
(2002) 03 MP CK 0079

In the Madhya Pradesh High Court

Case No : Writ Petition No. 105 of 2001

Dhar Industries Ltd.

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21

Citation : (2002) 4 MPHT 569 : (2002) 4 MPLJ 50

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; Indira Nair and A. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioner is assailing the interim order passed by the Debts Recovery Appellate Tribunal on 9-10-2000 (Annexure P-12) directing the petitioner to deposit a sum of Rs. Two crores within a period of 12 weeks out of the decretal amount of Rs. 6,80,31,209.11.

Petitioner was granted a loan for working capital in the year 1995. An application was filed before the Debts Recovery Tribunal by Bank of India, Indore for recovery of Rs. 6,80,31,209.11. Judgment was passed by the Debts Recovery Tribunal on 10-8-2000 (Annexure P-9). The Bank was entitled to recover the interest @ 18.36 p.a. with quarterly rests from 29-5-2000 till the realisation of the outstanding dues. Against this order the petitioner preferred an appeal before the Debts Recovery Appellate Tribunal. An interim order was passed and directed the deposit of Rs. Two crores within a period of 12 weeks failing which the appeal shall not be entertained. It was further observed that such amount of deposit is to be held without being paid to the Bank towards satisfaction of the dues and would be dealt with at the time of final hearing of the appeal. Learned

Counsel for the petitioner submits that the order of the Debts Recovery Appellate Tribunal is extremely harsh and in the facts and circumstances of the case the petitioner have to close the industry or sale part of it to make the deposit as ordered by the Appellate Tribunal. It is further submitted that gross illegalities were made by the Debts Recovery Tribunal. Principles of natural justice were not followed before passing the judgment. Petitioner has been deprived of seeking real justice. It is also the submission that application could not be filed without the assent of lead bank and other banks which were parties to the agreement. There was no notice for the date of 10-8-2000 which was the date for filing the reply. Thus the Tribunal acted unreasonably in passing the order.

Smt. Indira Nair, learned Senior Counsel for respondent No. 8 submits that provisions of Section 21 has been enacted by the Legislature. The Appellate Tribunal has directed that an amount of Rs. Two crores be deposited out of about Rs. Seven crores. Thus the order passed by the Tribunal for depositing 1/3 of the decretal amount cannot be said to be harsh, unfair or unreasonable.

Smt. A. Ruprah, Counsel for respondent No. 3 submits that petitioner is not interested in making any deposit. He has been afforded a reasonable opportunity during the pendency of the petition. It is pointed out that more than one year has lapsed after passing of the interim order. It is further submitted that one year 7 months have lapsed after passing of the judgment by the Debts Recovery Tribunal and petitioner is not making any deposit.

First question for consideration is that whether condition of making the deposit can be said to be unjust and unreasonable. The Appellate Tribunal has directed for deposit of Rs, Two crores. Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides that where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75% of the amount of debt so due from him as determined by the Tribunal u/s 19. The power is given under the proviso to the Appellate Tribunal for the reasons to be recorded in writing to waive or reduce the amount. Intention is clear. It requires 75% of the amount of debt determined by the Tribunal to be deposited. Thus it cannot be said that Legislature has acted unreasonably. The relaxation power is given to the Appellate Tribunal for the reasons to be recorded in writing. It is only on the basis of the special reasons that the Appellate Tribunal has to waive or reduce the amount to be deposited u/s 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

In *Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay*, , the Apex Court considered similar provision under the Customs Act and observed that right of appeal contemplated under Sections 129A and 129E is a conditional one and the Legislature in its wisdom has imposed that condition of depositing duty demanded or penalty levied. The right is a conditional one and the Legislature in its wisdom has imposed that condition. No question of whittling

down that right by an alteration of procedure arises. In para 9 their Lordships held that right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

In *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, the Apex Court considered the provisions of appeal u/s 170(b) and observed that resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. When the appellate authority is having the authority to deal with the appeal, the provisions require certain deposit to be made. In the instant case more than sufficient time has been given to the petitioner. The order was passed by the Debts Recovery Tribunal in August, 2000. Now it is March, 2002. The petitioner in all fairness ought to have made the deposit. Whatever that may be the petitioner has failed to show his bona fides. Petitioner has not come up with any such offer which may be acceptable. This Court by passing interim order has already allowed the extension of period which the petitioner could not have expected by taking most lenient view in the matter.

In *Mittal Steel Ltd. Vs. Union of India*, , High Court of Karnataka considered the question of stay of pre-deposit and observed that power to determine whether pre-deposit has to be waived or what deposit is to be made, is in the discretion of the appellate authority. It is only when the appellate authority does not act judiciously and reasonably and when discretion has not been exercised properly, the writ jurisdiction of the High Court can be invoked. The decisions of the Apex Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, and *Siliguri Municipality and Others Vs. Amalendu Das and Others*, , were referred, which prohibit grant of interim stay in such matter in routine.

In the instant case the Appellate Tribunal has passed a detailed order. Recovery of the amount has been ordered by the Debts Recovery Tribunal. Thus the petitioner is bound to make the deposit. The discretion has been exercised by the Appellate Tribunal reasonably. If the petitioner is interested in pursuing the appeal let the petitioner make the deposit within 2 months from today of the amount so ordeied by the Debts Recovery Tribunal.

In *Punjab National Bank Vs. O.C. Krishnan and Others*, it was held that when the remedy of appeal is available no interference should be made in the writ jurisdiction. There should no interference in the interlocutory orders and that law requires that appeal should be decided within 6 months. Now more than 1-1/2 year has lapsed and the matter is still pending.

The writ petition is dismissed. Cost on parties.