

(2002) 04 MAD CK 0176

In the Madras High Court

Case No : C.R.P. (NPD) No. 384 of 2002 C.M.P. No's. 4049 and 4050 of 2002

D.P. Karthikeyan

APPELLANT

Vs

Canara Bank Thirunagar Branch, Thirunagar, Madurai, P.
Chellammal and M. Muthukaruppa Gounder

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Banks and Financial Institutions Act, 1993 — Section 19
Constitution of India, 1950 — Article 226, 227
Provincial Insolvency Act, 1920 — Section 10, 13

Citation : (2003) 116 CompCas 582

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S.R. Rajagopal, for the Appellant;

Judgement

E. Padmanabhan, J.—The present revision has been preferred under Article 227 of The Constitution of India challenging the order dated

21.2.2002 passed by the Debts Recovery Appellate Tribunal in M.A. No.101/2001 in modifying the order passed by the Debts Recovery

Tribunal-II, Chennai, in I.A. No.1501 of 2001 in O.A. No.1456/2001 passed on 12.9.2001 by the Debts Recovery Tribunal.

2. The facts leading to the revision could be summarised briefly. The first respondent, M/s.Canara Bank filed O.A. No.1456 of 2001 u/s 19 of

The Recovery of Debts due to Banks and Financial Institutions Act, 1993, against the petitioner and respondents 2 and 3 herein. In the said

original application, the first respondent Bank prayed for the following reliefs :-

i) To direct the defendants 1 to 3 to pay the applicant jointly and severally a sum of Rs.14,84,591.00 being the amount due under Agricultural

Term Loan Account together with further interest at the rate of 19.34% per

annum compounded half yearly from the date of application till

realisation, together with further interest as stated above from the date of application till the date of realisation in full with compounded half yearly ;

ii) To pass an order for sale of mortgaged immovable properties more fully described in the schedule "A", "B" and "C" hereunder to and in favour

of the applicant and the proceeds of the sale of schedule "A", "B" and "C" properties be appropriated towards the amounts due after defraying

expenses for sale ;

iii) To pass a personal decree against the defendants 1 to 3 in case the proceeds of sale are insufficient for the payment of balance dues with further

interest at 19.34% per annum compounded half yearly till date of payment ;

iv) To issue a Recovery Certificate for a sum of Rs.14,84,591.00 being the amount due under Agricultural Term Loan Account together with

further interest at the rate of 19.34% per annum compounded half yearly from the date of application till realisation.

and other consequential reliefs. The applicant therein also prayed for interim orders.

3. The petitioner herein, states that he has no knowledge of the institution of the original application and he came to know about the proceedings

during April 2000. On verification, the petitioner further came to know that the O.A., came up before the Debts Recovery Tribunal on 12.5.99 for

the appearance of the defendants, on which date fresh summons was ordered returnable on 31.8.99. It is suggested that the summons issued on

31.8.99 also came to be returned with the endorsement no such person. The Debt Recovery Tribunal set the applicant exparte and the application

came to be posted on 21.12.99 for filing proof affidavit of the applicant, which affidavit was filed by the applicant therein on 21.12.99. Thereafter

final order was passed directing payment.

4. According to the revision petitioner, he has neither received any notice with respect to the filing of the original application nor any summons have

been served on him by the Debts Recovery Tribunal. Being kept in dark, the revision petitioner did not or could not have appeared in the said

original application before the Debts Recovery Tribunal. The plaintiff Bank was aware of the residential address of the revision petitioner, yet it had

not chosen to serve the revision petitioner. While pointing out that the non-

appearance of the revision petitioner is neither wilful nor wanton and only due to reasons, which is beyond his control, the revision petitioner filed I.A. No.1501 of 2000 on 4.5.2000 to set aside the exparte order passed on 31.8.99 in O.A. No.370 of 1999.

5. The said application was resisted by the first respondent Bank herein. The first respondent contended that the application has been filed only with a mala fide intention and to drag on the proceedings and the non-appearance of the defendant in the original application is neither bona fide nor it could be explained. According to the first respondent Bank, defendants 1 and 2 are the borrowers, the 3rd defendant is the co-obligant for defendants 1 and 2 in respect of the loan agricultural term loan sanctioned to the limit of Rs.13.44 lakhs. The revision petitioner has already filed an insolvency petition under Sections 10 and 13 of the Provincial Insolvency Act, 1940, in I.P. No.14/97 on the file of the Additional Sub Judge of Madurai seeking for an order of adjudication to adjudge him as an insolvent and place his properties in the hands of the Official Receiver for appropriate administration and distribution to the creditors. In the said insolvency petition, the respondent-Bank also had taken part. Notice in the original application was sent to the revision petitioner herein to the address, which he had furnished in I.P. No.14/97 and summons were also sent to the said address. If the exparte decree is set aside, irreparable loss will be caused to the plaintiff, namely, the first respondent-Bank.

6. In the said O.A. No.1456/2001, the Debts Recovery Tribunal on 31.8.98, while recording that affidavit of service is filed, summons were returned against D-1 and D-2 as no such person present in the address, publication also was effected, D-1 and D-2 called absent, set exparte and directed the matter to be posted for orders on 21.12.99. Proof affidavit was filed and orders were passed on 4.5.2000.

7. In I.A. Nos.3363/99 and 1501 of 2001, the Debts Recovery Tribunal-II, while holding that no notice has been served on the revision petitioner herein, with a view to afford one more opportunity to be given to the other side, set aside the exparte order on condition that the petitioner and respondents 2 and 3 herein should deposit Rs.3 lakhs within five weeks and in case of failure, the application itself shall stand dismissed. The first respondent had not challenged the said order.

8. Being aggrieved by the said order imposing the condition, the petitioner herein moved the Debts Recovery Appellate Tribunal u/s 20 of The

Recovery of Debts due to Banks and Financial Institutions Act, 1993. In the said appeal, the Appellate Tribunal modified the orders of the Debts

Recovery Tribunal by directing the revision petitioner to deposit Rs.1 lakh within six weeks as against Rs.3 lakhs ordered to be deposited by the

Debts Recovery Tribunal. Being aggrieved, the present revision has been preferred.

9. Mr.S.R.Rajagopal, learned counsel appearing for the revision petitioner contended that the order of the Appellate Tribunal is illegal, vitiated by

misdirections, factual misconceptions, even the condition to deposit Rs.1 lakh is onerous, that notice has been sent to a wrong address and that the

absence of the revision petitioner is neither wilful nor deliberate, but due to the fact that no notice has been served on the petitioner.

10. The relief claimed by the first respondent-Bank in the original application is for recovery of Rs.15 lakhs or thereabout with interest. This Court

pointed out that no case has been made out for interference under Article 227 of The Constitution as under Article 227 this Court is not exercising

appellate jurisdiction, but has to see whether the Tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated

by procedural irregularity. In other words, the Court is concerned not with the decision, but with the decision making process. It is equally well

settled that the High Court shall not in exercise of its powers under Article 227 assume appellate powers to correct every mistake of law. If the

order has been passed without jurisdiction, then this Court would be justified in interfering with the order passed by the Banking Recovery

Appellate Tribunal under Article 227.

11. In M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., the Apex Court, while examining the scope and ambit of Article 227, held thus :-

6) The exercise of power under Article 227 of the Constitution of India involves a duty on the High Court to keep inferior courts and tribunals

within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested

with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts

or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and

flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is

also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in

place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore

the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can

possibly come to such a conclusion, which the court or tribunal has come to.

12. In *Achutananda Baidya Vs. Prafulla Kumar Gayen and others*, the Apex Court held thus :-

10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only

but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to

ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of

this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction,

refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of

authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.

As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its

finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if

the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper

exercise of jurisdiction or if its conclusions are perverse.

13. In *Punjab National Bank Vs. O.C. Krishnan and Others*, the Apex Court held that provisions of Recovery of Debts due to Banks and

Financial Institutions, the jurisdiction of this Court under Articles 226 and 227 of

the Constitution has not been expressly ousted, yet when there is an alternate remedy, the High Court shall refrain from exercising its jurisdiction under Article 227.

14. While respectfully following the above pronouncements, it is not every or any order that is passed by the Recovery Tribunal or Appellate

Tribunal that could be interfered by this Court under Article 227 of The Constitution. The jurisdiction of this Tribunal under Article 227 over the

Debt Recovery Appellate Tribunal is judicial and not administrative. It is true that the decision of the appellate tribunal is subject to judicial review

and judicial superintendence of this Court under Article 227. But such interference could be on one or more of the grounds as has been held by the

Apex Court in the above pronouncements.

15. In the present case, this Court finds that the order of the appellate tribunal is not liable to be interfered under Article 227 of The Constitution.

Though the learned counsel for the petitioner relies upon the decision of the Apex Court in G.P. SRIVASTAVA VS. R.K.RAIZADA &

OTHERS reported in 2000 (3) SCC 564 and contended that while setting aside the exparte order against the defendants, the expression

sufficient cause for non-appearance"" cannot be stretched to cover the circumstances occurring prior to the date of non-appearance and when

there is sufficient cause for non-appearance, the defendants cannot be penalised by imposing a condition.

16. In this case, though the Debt Recovery Tribunal imposed a condition to deposit Rs.3 lakhs to set aside the exparte order, the Appellate

Tribunal has modified it by exercising its discretion and modified the condition directing the petitioner to deposit Rs.1 lakh as against Rs.3 lakhs.

Such a modification is an exercise of discretion by the Appellate Tribunal, which cannot be held to be either arbitrary or without jurisdiction nor it is

liable to be interfered by this Court. Further the loan transaction is not controverted by the petitioner and the outstanding remains undischarged for

a considerable period.

17. It was contended that no notice has been served. This again is a question, which the two tribunals below considered and were not prepared to

sustain since the first respondent-Bank has taken all steps to serve the petitioner herein and only thereafter, the exparte order has been passed

sustaining the Bank's claim for recovery of around Rs.15 lakhs. As of today, if the amount is to be calculated, the amount which the first

respondent-Bank is entitled to recover may exceed Rs.20 lakhs and above. But the appellate tribunal has only made a condition to deposit Rs.1

lakh towards Bank's claim to set aside the exparte order. This condition cannot be held to be unreasonable or arbitrary warranting interference.

18. While holding that the revision is maintainable under Article 227 as against the orders of the Debt Recovery Tribunal or the Appellate Tribunal

as the case may be, and wherever there is any provision for appeal, this Court declines to interfere with the order of the Appellate Tribunal.

19. The Appellate Tribunal has granted six weeks time from 1.2.2002 to deposit Rs.1 lakh. The said time has already lapsed. However, taking

into consideration of the entire facts, to render substantial justice and to afford an opportunity, this Court extends the time to deposit the said sum

of Rs.1 lakh (Rupees One Lakh only) by eight weeks from today. With the above direction, the Civil Revision Petition is dismissed. Parties shall

bear their respective costs. Consequently, connected C.M.P.s are also dismissed.