section 31 of the ''the Act'' to include a revision. Otherwise, absurd result shall follow. A pending revision in the High Court if covered by main parts of sub- section (1) of Section 31 of ''the Act'' to mean a suit "or proceeding" shall render the civil revision itself to be transferred to the Tribunal. It is also clear from the provisions of Section 31(1) of ''the Act'' that all the suits are liable to be transferred to the Tribunal established u/s 3 of ''the Act''. Thus, in effect, the Tribunal shall become the Court of revisional jurisdiction for hearing the revision passed by the civil Court. However, how can it hear revision against its own orders because the orders passed by a civil Court, prior to transfer, shall be by an authority, in whose shoes it steps in. It is well established rule of construction, for which no authority need be cited, that by interpreting the particular provision, the Court should avoid absurd results. In view of this matter, the objection raised by learned counsel for the non- applicant No. 1 Central Bank of India is of no consequence. This revision is maintainable in this Court as it was against an order passed prior to establishment of a Tribunal and was filed in this Court when the Tribunal came into being.

It has already been held by this Court that there was no justification for demanding additional security from the applicants by way of personal bond of Rs. 20,00,000/- (Rupees Twenty Lakhs) and a solvent security in the like amount by the trial Court.

The result of the aforesaid discussion is that the impugned order dated 19-1-1998 is hereby set aside partly to the extent challenged by the applicants. The rest of the impugned order is maintained. The revision is accordingly partly allowed. The case be remitted to the trial Court. The trial Court shall proceed to transfer the case to the Debts Recovery Tribunal, constituted u/s 31(1) of ''the Act''.

