

(2016) 07 OHC CK 0051
In the Orissa High Court
Case No : W.P.(C). No. 11243 of 2012

Geetanjali Sahoo

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20, 30

Citation : (2016) 165 AIC 808 : (2016) 3 BankJ 383 : (2016) 2 DRTC 618

Hon'ble Judges : Mr. Vinod Prasad and Mr. Biswanath Rath, JJ.

Bench : Division Bench

Advocate : M/s. G.M. Rath, S.K. Patnaik, S.S. Padhy, S.S. Satpathy, S.S. Mohanty and P.R. Sutar, Advocates, for the Petitioner; Mr. D.K. Mishra, Advocate, for the Opposite Party No. 3; M/s. R.K. Rout and P.K. Mishra, Advocates, for the Opposite Party No. 4; M/s. G.D

Final Decision : Dismissed

Judgement

Mr. Biswanath Rath, J.—This Writ Petition has been filed making the following prayer:

The petitioner therefore humbly prays that this Hon'ble Court be graciously pleased to admit the writ petition, issue a Rule nisi calling upon the

Opp. Parties to show cause as to why the orders dated 11.01.2012 and 06.03.2012 passed by the learned Recovery Officer, Debts Recovery

Tribunal, Cuttack in R.P. No. 141/2006 vide Annexure-12 & 13 respectively, auction sale notice dated 15.5.2012 vide Annexure-14 shall not be

quashed and as to why property more fully described in paragraph-3 of the writ application shall not be settled in favour of the petitioner and if the

Opp. Parties fail to show cause or show insufficient cause to make the said rule absolute by issuing appropriate writ/writs, order/orders,

direction/directions as this Hon'ble Court deems fit and proper;

And/or to pass such other order/orders, direction/directions as this Hon'ble Court deems just, equitable and proper in the facts and

circumstances of the case;

And for this act of kindness, the petitioner shall as in duty bound ever pray.

This Court also finds that the petitioner by filing Misc. Case No. 19959 of 2014 wants to bring the following in the prayer by way of amendment;

Order dated 22.11.2011 passed by learned Presiding Officer, Debts Recovery Tribunal in R.P.No. 141 of 2006 vide Annexure-11.

Above amendment clearly demonstrates that in the present writ petition, apart from challenging the Annexures-12, 13 and 14, the petitioner also

wants for setting aside of the impugned order vide Annexure-11 passed by the Debt Recovery Tribunal by this Court in exercise of power under

Article 226 and 227 of the Constitution of India.

2. During course of argument, serious objection was raised by the learned counsel appearing for the Opp. parties as to the maintainability of the

writ petition in view of clear statutory remedy of appeal available under the Recovery of Debts Due to Bank and Financial Institutions Act, 1993,

hereinafter referred to as "the Act, 1993".

3. In view of involvement of the question of maintainability of the Writ petition, this Court is required to decide first the maintainability of the writ

petition.

There is no dispute at the Bar that the Writ petition involves challenging the orders passed by the Recovery Officer under the Act, 1993 vide

Annexures-12 and 13 and the consequential Notification vide Annexure-14 and also the order passed by the Debt Recovery Tribunal vide

Annexure-11 but however by way of amendment.

4. During course of argument, learned counsel for the petitioner drawing our attention to a document vide Annexure-11 passed by the Presiding

Officer, Debts Recovery Tribunal, Orissa, Cuttack in R.P. No. 141 of 2006 contended that in view of the observation made by the Debts

Recovery Tribunal, Orissa, Cuttack in the order dated 22.11.2011, the appeal under Section 30 of Recovery of Debts Due to Banks and

Financial Institutions Act, 1993 challenging the orders under Annexures-12, 13

and 14 would become futile. Therefore, he has rightly approached the Writ Court for interfering with the impugned orders.

5. On their appearance, learned counsel appearing for the Bank as well as other Opp. parties vehemently objected to such submissions of the

learned counsel for the petitioner and contended that in view of clear statutory appeal remedy under the Act, 1993, the Writ petition is not

maintainable and the objections raised herein, can very well be considered by the appellate forum.

6. To substantiate his submission on the question of maintainability of the Writ petition, learned counsel for the petitioner relied on the decisions in

the case between Bireswar Das Mohapatra v. State Bank of India reported in 2006 (II) OLR 423, a judgment of this Court between

Gobinda Chandra Pattnaik v. Presiding Officer and ors. in W.P.(C) No. 1468 of 2009 decided on 06.5.2009, in the case between Raja Textiles

Ltd. v. Income Tax Officer, reported in AIR 1973 SC 1362, in the case between Whirlpool Corporation v. Registrar of Trade Marks,

reported in AIR 1999 SC 22, in the case between U.P. State Spinning Co.Ltd v. R.S. Pandey, reported in (2005) 8 SCC 264 , in the case

between Karan Singh Sobti v. Smt.Sukula Bedi and anr. reported in AIR 1962 P & H 477 and in the case between Sain Ditta Mal v.

Bulaqi Mal & Sons, reported in AIR (34) 1947 Lahore 230. In opposition, the Opp. parties including the learned counsel appearing for the

Bank relied on the decisions in the case between T.P. Vishnu Kumar v. Canara Bank, P.N. Road, Tiruppur and others, reported in (2013)

10 SCC 652 and in the case between Sadashiv Prasad Singh v. Harendar Singh and others, reported in (2015) 5 SCC 574 .

7. After hearing the learned counsel for both parties at length, considering the submissions made by the respective counsel for the parties and

considering the citations cited at Bar at the instance of the petitioner, this Court finds that fact situation involving the present case does not match to

the fact situation available in the cases cited, for which none of the citations cited at the Bar at the instance of the petitioner are applicable to the

present case.

8. Now coming to consider the citations cited at the Bar at the instance of the Opp. parties, on perusal of the citations, this Court observes that

both the citations involve proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In the case of T.P. Vishnu

Kumar v. Canara Bank, P.N. Road, Tiruppur and others reported in (2013) 10 SCC 652, taking into consideration the bar of jurisdiction

under Section 18 of the Act as well as the provision for appeal to the appellate Tribunal under Section 20 of the Act, the Hon'ble Apex Court

in para Nos. 9 and 11 held as follows:

Para-9: Powers, which were conferred on the civil court, now stand conferred on a Tribunal under Section 17 of the Act thereby it can deal with

applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. We are of the view that when a

specific remedy is made available to the aggrieved party under Section 20 of the Act, the learned Single Judge of the High Court, in exercise of its

jurisdiction under Article 226 of the Constitution of India, was not justified in interfering with the orders passed by the Debts Recovery Tribunal.

Para-11: A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided

on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness or

otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ court, it will only defeat the object and purpose of

establishing such Tribunal. We have already noticed that due to the intervention of the writ court, the matter got delayed for four years defeating the

very purpose and object of the Act. We, therefore, find no merit in these petitions and the same are dismissed.

9. Back ground involved in the case was a writ petition preferred against the rejection of the application by the Debt Recovery Tribunal and the

same was entertained by the learned Single Judge. On reading of the aforesaid decision of the Hon'ble Apex Court and looking to the grievance

of the petitioner vis-a-vis, the order passed by the Recovery Tribunal vide Annexure-11 in the case at hand, this Court observes that the petitioner

has a clear remedy of appeal under Section 20 of the Act to the appellate Tribunal as against the order available under Annexure-11 and since the

impugned orders under Annexures-12,13 and the notice under Annexure-14 are outcome of the order at Annexure-11, unless the petitioner gets

rid of order under Annexure-11, he cannot succeed in assailing the order as available under Annexures-12 ,13 and 14. Further even assuming that

petitioner has a right to challenge the orders passed by the Recovery Officer under the Act vide Annexures-12 and 13 and the notice of the Bank

vide Annexure-14, this Court finds the petitioner has also a clear remedy of appeal to the Debt Recovery Tribunal under Section 30 of the Act.

Section 20 and Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 reads as follows:

20. Appeal to the Appellate Tribunal.- (1) Save as provided in subsection (2), any person aggrieved by an order made, or deemed to have been

made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or

deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was

sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being 21

heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall

be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

[30. Appeal against the order of Recovery Officer.- (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of

the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to

the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive)].

10. Bare reading of the aforesaid statutory provision, this Court observes that since the petitioner has the statutory remedy of appeal under Section 20 of the Act, challenging the order at Annexures-12, 13 and 14 and further challenging the order vide Annexure-11 by way of an amendment of appeal under Section 30 of the Act, the Writ petition is not maintainable.

11. In deciding a similar matter, the Hon'ble Apex Court in the case of *Sadashiv Prasad Singh v. Harendar Singh and others* reported in

(2015) 5 SCC 574 has observed that in view of clear statutory remedy of appeal under Section 30 of the Act in favour of the petitioner therein,

the High Court ought not to have interfered with the matter agitated by the Opp. party therein in exercise of its writ jurisdiction and upheld the

decision of the Single Bench dismissing the Writ Petition by the respondent therein on the ground of maintainability. It is apt to mention here that the

Hon'ble Apex Court in a case between *T.P. Vishnu Kumar v. Canara Bank, P.N. Road, Tiruppur and others* reported in (2013) 10

SCC 652 has also come to hold that power under Article 226 of the Constitution of India cannot be exercised in such matters unless there is

violation of statutory provision. From the entire reading of the pleadings of the petitioner, this Court does not find existence of violation of any

statutory provision in the present case. In another similar situation in the case between *Kanaiyalal Lalchand Sachdev and others v. State of*

Maharashtra and Others, reported in (2011) 2 SCC 782 in para-25 of the said judgment, the Hon'ble Apex in clear terms has held that

Writ petition under Article 226 of the Constitution of India is not maintainable when there is clear efficacious alternative remedy available to an

aggrieved party. In another occasion, Hon'ble Apex Court in considering the maintainability of the Writ petition under Article 226 of the

Constitution of India, in a case between *United Bank of India v. Satyawati Tondon and others*, reported in (2010) 8 SCC 110 in paragraph-

55 held as follows:

It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

12. Under the above facts, situation and legal proposition as settled by the Hon'ble Apex Court, this Court finds that the petitioner has clear remedy of Appeal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and consequently finds the Writ petition not maintainable. Accordingly the Writ petition stands dismissed as not maintainable. However, there is no order as to cost.

Vinod Prasad, J. - I agree.