
(2013) 09 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 21399 of 2011

Jayram Mohapatra

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : AIR 2014 Ori 12 : (2014) 2 BC 614

Hon'ble Judges : Sanju Panda, J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. Heard Mr. Asutosh Panda, learned counsel for the petitioner, Mr. S.R. Patnaik for opposite party No. 4 and Mr. Biswajit Nayak for the intervenor. Defendant No. 2 in O.A. No. 80 of 2002 being the Managing Partner of Defendant No. 1- M/s. Panchasakha Prakashan, has filed this writ petition seeking to quash the orders dated 20.6.2005 and 5.1.2007 passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack under Annexures-1 and 5 as well as the order dated 25.7.2011 passed by the Debts Recovery Appellate Tribunal, Kolkata under Annexure-12 and the auction notice dated 1.12.2008 published in daily news paper "the Samaj" under Annexure-6 with a further prayer to direct the opposite party No. 2 to hear the matter afresh giving opportunity of hearing.

2. Opposite party No. 4-Oriental Bank of Commerce being the applicant filed an application before the Debts Recovery Tribunal, Cuttack seeking recovery of Rs. 10,80,223.26 with interest @ 17.86% per annum with quarterly rests with pendent lite and future interest together with costs from the date of application till the date of realization from the petitioner and opposite parties 5 to 7 jointly and severally and from their personal assets.

3. Opposite party No. 5 is a partnership firm engaged in printing and publishing of books and stationeries etc. Petitioner is the Managing Partner and opposite parties 3 and 4 are the other partners of opposite party No. 5. Opposite party

No. 5 through the petitioner and opposite parties 6 and 7 approached the opposite party No. 4-Bank for financial assistance for working capital to run the printing unit. On consideration of the application, opposite party No. 4-Bank by letter dated 19.3.1998 sanctioned cash credit (hypothecation) facilities to the limit of Rs. 10.00 lakhs with interest @ 17.86% per annum with quarterly rests. In order to avail the said loan facilities sanctioned by the opposite party No. 4-Bank to the opposite party No. 5-Firm, the petitioner, and opposite parties 6 and 7 executed an agreement of hypothecation of assets for cash credit (LD-11) and an agreement for cash credit (LD-9) for cash credit (hypothecation) limit of Rs. 10.00 lakhs with interest @ 17.86% with quarterly rests. In addition to the secured documents executed in favour of opposite party No. 4-Bank, the petitioner and opposite parties 6 and 7 individually executed separate agreements of guarantee on 4.3.1998 giving continuous guarantee for the payment of all the dues to the opposite party No. 4-Bank in the cash credit account of the partnership firm- opposite party No. 5. The petitioner has also created an equitable mortgage over the properties mentioned in Schedule "A" of the application by depositing the original title deeds and by signing on the memorandum of deposit of title deeds. After availing the credit facilities, since the opposite party No. 5 failed to keep up their promise and committed default in repayment of the loan amount due to the opposite party No. 4-Bank, application was filed before the Debts Recovery Tribunal, Cuttack, which was registered as O.A. No. 80 of 2002 for realization of the said amount of Rs. 10,80,223.26 with interest @ 17.86% per annum with quarterly rests from the date of filing of the application till the date of realization with cost and for other reliefs.

4. Presiding Officer, Debts Recovery Tribunal, Cuttack issued notice to the defendants and in response to the same the defendants entered appearance through their counsel and filed an application seeking for production of documents so as to enable them to file written statement. The said application was registered as M.A. No. 143 of 2003. In paragraph 6, they sought for the following documents:

- (i) Loan sanction letter issued by the bank.
- (ii) Detail terms and conditions of sanction
- (iii) Date-wise disbursement of loan (statement of A/c. in detail.
- (iv) Copy of recall notice
- (v) The quantum of Principal and interest in the amount claimed
- (vi) The quantum of principal and interest in the amount mentioned by the advocate on behalf of the bank vide page No. 85 of the application.
- (vii) The Xerox copy of the cover note of the insurance policy made by the bank on behalf of the defendants to insure the stock lying in the godown of the defendant for the year 1998-99 and 1999-2000.

(viii) Copy of the proposal submitted by the defendants at the time of availing the loan.

5. On consideration of such application, learned Presiding Officer passed an order on 22.8.2003 vide Annexure-2 to the following effect:

Both the sides present.

Applicant Bank is directed to file the documents referred to/available with them within 10 days. Call on 3.9.2003

On perusal of the records, it is found that the said order dated 22.8.2003 has not been complied with by opposite party No. 4-Bank. Further without considering the grievances made by the defendants, i.e., petitioner and opposite parties 5 to 7, learned Presiding Officer, Debts Recovery Tribunal, Cuttack by order dated 20.6.2005 set them ex parte and allowed the Original Application directing to recover Rs. 10,80,223.26 with interest @ 12% per annum from the date of the application till the date of realization with costs and holding that defendant Nos. 1 to 4, i.e., the petitioner and opposite parties 5 to 7 are jointly and severally liable to pay the said amount and also stated that opposite party No. 4-Bank is entitled to recover the said amount from the properties given as security, if it is not sufficient from the personal properties of the petitioner and opposite parties 6 and 7. The said order dated 20.6.2005 under Annexure-1 is impugned in this writ petition.

6. The petitioner filed an application bearing M.A. No. 570 of 2006 with a prayer to set aside the order dated 20.6.2005 in Annexure-1 in order to enable him to file written statement for defending their case by providing documents sought for. The Presiding Officer, Debts Recovery Tribunal, Cuttack by order dated 5.1.2007 in Annexure-5 dismissed the same and vide Annexure-6 the property auction notice was issued in R.P. No. 140/2006/CTC arising out of O.A. No. 80 of 2002 by the Recovery Officer, Debts Recovery Tribunal, Cuttack. Against the said order dated 5.1.2007 passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack in M.A. No. 570 of 2006, the petitioner preferred an appeal bearing Appeal No. 61 of 2011/844 before the Debts Recovery Appellate Tribunal, Kolkata reiterating the facts that no opportunity has been given to him and the order passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack directing to recover the amount being an ex parte one, he should be given an opportunity to file written statement by providing documents asked for by order dated 22.8.2003. Though learned Appellate Tribunal has taken into consideration various dates in its order, but has not taken into consideration the order dated 22.8.2003 in Annexure-2 and has dismissed the appeal by confirming the order dated 5.1.2007 passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack vide order dated 25.7.2011 under Annexure-12, which is also challenged in this writ petition.

7. This Court while issuing notice in the writ petition, by order dated 9.8.2011 directed that no coercive action shall be taken against the petitioner. Further, in

Misc. Case No. 17784 of 2013 this Court by order dated 13.8.2013 called for the LCR in O.A. No. 80 of 2002 and R.P. No. 140 of 2006 from the Debts Recovery Tribunal, Cuttack by special messenger to facilitate just adjudication of the case in hand.

8. Mr. Asutosh Panda, learned counsel appearing for the petitioner vehemently urged that though the Presiding Officer, Debts Recovery Tribunal, Cuttack passed specific order on 22.8.2003 under Annexure-2 directing the Bank to file documents referred to within 10 days, but the same has not been filed, for which he could not file his written statement, as a result of which he was set ex parte and this clearly amounts to arbitrary and unreasonable exercise of powers. Therefore, he seeks to quash Annexures-1,5, 6 and 12.

9. Mr. S.R. Patnaik, learned counsel appearing for the opposite party No. 4-Bank states that when the application was filed u/s 29 of the D.R.T. Act along with the documents, the originals thereof had also been produced before the Debts Recovery Tribunal. Therefore, no further document was required to be submitted and as such, opportunity had been given to the petitioner and opposite parties 5 to 7 to file written statement. Therefore, the order passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack does not suffer from any infirmity and this Court may not interfere with the same.

10. From the L.C.R. produced before this Court on 27.8.2013, it appears that the documents sought for by the petitioner in M.A. No. 143 of 2003 basing upon which order dated 22.8.2003 in Annexure-2 has been passed, were not there, as a result of which, the petitioner and opposite parties 5 to 7 being defendants in the court below could not be able to file their written statement of defence in absence of valid documents. It is also found that the opposite party No. 4-Bank has not stated at any stage whether such documents are required or not. In any case, it is the duty of the Presiding Officer, Debts Recovery Tribunal, Cuttack to follow the law and pass appropriate orders.

11. For better appreciation, reference is made to Section 22(1) of the Recovery of Debts Due to Banks and Financial Interests Act, 1993, which is quoted below:

22. Procedure and powers of the Tribunal and the Appellate Tribunal--(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

On perusal of the above mentioned provision, it is made clear that neither the Tribunal nor the Appellate Tribunal is bound by the procedure laid down in the Code of Civil Procedure, but they shall be guided by the principles of natural justice and subject to the other provisions of the Act and any Rules. As it reveals, when the Tribunal on consideration of the application bearing M.A. No. 143 of

2003 passed order on 22.8.2003 calling upon the Bank to file documents and admittedly the same having not been filed, there is non-compliance of the principles of natural justice, as a result of which the petitioner and opposite parties 5 to 7 could not be able to file their written statement but the learned Presiding Officer, Debts Recovery Tribunal, Cuttack set them ex parte and proceeded with the matter. Learned Debts Recovery Tribunal thereafter should have ensured production of the documents which would have been in compliance to the principles of natural justice and in conformity with the provisions contained in Section 22(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and without doing so, setting them ex parte and proceeding with the matter, absolutely amounts to exercise of power in excess of its jurisdiction. Therefore, the order passed in Annexure-1 and the consequential order in Annexure-5 and the auction notice in Annexure-6 are liable to be quashed. So far as the order in Annexure-12 is concerned, the appellate Tribunal has also not taken into consideration the facts in proper perspective and accordingly, the same also cannot stand and is liable to be quashed.

12. In view of the foregoing discussions, the impugned orders dated 20.6.2005 passed by the Debts Recovery Tribunal, Cuttack in O.A. No. 80 of 2002 under Annexure-1, dated 5.1.2007 passed in M.A. No. 570 of 2006 under annexure-5 and the consequential auction notice dated 1.12.2008 under Annexure-6 are quashed. However, in the fitness of things, we direct the opposite party No. 4-Bank to comply with the direction given vide order dated 22.8.2003 in Annexure-2 for production of documents in the application bearing M.A. No. 143 of 2003 and in the event the opposite party No. 4-Bank files any documents, the same shall be perused and if necessary certified copy thereof, be provided to the petitioner and opposite parties 5 to 7, who are defendants in the court below and on perusal of such documents, they shall file written statement and from that stage, the Presiding Officer will proceed with the matter and decide the same giving opportunity of hearing to the parties within a period of six months. With the aforesaid observation and direction, the writ petition is disposed of.