
(1997) 06 CAL CK 0016
In the Calcutta High Court
Case No : C.O. No. 612 of 1997
In re: United Bank of India

Date of Decision : 25-06-1997

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Railway Claims Tribunal Act, 1987 — Section 18(1)

Citation : (1997) 06 CAL CK 0016

Hon'ble Judges : Bijitendra Mitra Mitre, J

Bench : Single Bench

Advocate : Subrata Roy and Mr. D.K. Pal, for the Appellant; Uday Shankar Chatterjee, R.M. Roychowdhury and Mr. Kabir Ghosh, for the Respondent

Final Decision : Allowed

Judgement

B.M. Mitres, J.—The instant petition under Article 227 of the Constitution of India is directed against Order No. 13 and Order No. 17 respectively dated 7.1.97 and 18.2.97 passed by the presiding officer, Debts Recovery Tribunal, Calcutta in O.A. No. 189 of 1995. So far as the first order being Order No. 13 is concerned it appears that defendant No. 2 figuring in the proceeding was impleaded in the capacity of a guarantor of the borrower and he being the son of defendant No. 2 cannot but be recorded as one of the heirs or legal successors of the deceased. The said defendant No. 1 in his capacity as legal successor of defendant No. 2 is found on record in proceeding. It appears from the record mentioned in the impugned order that the same shows that the learned Lawyer for the respondent No. 1 informed the Tribunal about the death of said respondent No. 2 on 3.7.96. The said respondent No. 2 died on 24.1.96 and thereafter the applicant Bank was directed to have steps for substitution in respect of the deceased respondent No. 2. Some caustic remarks were made in the first impugned order by the Presiding officer of the Debts Recovery Tribunal that the applicant Bank did not care to take any steps till 8.7.96 and no explanation whatsoever has been given in the petition for condonation of delay as to why delay in filing the petition for substitution would not be condoned. The formulation of the premise by the Debts

Recovery Tribunal is questioned before this court and it has been submitted by Mr. Roy, the learned Advocate appearing on behalf of the Bank that there is no basis for drawing an inference to make such caustic remarks when the premise itself requires scrutiny as to wherefrom the Debts Recovery Tribunal gets the idea of condonation of delay without specifying the period within which substitution petition is required to be filed. This court being a court of superintendence is required to regulate the day to day procedure on adjudication of the Debts Recovery Tribunal and it cannot abdicate its authority of superintendence over it and adjudicating forum cannot be turned into a breeding ground either of anarchy or of free play of whims under the level of the epithet of omnibus nomenclature of natural justice which is supposed to have a definite or precise connotation. The entire procedure as laid down under a self-contained statute, namely, the Recovery of the Debts due to the Bank and Financial Institution Act, 1993 is required to be modulated in terms of section 19(1) coupled with Clause (2) thereof and also the guiding parimateria appears to be the application of principles of natural justice as laid down in section 22. It is significant to mention that apart from elongation of the pith and substance of the principle of doctrine of natural justice as laid down from the earless judicial decision down to the latest one and it is needless to mention that doctrine of natural justice finds its fruition when it is required to be synthesised with principle of equity, justice and good conscience. Whenever justice to be meted out by an adjudicating forum, it must dispense justice in accordance with procedure as procedures are handmade of justice. It is relevant to refer to a celebrated observation of Aristotle that in an adjudicating process, rule of law is preferable to that of rule of man howsoever high pedestal in which such person may be placed. Anybody placed in the pedestal of justice is subservient to rule of law and in the name of natural justice one cannot be allowed to embark into a journey of demonstration of whims and anarchy. For that the entire process is required to be modulated and guided by procedure in civil adjudication in whatsoever nature whether it is a money claim or not, we in the judicial domain are groomed up in tradition for application of the basic parimateria, namely, the Evidence Act. Limitation Act and the Code of Civil Procedure. Here, before the Debts Recovery Tribunal, there has been no exclusion made with regard to the applicability of other two basic parimateria guiding governance of civil adjudication, namely. Limitation Act and Evidence Act. The problem has arisen in view of the provision incorporated in section 22(1) of the connected Act where basic parimateria has been forecast as adherence to the principle of natural justice but in the same breadth it has been pointed out that it shall not be bound by the procedure laid down by the Code of Civil Procedure. But Tribunal shall have the power to regulate its own procedure including the places at which they shall have their sittings. We get a glimpse of truncated projection of the applicability of CPC as enumerated in section 22(2) covered by Clauses (a) to (h) and it appears that there is no specific mention with regard to other, provisions of the Code of Civil Procedure. It is relevant to remember that in the same breadth it has been made clear in the CPC and its applicability has not been excluded by specific terms and only it has been indicated that it shall

not be bound by the procedure laid down by the Code of Civil Procedure. It has been canvassed before this court by the learned counsel appearing in other cases that the said provision was required to be incorporated so that it may not defeat the very purpose and object of the Act and object being the expeditious adjudication and recovery of debts. The expeditious process of adjudication is not intended to be throttled by bottlenecks of the procedural wrangling which are likely to have a bearing for consuming a wider period of time. This court is not oblivious of the reality emanating from that scenario and is quite conscious of the same.

2. So far as the party litigants are concerned against whom debt is being attempted to be recovered are definitely person to the eye of law. So far as the natural persons are concerned who figure as litigants and so long as they remain on the scene of the life, certain eventualities are concomitants of the hazard of life, namely, death marriage and Insolvency of the parties. If a party is declared as an undischarged insolvent, such person is denuded of his juristic personality and he is rated as a nonperson in the eye of law and no proceeding can continue against such an undischarged insolvent. So far as the natural persons are concerned while they are alive, marriage is likely to occur In the life span of the person and the death is bound to be visited on the scene of life. If death Intervenes a person who is a party to the proceeding makes an exit from the scene of life and the pending Its standing In his name cannot any further continue. Continuation of litigation against a dead person unless he is allowed to be survived by his heirs are brought on record. If the dead person has no known legal successor, then the principle of escheat will apply but if he has legal successor who can be traceable, they are required to be substituted. If they are not allowed to be substituted, the effect as forecast under the provisions of Order 22 of the CPC is that abatement of the proceeding will take place. The only irresistible conclusion which emanates from non-substitution of a dead party in a pending litigation is abatement or termination of the proceeding either by way of a dismissal of the same or allowing the same. It has been attempted to be pointed out that abatement is a concept which emerged from the Code of Civil Procedure. In normal life as we cannot conceive of a situation where we cannot escape the eventuality of death, therefore, the consequence cannot be avoided. The said consequence in terms of forensic expression cannot but be described in better form than of the abatement. Then we come within the arena of Code of Civil Procedure. This court feels that where a party litigant is visited by the eventualities either of death, marriage or insolvency, though the Tribunal is not bound by the CPC but for the efficacious prosecution of the procedure it should adopt the procedure as contained under Order 22 of the Civil Procedure Code. As indicated, we cannot conceive of life without death, similarly, we cannot conceive of a party litigant in a pending proceeding being visited by death which must be followed by the legal eventuality of abatement. There is no other efficacious alternative via-media by way of a procedural law which can regulate the proceeding in the case of death, marriage and insolvency of the parties other

than the application of Order 22 of the Code of Civil Procedure. Unless the same is allowed to be invoked, the Debts Recovery Tribunal will be in a region of quandary to arrive at an adverse inference to the conduct of a party litigant for not taking steps either for condonation of delay or for nonpresentation of the substitution in time. If CPC does not apply and then in absence of the application of the same. Limitation Act is allowed to be applied as the only parameteria under the relevant provisions of the Limitation Act. Longer time has been prescribed which may not fit in with the object and the purpose of the Recovery of Debts Due to Bank and Financial Institution Act, 1993. The adaptation of the procedure should be in a manner so that objects of the Act may not be made a casualty at the alter of erratic procedure and speedy justice may not be thwarted. We too consider the statute by invoking the doctrine of mischief rule in preference to that of doctrine of golden rule with regard to the construction of statue. It becomes very difficult to specify all the eventualities and to the procedural remedial steps to be taken to get over such eventuality except by application of Order 22 of the CPC which is a well thought device adopted and tested for centuries by the legal draftsman whose wisdom is supposed to be greater than that of the modern harbinger of natural justice. This court is loaded with everyday several applications on a complaint that erratic procedures are being adopted and so long the impression was that debtor were complaining parties and now the Bank or Financial Institutions have also fallen in the line. Therefore, the mischief likely to be visited is not one sided one. It is bound to affect all the parties in a proceeding.

3. This court is quite aware of the doctrine of representation and the principles of representation of the estate of the deceased would fall on the successors. In that context this court does not multiply the decision which is being followed since the days of the Privy Council and by way of ready reference can refer to the case of N.K. Mohammad Sulaiman Vs. N.C. Mohammad Ismail and Others, If doctrine of representation is given effect to, then it is bound to be required to be given effect to by an exhaustive procedure and that procedure has been forecast under the Civil Procedure Code. CPC under the relevant rules of Order 32 prescribe a period of time within which substitution has got to be made and after the expiry of a certain period of time, there can be question of setting aside abatement within the meaning of Order 22, Rule 9 of the Civil Procedure Code. Even, Order 22, Rule 10A casts a pleader appearing for a party a mandate being saddled with a duty to inform the court about the death of the party. If such information is received, then steps must be taken to bring the heirs on record. If is well-known concept under Order 22 itself that if one of the heirs is already on record then there is no question of abatement. Here, the complaint is that Bank itself does not know as to what is the period of limitation within which substitution application has to be made and when it is called upon to make an application for condonation. The period for filing of an application for substitution and the limitation should also governed by Order 22 of the CPC and after the expiry of the time period, section 5 of the Limitation Act may be sought to be applied and

there the guiding principles may be made effective. The time forecast by CPC for making substitution is much shorter than that of the Limitation Act. Therefore, the parimateria shall fit in better with the object of the Act as enunciated in the Recovery of Debts due to Bank and Financial Institution Act, 1993. Therefore, henceforward the Debts Recovery Tribunal is required to deal with questions which result as offshoot from death, marriage and insolvency of a party before it. It should adhere to particular provisions of Order 22 of the Civil Procedure Code. It is made clear that it is not an warrant for which the Debts Recovery Tribunal shall get any encouragement that entire CPC is to be applied for as a whole. It is only for the limited purpose for taking care of the eventualities the death, insolvency and marriage only. The particular provision of Order 22 should be resorted to and Order 22 also includes within its fold the other residuary eventualities like assignment or anything else which Is covered by Order 22. This court makes it clear that non-application of the CPC does not operate as a bar to apply Order 22 of the CPC so that the mischief of free play of the whims of the vagaries of the person do not come Into play and that may not take as a substitute of practical implementation of the principles of natural justice. In this context, a reference may be made to the case of A.A. Haja Muniuddian Vs. Indian Railways, where Supreme Court has held on construction of section 18(1) of the Railways Claims Tribunal Act, 1987 that the claims Tribunal shall not be bound" by the procedure of the CPC but does not go so far as to say that it "shall be precluded" from invoking the provisions of the Code even if the same is not inconsistent with the Act and the Rules. A view which advances the cause of Justice must be preferred to the one which defeats it. This court reserves this thought for elucidation in details about the pith an substance of the principles of natural justice being historically derived from the concept of just nature but this court does not Intend to go in detail of the same on this issue but it only makes a restricted application of Order 22 so that the exercise may be governed by particular procedural modalities. Therefore, the Debts Recovery Tribunal is directed to reconsider the matter afresh in terms of the directions contained here. The subsequent order passed, namely, whereby it appears that an adverse inference has been drawn about the conduct of the Bank, there is no basis for deriving such adverse inference of the conduct of the Bank where nobody knows as how to tackle such impending possibility. This court is made to remind on numerous occasions its firm conviction that justice finds its noblest fulfilment when it is tempered with consideration and not tintured with vindictiveness. If a party litigant is not sure as to what it should do then aspersion should not have been made personally about the conduct of the party without making the same familiar the procedure which it should follow.

4. Accordingly, the orders impugned are set aside. The revisional application succeeds and the Debts Recovery Tribunal is directed to rehear the matter and to bring the heirs on record and no order of abatement can be passed in this proceeding.

In view of the earlier order being passed which is also directed against Order

dated 18.2.96, the said order will govern the second application, namely, C.O. No. 612 of 1997 which is also directed against Order dated 18.2.96 by the self-same court.