

(2002) 08 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 5876 of 2000

Dimapur Town Committee and Another	APPELLANT
Vs	
Debt Recovery Tribunal and Another	RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 12(6)

Citation : (2004) 1 BC 145 : (2003) 2 GLR 715 : (2002) 3 GLT 407

Hon'ble Judges : P.P. Naolekar, C.J.;B.B. Deb, J

Bench : Division Bench

Advocate : D.K. Mishra and A. Dutta, for the Appellant; A.R. Borthakur and P.N. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

P. P. Naolekar, C.J.—The petitioner No. 1 herein is a civic body formed under the Naga Hills District (Constitution of Town Committees) Rules, 1954, having its office at Dimapur, Nagaland. The petitioner No. 2 is the Chairman/ Administrator of the petitioner No. 1. The Respondent No. 2, State Bank of India is a body corporate constituted under the State Bank of India Act, 1955 having its Local Head Office at Guwahati and one Regional Office at Dimapur.

2. The Respondent No. 2 filed a Money Suit on 29.8.1996 against the petitioners in the Court of the Assistant to Deputy Commissioner, Dimapur, Nagaland which was registered as Money Suit No. 30 of 1996, praying for a decree for Rs. 1,52,45,776.30 P as principal amount due from the petitioners and interest outstanding as on 28.8.1996; a decree for future interest at the existing commercial rate of interest from 29.8.1996 till realization of the decretal amount and; a decree for possession, sale or foreclosure of the mortgaged properties detailed in paragraphs (3) and (5) of the plaint.

3. Notices of the suit were issued to the petitioners u/s 31 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (hereinafter shall be

referred to as "the Act of 1993"). After service of notice the petitioners filed their written statement denying the averments made by the Respondent-State Bank of India in the plaint. By order dated 28.4.2000 the Debt Recovery Tribunal directed both the parties to file their affidavit. The Respondent-Bank filed its evidence-on-affidavit on 4.7.2002. The said affidavit was sworn by one Shri A. K. Bhattacharjee, who was serving as Chief Manager, I.C.R. Department of the respondent-Bank. The petitioners filed an application seeking order of the Tribunal to allow the petitioners to cross-examine Shri A.K. Bhattacharjee, Chief Manager, I.C.R. Department on the ground that in the affidavit Shri Bhattacharjee has not specified the period during which he had worked as Manager, SIB Division, Dimapur Bazar Branch. It is stated in the affidavit that the defendants executed documents in consideration of the loan in his presence and that he also witnessed these documents, but has not specified those documents. In the affidavit, reliance has been placed on a letter dated 25.5.2000 which was not relied upon in the plaint. It is stated in the affidavit that Shri S.K. Khulu, Additional Deputy Commissioner, Dimapur executed various documents on behalf of the Dimapur Town Committee, but has not produced any authority letter indicating his power to do so. It is stated in the affidavit that Shri K.T. Sukhalu, the Sub-divisional Magistrate, who deposited the Title deed of the properties of the petitioner No. 1 as he has been authorized by Shri H.K. Khulu, but no document giving such authority nor any provision was mentioned in the affidavit. It is stated in the affidavit that the defendants from time to time executed revival letters for extending the terms of loan and also to save limitation, but the respondent has failed to produce any letter or document authorizing the Additional Deputy Commissioner, Dimapur to sign the alleged revival letters on behalf of the Dimapur Town Committee and, as such, the defendant, i.e., the petitioners may be allowed to cross-examine the Chief Manager in this regard. Cross-examination of Shri A.K. Bhattacharjee was asked for in the aforesaid premises. The Tribunal has rejected the application seeking permission to cross-examination of Shri A.K. Bhattacharjee.

4. The Tribunal while rejecting the prayer has considered the grounds on the basis of which the petitioner sought permission for cross-examination of Shri Bhattacharjee. The Tribunal has held that the Act of 1993 contemplates summary proceedings and no right has been conferred for examining a witness on oath in court or cross-examine a witness and the Tribunals are not bound by the procedure laid down under the Code of Civil Procedure. It has also been observed that personal knowledge of the witness and officers of the Bank was not necessary and they can depose on affidavit on the basis of documents and on the basis of tallying signature from the record which can be accepted. Thus, there is no necessity for the Bank to show the period during which he was working as Manager in the Branch nor to mention any particular document which has been executed in his presence. It is further stated in the order that the letter Ext. A/2, letter sanctioning loan of Rs. 50 lakhs for construction of a new market complex in favour of the Chairman, Dimapur Town Committee, Dimapur, Nagaland has

clearly specified who will be the guarantor and who will be executing the security documents on behalf of the loanee Dimapur Town Committee. In Column 2 of sanction letter it is mentioned that the Additional Deputy Commissioner and Ex-officio Chairman of Dimapur Town Committee would submit the periodical statement regarding progress of work done and the disbursement of the loan amount shall be based on the periodical statement so submitted by the Additional Deputy Commissioner. Para 3 of the sanction letter mentions that the Nagaland State Government would be the guarantor for the loan. Column 9(6) of the sanction letter further mentions that the Additional Deputy Commissioner, Dimapur had to take the responsibility for the repayment of the bank loan and a letter to that effect was to be submitted by the Additional Deputy Commissioner. In view of such terms mentioned in the sanction letter, the Tribunal found that there is no justification for the defendant to challenge through cross-examination applicant's witness about execution of documents by the Additional Deputy Commissioner or under his orders by the Sub-Divisional Magistrate posted under him. The Tribunal was of the definite opinion that there is no necessity of calling the applicant's witnesses for cross-examination by the defendant at all. The Tribunal further held that the application has been moved simply to delay disposal of the petition. Therefore, the Tribunal dismissed the application moved by the petitioners seeking permission to cross-examine the witness who has filed the affidavit-in-evidence.

5. From perusal of the order passed by the Tribunal it is clear that the order is based on reasons and this Court in exercise of powers under Article 227 will not sit over the reasons given by the Tribunal for refusing the permission to cross-examine the witness. It is not a case where the impugned decision is arrived at without jurisdiction or against the principle of natural justice or in grave dereliction of duty or in flagrant violation of law as distinguished from merely erroneous decision of fact or law. This Court while exercising jurisdiction under Article 227 will not go in to the question of adequacy of sufficiency of the reasons unless and until it is demonstrated that the reasons given in support of the order is perverse, viz., no reasonable person on the facts found could arrive at such a conclusion which has been arrived at. The petitioners have failed to make such a case before us.

6. It is submitted by the learned counsel for the petitioner that on a plain reading of proviso to Rule 12(6) of the Debts Recovery Tribunal (Procedure) Rules, 1993, would reveal that whenever an application is moved by the defendant desiring to cross-examine a witness whose affidavit has been filed, the Tribunal has no jurisdiction or authority to admit the affidavit as evidence on record. Rule 12(6) of the Rules with its proviso reads as under :

"12(6) The Tribunal may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Tribunal thinks reasonable :

Provided that where it appears to the Tribunal that either applicant or defendant desires the production of a witness for cross-examination, and that such witness can be produced an order shall not be made authorizing the evidence of such witness to be given by affidavit."

7. The main part of the rule authorizes the Tribunal for sufficient reason, to order any particular fact or facts may be proved by affidavit. The submission of the counsel is based on the basis of the words used in the proviso that once a desire is expressed by the defendant for production of witness for cross-examination and if such witness can be produced, the Tribunal cannot pass an order authorizing evidence of such witness to be given by affidavit. Such a construction has been expressly repealed by the Apex Court while considering Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993 in the case reported in Union of India and Another Vs. Delhi High Court Bar Association and Others, of the judgment is a complete answer to the submission made by the learned counsel for the petitioner, which reads as under :

"23. In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction, on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire of a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before it ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient."

8. The Apex Court while interpreting Rule 12 has said that the Tribunal has power to require any particular fact to be proved by affidavit or it may order the affidavit of any witness may be read at the hearing. Once the parties have filed

affidavits in support of their respective cases, it is only thereafter that the desire for the witnesses to be cross-examined can legitimately arise and it is at that time, if it appears to the Tribunal that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case, that it shall require the witness to be present for cross-examination, and if the witness does not appear, then the affidavit shall not be taken into evidence. Thus, before permitting the witness to be cross-examined, the Court should be satisfied that it is necessary to do so and that it is not a ploy of the defendant to prolong the case, the court shall permit cross-examination of the witness who has submitted an affidavit. On permission, being granted for cross-examination, if the witness does not appear, the evidence so produced through affidavit, shall not be read as evidence. The Rule does not contemplate that simply because the defendant moved an application for cross-examination of the witness, affidavit-in-evidence cannot be read as an evidence. The permission to cross-examination is not merely on an application being filed. It can only be allowed if the court finds it necessary and that there is no element of delaying tactics.

9. In view of the decision rendered by the Apex Court, we do not find that the counsel for the petitioner is right in his submission that once an application is moved seeking cross-examination, the affidavit in evidence cannot be read in evidence. The Tribunal while dismissing the application has given reasons as to why it does not think it proper to permit cross-examination of the witness. Reason given by the Tribunal cannot be said to be without basis.

10. For the aforesaid reason, we find no infirmity or illegality in the order passed by the Tribunal. The petition is dismissed with cost of Rs. 5,000.