

(1998) 06 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 153 of 1998

Hilton Precision Instruments Etc.

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 19, 20, 21, 34

Citation : (1998) 2 ShimLC 463

Hon'ble Judges : Kamlesh Sharma, Acting C.J.; L.S. Panta, J

Bench : Division Bench

Advocate : Arun Madan and Y. Paul, for the Appellant; Ravi Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, A.C.J.

1. The Petitioner-company along with its partners Ravinder Sehgal and A.K. Bhatia are Defendants in a civil suit filed by Respondent-Bank against them for recovery of more than Rs. 26 lacs. Originally, this suit was filed in this Court in 1986 but on coming into force of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called "the Act") it was transferred to Presiding Officer, Debts Recovery Tribunal, Jaipur (hereinafter called "the Tribunal") where the matter is at a stage of recording evidence of the Defendants.

2. In the present writ petition, the Petitioners have challenged the order dated 28.10.1997 whereby their application for amendment of written statement has been rejected by the Presiding Officer of the Tribunal. Before we examine the legality and validity of the impugned order we will deal with the preliminary objection raised on behalf of the Respondent-Bank that in view of the alternative remedy of appeal available to the Petitioners to challenge the impugned order before the appellate Tribunal the present petition is not maintainable and

deserves to be dismissed on this short ground. In answer to this preliminary objection learned Counsel for the Petitioner has urged that the impugned order being not final in nature is not appealable before appellate Tribunal u/s 20 of the Act in the alternative, the submission of learned Counsel for the Petitioners is that the statutory remedy of appeal is not a proper remedy inasmuch as the Appellants would be required to deposit 75% of the amount of debt as determined by the Tribunal. Above all, it is urged that by virtue of Section 18 of the Act the powers of the High Court to exercise jurisdiction under Article 226/227 of the Constitution have been maintained, as such, the present writ petition is maintainable.

3. After giving our best considerations to the respective submissions of learned Counsel for the parties and going through the relevant provisions of the Act, we are of the view that the Act is self-contained providing exclusive jurisdiction for Tribunals established under the Act to entertain and decide applications from the banks or financial institutions for recovery of dues payable to them from the appointed day. Chapter-IV of the Act provides procedure of Tribunals and Section 20 falling under this Chapter provides an appeal to the appellate Tribunal by any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the Act except an order made by a Tribunal with consent of the parties. Section 34 of the Act provides that the provisions of the Act shall have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Thus, the Act provides special provisions and procedure for determination and recovery of dues payable to the banks and financial institutions. It also provides a right of appeal to the aggrieved party against the order of the Tribunal.

4. The perusal of Section 20 of the Act makes it clear that it provides an appeal against an order made, or deemed to have been made, by the Tribunal and it does not speak about final order determining the amount of debt due. The only bar to appeal before the appellate Tribunal is in respect of an order made by the Tribunal with the consent of the parties. It is further clear from Section 21 of the Act, which provides that appeal shall not be entertained by the appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19. The amount of debt due is determined by the final order of the Tribunal and for filing appeal against it deposit of seventy five per cent thereof is the requirement of Section 21. However, under the proviso to this Section powers have been given to the appellate Tribunal for reasons to be recorded in writing, to waive or reduce the amount to be deposited under this Section.

5. So far other arguments of learned Counsel for the Petitioner that powers of High Court in exercise of Article 226/227 of the Constitution have been kept intact by virtue of Section 18 of the Act are concerned, we have no hesitation to say that this Court has power to interfere with an order passed by the Tribunal in

a proper case but at the same time these powers cannot be exercised in such a manner as to convert this Court as Court of appeal which is specifically provided under the Act. In other words, the powers under Article 226/227 of the Constitution are required to be exercised very sparingly in a rarest of rare cases when such exercise becomes utmost necessary to prevent miscarriage of justice or an abuse of the powers of the Tribunal, otherwise, the very purpose of establishing the Tribunal as well as the appellate Tribunal will be defeated. Therefore, we hold that in view of the remedy of appeal provided in the Act, it is obligatory on the part of the Petitioner to first avail the statutory remedy to challenge the impugned orders. For taking this view, we have relied upon the judgment of the Rajasthan High Court in *Bharat Ispat Udyog v. Presiding Officer* 1998 ISJ (Banking) 11. There is nothing on record to convince us that the remedy of appeal provided in the Act is not efficacious remedy in view of our findings that it is available against every order passed by the Tribunal and deemed to have been passed by the Tribunal and unless the debt due is determined by the Tribunal there is no requirement of deposit of 75% of the amount of debt due as provided u/s 21 of the Act.

6. The result of the above discussion is that we find merit in the preliminary objection raised on behalf of the Respondents and dismiss the writ petition on the ground that the Petitioner has alternative statutory remedy of appeal provided under the Act. The writ petition is dismissed with costs. The counsel fee is quantified at Rs. 3,000/-.

C.M.P. No. 226 of 1998.

In view of the order passed in the main matter, this application is dismissed.