(2007) 12 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 14165 and 18843 of 2006

Dhileep and Others etc. APPELLANT

Vs

Debt Recovery Tribunal and Others RESPONDENT

Date of Decision : 10-12-2007

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 2, 7, 7(1), 7(2)
Income Tax Rules, 1962 — Rule 11, 11(1), 11(4), 11(5), 11(6)
Kerala Municipalities Act, 1994 — Section 237
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(1), 19(2), 19(8), 28

Citation : AIR 2008 Ker 141 : (2008) 1 ILR (Ker) 332

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : V.V. Asokan, V.M. Kurian, Mathew B. Kurian and K.T. Thomas, for the Appellant;

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—What, if any, is the Court fee payable on an appeal to the Debts Recovery Tribunal, against an order of its Recovery Officer, deciding a claim or objection to attachment or sale?

W.P. (C) No. 14165 of 2006

2. On the basis of different recovery certificates issued by the Debts Recovery Tribunal, for short, the "Tribunal", constituted under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the "RDB Act", proceedings were initiated against the properties involved in those cases. Petitioners who are not the debtors in terms of the recovery certificates, asserted independent title and filed claim petitions invoking Rule 11(4) of the IInd Schedule of the Income Tax Act, 1961, hereinafter referred to as the "Schedule Rules". The Recovery Officer dismissed those petitions. Petitioners filed appeals u/s 30(1) of the RDB Act. The Tribunal''s

Registry overruled the petitioners'' answer to its objections on the question of Court fee. The petitioners'' appeals to the Tribunal against that, stand dismissed as per the impugned orders.

W.P. (C) No. 18843 of 2006

3. The petitioner, a Municipality, on the ground that property tax is a first charge, u/s 237 of the Kerala Municipality Act, 1994, filed a claim petition under Rule 11 of the Schedule Rules asserting priority in matter of liabilities, in preference to the Bank, the holder of a recovery certificate. That was dismissed by the Recovery Officer. The appeal filed by the petitioner to the Tribunal has not been entertained on the ground of insufficiency of court fee for reasons similar to those stated in the order impugned in W.P. (C) No. 14165 of 2006.

4. On behalf of the petitioners in W.P. (C) No. 14165 of 2006, their learned Counsel argued that they are not judgment debtors from whom any money is due, or has been found due, to the Bank. Accordingly, it is argued that there is no amount due from them and they have no financial liability under the transaction in question. It is pointed out that even as per the order of the Recovery Officer, dismissing the claim petitions, they are not saddled with any liability to pay any amount to the certificate holder and no monetary liability is imposed on the writ petitioners and hence an appeal against such an order cannot be construed as an appeal against an order imposing liability to pay amounts.

5. The findings in the impugned decisions are criticized as based on an erroneous construction of Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993, hereinafter referred to as the "Procedure Rules", treating it as an all encompassing one. It is argued that the same is only a machinery provision which stipulates the rate of fee payable on an application and while Rule 7(2) does not provide for any particular kind of appeal, it is not open to the authority to otherwise inject into a statute, something that is not clearly provided for. Canvassing the position that provisions relating to levy of Court fee are those imposing pecuniary liability and that therefore, any such restrictions on a person''s right to seek legal recourse has to be strictly construed, reference was made to the decision of the Apex Court in Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others, holding that access to justice is the basis of the legal system and so, where there is a reasonable doubt, the benefit must go to him who says that the lesser Court fee should be paid.

6. It is argued by the learned Counsel appearing in W.P. (C) No. 18843 of 2006 that the phrase "the amount appealed against" is referable only to a certificate holder or to a garnishee to whom notice has been issued u/s 28 of the Act and does not refer to a person who does not have any liability whatsoever, for payment to the certificate holder. It is argued that the phrase "the amount appealed against" does not permit of an interpretation as "the value of the subject matter of the appeal" but only an interpretation as "value of liability

imposed" or disputed. It is further pointed out that even assuming that the view of the Tribunal that every appeal has to be accompanied by fee is to be accepted, that payment of fee can be insisted upon only when the plain language of the Rules specifies payment and not otherwise. It is contended that there is no specific provision for levy of fee and Rule 7(2) at Sl. No. 5 does not take in appeals against orders on claim petitions. In the absence of any specific provision, no Court fee is leviable, it is contended.

7. Rule 11 of the Schedule Rules provide for adjudication of any claim preferred, or any objection made, to the attachment or sale of any property in execution of a certificate on the ground that the said property is not liable to such attachment or sale. Sub-rules (4) and (5) of Rule 11 provide that the Recovery Officer may pass an order on investigation of the claim or objection. No appeal is provided under the Income Tax Act against that order. Instead, Sub-rule (6) of Rule 11 of the Schedule Rules provide for a suit to establish the right claimed by any person against whom an order may be passed following the investigation under Rule 11. Section 29 of the RDB Act provides for the application of the provisions of, among other things, the Schedule Rules, as far as possible, with necessary modifications, as if those provisions referred to the amount of debt due under the RDB Act instead of the Income Tax Act. After making such regulated incorporation by reference, Section 30(1) of the RDB Act provides that notwithstanding anything contained in Section 29 thereof, any person aggrieved by an order of the Recovery Officer made under that Act may prefer an appeal to the Tribunal. Therefore, the provision in Rule 11(4) among the Schedule Rules providing a suit, is displaced by the right of appeal conferred as per Section 30(1) of the RDB Act. Hence, an order of the Tribunal''s Recovery Officer, under Sub-rules (4) or (5) of Rule 11 of the Schedule Rules would be an order appealable u/s 30(1) of the RDB Act.

8. The Procedure Rules, provide, among "things, in Rule 7 thereof, for application that Rule read as follows:

7. Application Fee:-- (1) 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 a fee provided in the Sub-rule (2) and such fee may be remitted through a crossed 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 situated.

(2) The amount of fee payable shall be as follows:

S. NATURE OF APPLI- AMOUNT OF No. CATION FEE PAYABLE

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1. Application for recovery of debts due u/s 19(1) or Section 19(2) of the Act (a) Where amount of debt Rs. 12,000 due is Rs. 10 lakhs (b) Where the amount of Rs. 12,000 plus Rs. 1,000 debt due is above Rs. 10 for every one

lakh rupees lakhs. of debt due or part thereof in excess of Rs. 10 lakhs, subject to a maximum of Rs. 1,50,000 2. Application to counter claim u/s 19(8) of the Act- (a) Where the amount of Rs. 12,000 claim made is upto Rs. 10 lakhs. (b) Where the amount of claim made is above Rs. 10 Rs. 12,000 plus Rs. 1,000 lakhs. for every one lakh rupees or part thereof in excess of Rs. 10 lakhs, subject to a maximum of Rs. 1,50,000 3. Application for review including review application in respect of the counterclaim (a) against an interim order Rs. 125 (b) against a final order 50% of fee payable at excluding review for rates as applicable on the correction of clerical or applications u/s 19(1) arithmetical mistakes or 19(8) of the Act, subject to a maximum of Rs. 15,000 4. Application for interlocutory Rs. 250 order 5. Appeals against orders of the recovery officer If the amount appealed against is (i) less than Rs. 10 lakhs Rs. 12,000 (ii) Rs. 10 lakh or more but Rs. 20,000 less than Rs. 30 lakhs (iii) Rs. 30 lakhs or more Rs. 30,000 Vakalatnama Rs. 5

9. Rule 2(c) of the Procedure Rules reads as follows:

2. Definitions.-- In these rules, unless the context requires,--

(c) "application" means an application filed u/s 19 or u/s 31A and includes an "appeal" filed u/s 30(1) of the Act.

10. A close reading of Section 30(1) of the RDB Act and Rule 7(1) of the Procedure Rules shows that what is referred to under those provisions is essentially an appeal u/s 30(1) of the RDB Act, notwithstanding the fact that the word "appeal" does not appear in Rule 7(1) of the Procedure Rules. For one thing, Section 30(1) of the RDB Act does not provide for any application; it provides only for an appeal. Secondly, the Procedure Rules constitute a piece of subordinate legislation, being rules made by the Central Government in exercise of the relevant rule making power and therefore whatever is contained in that has to be read subject to the provisions in the RDB Act.

11. The Entry at Sl. No. 5 in Rule 7(2) of the Rules provides for the levy of fee on appeals against orders of recovery officer. No doubt, what the petitioner presented before the Tribunal were appeals against orders of the Recovery Officer. The levy of fee in terms of that Entry in Rule 7(2) is prescribed by classifying the appeals into three categories on the basis of "the amount appealed against".

12. An order under Rules 11(4) or (5) of Rule 11 of the Schedule Rules is one ordering the release of the property claimed or one disallowing that claim. That result emanates out of an adjudication on any claim which is preferred to, or any objection that is made to the attachment or sale, such claim or objection being preferred in terms of Rule 11(1) of the Schedule Rules. So much so, neither the institution nor the adjudication of a claim petition in terms of Rule 11(1) of the Schedule Rules is dependent upon the determination of any amount which could be treated as "the amount appealed against" for the purpose of an appeal against such an order, invoking Section 30(1) of the RDB Act. Hence, an appeal

against an order passed on an application under Rule 11(1) of the Schedule Rules is not an appeal where an "amount" is appealed against.

13. The imposition of Court fee is essentially a fiscal imposition, levy of which has to be footed on specific statutory provisions, either primary or subordinate, as duly authorised, and if two views are possible on the construction and interpretation of such a levying provision, the benefit has necessarily to go to the person, who could be treated as obliged to pay. This is all the more so in the case of levy of fee in relation to a judicial proceeding, for the further reason that any insistence to pay a fee, which is not explicitly available in the governing law, will jeopardize the right of appeal. Enormous support to this view is consistent. For reference, see State of Bombay Vs. Supreme General Films Exchange Ltd., , Usha v. F.C.I. 1997 (1) KLT 264, Procurator, Roman Catholic Diocese of Calicut Vs. State of Kerala, , Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others, and Steel Industrials Kerala Ltd. Vs. Assistant Commissioner, .

14. Now, I shall come to the reasons stated by the learned Tribunal for the conclusion that fee is leviable on the appeals in question. The word "every" preceding the word "application" in Sub-rule (1) of Rule 7 of the Procedure Rules read with Rule 2(c) of those Rules would show that every appeal u/s 30(1) of the RDB Act is called an "application" for the purpose of the Procedure Rules. That finding is beyond challenge. But the mere fact that an appeal u/s 30(1) of the RDB Act is called an "application" for the purpose of the Procedure Rules by virtue of Sub-clause (c) of Rule 2, the interpretation clause, of those Rules, does not necessarily lead to the inference or conclusion that all appeals u/s 30(1) of the RDB Act are chargeable with a fee applying Entry 5 in Rule 7(2) of the Procedure Rules. As already noticed, any benefit in interpreting a legislative provision imposing a fee, including Court fee, has to go to the litigant. Therefore, notwithstanding the fact that by virtue of Rule 7(1) read with Rule 2(c) of the Procedure Rules, the Entry at Sl. No. 5 in Rule 7(2) of those Rules apply to appeals u/s 30(1) of the RDB Act, the levy of fee in terms of that Rule could be only on those appeals u/s 30(1) of the RDB Act which are appeals in which an "amount" is "appealed against". The appeal against an order on an application u/s 11(1) of the Schedule Rules, as already noticed, is not an appeal against any particular amount. Therefore, the classification of such appeals cannot be made on the criteria of "the amount appealed against".

15. Hence, the learned tribunal''s view that the words "the amount appealed against" at Sl. No. 5 in Rule 7(2) means the "value of the subject-matter of the appeal" and the further view that any other interpretation would make the entry at Sl. No. 5 in table under Sub-rule (2) of Rule 7 of Procedure Rules redundant do not stand. That entry is inapplicable to an appeal against an order following an adjudication of an application under Rule 11(1) of the Schedule Rules. If that provision were to apply as it stands, the appealing claimant ought to be compelled to value the subject matter of the appeal. Such provision for valuation is just not there, either under the RDB Act or under the procedure Rules. There

can be no imposition of Court fee without an express provision in that regard. As already found, the Entry at Sl. No. 5 in Rule 7(2) of the Procedure Rules does not apply to an appeal, u/s 30(1) of the RDB Act, against orders passed on an adjudication of a claim under Rule 11(1) of the Schedule Rules. In the absence of any specific provision, at least in the form of a residuary one, the conclusion is irresistible that no Court fee is leviable on such an appeal.

16. In the result, these writ petitions are allowed quashing the impugned orders and directing that the appeals, filed by the petitioners, on which the impugned orders have been passed, shall be entertained without insisting on payment of any Court fee.

