

(2001) 04 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 10857 of 2001-P

Devassia Devasia

APPELLANT

Vs

Chairman and Manager, South Indian Bank Ltd. and Another

RESPONDENT

Date of Decision : 05-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21, 31A

Citation : (2001) 2 ILR (Ker) 231

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : Mathew John and Baby Thomas, for the Appellant; K. Prabhakaran, for the Respondent

Judgement

M.R. Hariharan Nair, J.—The petitioner is the judgment debtor in O. S. No. 317 of 1994 of the Sub-Court, Pala, obtained by the first respondent-bank. Pursuant to the constitution of the Debt Recovery Tribunal, the bank approached the said Tribunal seeking issuance of a certificate u/s 31A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The petitioner is aggrieved that without giving him an opportunity to be heard the said request was allowed by the Tribunal vide exhibit P-2 order.

2. Learned counsel for the petitioner submitted during hearing that the Tribunal, without affording an opportunity to the petitioner to represent in the matter, has proceeded to issue the certificate simply following the amount claimed in the E. P. filed by the bank and that the bank actually is not entitled to the full amount mentioned in the E. P. for the reason that Rs. 6 lakhs had been paid by the petitioner in various instalments and accompanied by memos, wherein specific mention had been made that the payments were intended to be appropriated towards principal alone. If the amounts were so appropriated the bank would not be entitled to the full amount mentioned in the E. P. This is an aspect the petitioner could have brought to the notice of the Tribunal if only he was given an

opportunity to be heard. Therefore the prayer is to remit the matter to the Tribunal to afford such an opportunity.

3. Shri K. Prabhakaran, who appeared for the first respondent, submitted that there is no provision in the Act or the Rules for issuing" notice to the debtor before a certificate u/s 31A is granted and in that perspective the impugned order does not suffer from any defect. Counsel further submitted that even if the petitioner is aggrieved, he has an effective alternative remedy before the Appellate Tribunal constituted under the Act and as such the writ jurisdiction cannot be invoked to assail the impugned order. In answer to the above-said contention the stand of the petitioner is that there is no effective remedy even though there is provision for appeal in so far as it is mandatory that the petitioner should deposit 75 per cent, of the decree amount if at all the appeal should be taken as maintainable. Here, in the instant case, what is impugned before the Tribunal is not the correctness of the decree amount ; but only the validity of the order issued by the Tribunal specifying the amounts to be recovered by the certificate and that if it is made mandatory that even for raising such a contention before the Appellate Tribunal the petitioner should deposit 75 per cent, of the amount, the provision for appeal will be rendered ineffective and nugatory. Learned counsel also relied on case-law in support of his contentions.

4. A perusal of exhibit P-2 shows that it has been passed without giving an opportunity to the debtor to be heard. Since the petitioner has a valid contention that an amount of Rs. 6 lakhs paid from time to time was intended to be appropriated towards principal and not towards interest, the mere copying of the amount mentioned in the E. P. in the certificate will certainly work out injustice. Section 31A providing" for issuance of certificate itself is a new provision introduced under the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000/Learned counsel for the respondent has no case that any rules have been framed under the said provision enabling challenge of the certificate before any authority, apart from invoking the general provision contained in Section 20 of the Act. But then Section 21 of the Act, provides that where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution, an appeal u/s 20 shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75 per cent, of the amount of debt so due from him as determined by the Tribunal u/s 19. To insist that even for challenging an order directing issue of a recovery certificate such deposit is essential, would work out injustice and difficulties.

5. According" to learned counsel for the first respondent the original petition itself is not maintainable in view of the appeal provision aforementioned. The said contention cannot stand in view of the decision of this court in James Koshy v. Kerala State Road Transport Corporation [1999] 3 KLT 533 , where the court has taken the view that the rule which requires the exhaustion of alternative remedies as laid down in Ram and Shyam Company Vs. State of Haryana and

Others, , is a rule of convenience and discretion, a self-imposed restraint on the court rather than a rule of law and that it does not oust the jurisdiction of the court. Where the order complained against is alleged to be illegal or invalid as being contrary to law a petition at the instance of person adversely affected by it would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to another authority. When a citizen files a writ petition and if there are no complicated questions of fact to be determined it is too harsh to direct the party to approach the civil court for redressal of his grievances undergoing long-drawn litigation. In the present case what arises for consideration is only the justification for passing exhibit P-2 order without following the principles of natural justice. Such a matter can be effectively disposed of by this court and hence I find that the original petition is maintainable.

6. What arises next is the question whether the Tribunal was bound to follow the principles of natural justice before ordering" issue of a certificate and in passing an order in the nature of exhibit P-2. It is true that there is no specific rule which makes it mandatory. Even then since this is a matter affecting the rights of parties, a judicial forum like the Tribunal was bound to follow the principles of natural justice. If any authority is required, reference may be made to *Rajendra Kurup v. Union of India* [1993] 3 KLT 480, where it is held that the principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. Natural justice is an inseparable ingredient of fairness and reasonableness. Even if a statute is silent and there are no positive words in the Act, or Rules spelling out the need to hear the party whose rights and interests are likely to be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute unless the statute provides otherwise.

7. I respectfully follow the said decision and find that while passing orders like exhibit P-2 issuing certificates intended for recovery of amounts, the Debt Recovery Tribunal is bound to follow the principles of natural justice and to issue notice to all the affected parties, including the judgment debtor. This will be followed in all future cases as well, wherein orders are passed u/s 31A of the Act.

8. In the circumstances exhibit P-2 order is set aside and the matter is remitted to the Debt Recovery Tribunal, Ernakulam, with a direction to issue notice as aforementioned and to pass fresh orders in accordance with law.

9. The original petition is disposed of as above.