(2008) 01 MAD CK 0058

In the Madras High Court

Case No : C.R.P. (PD) No. 48 of 2008 and M.P. No. 1 of 2008

H.N. Umashankar — APPELLANT

Vs

State Bank of Mysore — RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 22
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 18
Debts Recovery Tribunal Act, 1993 — Section 19(25), 20, 21

Citation : (2008) 2 MLJ 803

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : S.R. Rajagopal, for the Appellant; J. Radhakrishnan, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This revision application has been preferred by the petitioner against order dated 12th Dec., 2007, passed by the

Debts Recovery Appellate Tribunal, Chennai, (hereinafter referred to as ''DRAT'') in I.A. No. 916/07 in M.A. No. 52/07. By the said order, the

appellant before the DRAT has been directed to deposit cost of Rs. 10,000/- as awarded by the Debts Recovery Tribunal, Bangalore, (hereinafter

referred to as ''DRT'') by the order impugned before DRAT in favour of the respondent, State Bank of Mysore (hereinafter referred to as the

''Bank'') on or before the specified date.

2. The main plea taken by the petitioner is that the DRAT has no jurisdiction to direct the petitioner/appellant to deposit the cost as imposed by

DRT for determination of appeal or for extension of interim order of stay.

On the other hand, according to the bank, the DRT as also the DRAT has power to make such order to prevent abuse of its process and to secure the ends of justice.

3. The admitted fact is that the petitioner is the borrower, who obtained housing loan on 15th Jan., 1981 and created an equitable mortgage on

10th Jan., 1983. He sought for enhancement on 5th Feb., 1992, and then on 16th Aug., 1997 and there was an extension of scope of mortgage on

17th Aug., 1998. Originally the housing loan was sanctioned by the bank and, thereafter, educational loan was sanctioned in favour of the 2nd and

3rd respondent to the original application.

The bank preferred application, O.A. No. 76/05 and sought for recovery of a sum of Rs. 21,52,976.08 along with interest and cost. In the said

application, the petitioner, who is the 1st defendant, filed application, I.A. No. 1244/06 seeking dismissal of the original application on the

following grounds:

The application is barred by limitation, misjoinder of parties, misjoinder of cause of action clubbing unaccounted and separate loans sanctioned

under different heads repayable by different parties creating jurisdiction to Tribunal, which is not permissible.

The DRT, Bangalore, by its order dated 15th June, 2007, rejected the said interlocutory application by detailed reasoned order with exemplary

cost of Rs. 10,000/- payable to the other side.

Being aggrieved, the petitioner preferred appeal against the said order before DRAT, Chennai, registered as M.A. No. 152/07. An I.A. No.

916/07 was filed in the said appeal for interim stay, wherein following conditional order was passed by DRAT, Chennai, on 10th Dept., 2007,

directing the petitioner to deposit a sum of Rs. 3,50,000/- in two equal instalments:

Heard the Ld. Counsel for the Petitioner/Appellant.

1. Interim stay on condition of deposit of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only) with the respondent Bank in two instalments,

each at Rs. 1.75 lakhs, 1st on or before 11.10.2007 and 2nd one on or before 12.11.2007.

2. Notice and call on 12.10.2007.

The case was subsequently taken up on 12th Dec., 2007 when the DRAT extended the interim stay, but again condition to pay the cost of Rs.

10,000/- as imposed by DRT, Bangalore, which is under challenge in appeal. The order is quoted hereunder:

Both sides counsel are present.

The appellant is directed to deposit the cost of Rs. 10,000/- as awarded by the DRT, Bangalore in the impugned order, to the respondent bank on

or before 19.12.2007.

Proof of payment by then.

Interim stay is extended till then.

4. Learned Counsel appearing on behalf of the petitioner submitted that in absence of a decree against borrower - petitioner, in fact DRAT should

not have passed conditional order to deposit a sum of Rs. 3,50,000/- for hearing of the appeal and interim stay. According to him, with a view to

honour the Appellate Tribunal''s order, the amount of Rs. 3,50,000/- was deposited within time, but again when the matter was taken up, the

impugned order dated 12th Dec., 2007, was passed, wherein the petitioner has been directed to deposit the cost as was imposed by DRT,

Bangalore, which is under challenge before DRAT. It was submitted that DRAT having not empowered under the provision of law, cannot make a

pre-condition to deposit the cost for hearing the appeal against the nature of order under challenge, wherein cost has been imposed by DRT.

5. Learned Counsel appearing on behalf of the bank, while submitted that the earlier conditional order dated 10th Sept., 2007 is not under

challenge, further submitted that the petitioner has already deposited the cost of Rs. 10,000/-.

According to the counsel for the petitioner, the said cost has been deposited conditionally, as the order is under challenge in the revision

application.

Counsel for the bank referred to Section 19(25) of Debts Recovery Tribunal Act, 1993, (hereinafter referred to as ''DRT Act, 1993'') and Rule

18 of the Debts Recovery Procedure Rules, 1993 (hereinafter referred to as ''DRT Procedure Rules, 1993'') to show that DRT has jurisdiction to

impose cost if it is found that the application has been filed to abuse its process. He also referred to Rule 22 of the Debts Recovery Appellate

Tribunal (Procedure) Rules, 1994, (hereinafter referred to as ''DRAT Procedure Rules, 1994'') in support of his stand that DRAT has jurisdiction to pass such order.

6. We have heard the parties, noticed the rival contentions, orders as on record as also the relevant provisions of law as referred to by the parties.

7. In the present case, the petitioner has not challenged the conditional order dated 10th Sept., 2007, passed by DRAT, Chennai, in I.A. No.

916/07 in M.A. No. 152/07, whereby interim stay was granted on condition that the petitioner deposits Rs. 3,50,000/- in two equal instalments. In

this background, we are not inclined to decide and determine in the present case the question as to whether DRAT had jurisdiction to pass such

conditional order for grant of interim stay.

Further, as the order passed by DRT, Bangalore, is under challenge in M.A. No. 152/07 before DRAT, Chennai, we are not supposed to

deliberate on the question whether DRT, Bangalore, had such power u/s 19(25) of DRT Act, 1993 or Rule 18 of the DRT Procedure Rules,

1993, which may be determined by DRAT, Chennai.

8. So far as the power of DRAT to pass order under challenge dated 12th Dec., 2007 is concerned, learned Counsel for the bank relied on

Section 22 of the DRAT Procedure Rules, 1994, which reads as follows:

22. Orders and directions in certain cases.- The Appellate Tribunal may make such orders or give such directions as may be necessary or

expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

From the aforesaid rule, it will be evident that the Appellate Tribunal may pass orders under Rule 22 only under the following circumstances:

(i) giving direction as may be necessary or expedient to give effect to its orders;

(ii) to prevent abuse of its process; and

(iii) to secure the ends of justice.

9. So far as the present case is concerned, no order having been passed by DRAT on the main appeal, the question of exercising power under

Rule 22 to give effect to its order does not arise. For the same reason, the appeal having not yet been taken up for hearing on merits and no

unnecessary adjournment having sought for and in absence of such activity, the question of passing an order under Rule 22 to prevent abuse of its

process also does not arise.

So far as securing the ends of justice is concerned, DRAT cannot make up its mind having not heard the appeal on merits and, therefore, it cannot

exercise its power under Rule 22 at the initial stage in the name of securing the ends of justice.

10. In view of our finding, as recorded above, we hold that the DRAT had no jurisdiction to direct the appellant to deposit the cost of Rs.

10,000/- as awarded by DRT, Bangalore, and under challenge before DRAT either for determination of appeal or for the purpose of extension of

interim stay, that too when the petitioner has deposited a sum of Rs. 3,50,000/-, in view of interim direction, which he has deposited within time. In

absence of any specific power vested with the Appellate Tribunal, it cannot impose any condition to pay the cost, if imposed by DRT, if such order

is under challenge in an appeal.

In this regard, we may mention that the Legislatures have made specific provision u/s 21 of the DRT Act, 1993 to deposit 75% of the amount of

debt due to the financial institution for preferring an appeal u/s 20, but no such condition precedence has been imposed, for preferring an appeal

against an order passed by DRT, where no determination of due amount has been made by the Tribunal. In absence of such power, we hold that

DRAT had no jurisdiction to pass order as impugned, dated 12th Dec., 2007.

11. We, accordingly, set aside part of the order dated 12th Dec., 2007, passed by DRAT in M.A. No. 152/07, whereby the petitioner/appellant

has been directed to deposit cost of Rs. 10,000/- awarded by DRT, Bangalore. If the petitioner has deposited the cost it should be refunded to

the petitioner immediately. The interim order of stay as extended by order dated 12th Dec., 2007 shall continue till the appeal is decided on merits.

The revision petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. There

shall be no order as to costs.

