

(2003) 01 CAL CK 0035
In the Calcutta High Court
Case No : C.O. No. 115 of 2003

Jekay Rolling Mill Private Ltd.

APPELLANT

Vs

The Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2003) 3 BC 194 : (2003) 2 CALLT 73 : (2003) 1 ILR (Cal) 105

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Santi Bhushan Mukherjee and Tapan Coomar Dey, for the Appellant;
Bidyut Kumar Banerjee-II, for the Respondent

Judgement

S.K. Mukherjee, J.—This is an application under Article 227 of the Constitution of India challenging an order of proclamation of sale issued under the signature of the Recovery Officer, Debts Recovery Tribunal-2, Kolkata.

2. This application is not in form. The certified copy of the order impugned has not been annexed with the said application. Chapter V of the Rules of the High Court at Calcutta (Appellate Side) specifies the general rules of procedures. Under Rule 9 of the said chapter V of the said Rules, in the case of an application for revision, certified copy of the order to which the application relates must accompany the application. The said Rule 9 is set out below:

"9. In the case of an application revision, the application shall be accompanied by certified copies of each of the following documents:

(i) The Judgment, decree or order to which the application relates;

(ii) If the judgment, decree or order to which the application relates was a judgment, decree or order delivered by a Court sitting in appeal, the copies of the judgment, decree or order of the Court of first instance.

Note: Except in application to be heard by a single Judge together with the application shall be filed with duplicate type written copies of the application and the judgments or orders filed with such application."

3. The Debts Recovery Tribunal has been impleaded as opposite party No. 1 in the said application. In an application under Article 227 of the Constitution of India, the Tribunal whose order is challenged is not a necessary party.

4. A Division Bench of the Gujarat High Court, speaking through P.N. Bhagwati, J. (as His Lordship then was), in the case of Gopichand Khoobchand Sharma and Others Vs. Works Manager, Loco-shops, Western Railway, Dohand and Another, observed that if the petition was for relief under Article 227 of the Constitution of India, the Tribunal whose order has been impugned in the said application need not be made a party to the application. The jurisdiction, which the High Court exercised under Article 227 was of superintendence-- a jurisdiction somewhat analogous to the revisional jurisdiction, which the High Courts have under diverse statutes. In the said judgment a decision of the Apex Court in Civil Appeal No. 985 of 1963 Muhammad Enamul Haque v. Muhammad J. Hussain has been relied upon by the said Division Bench. The observation of the Gujarat High Court is quoted hereunder:

"Now there can be no doubt that in a petition for relief under Article 226, the Tribunal whose order is impugned in the petition must be made a party to the petition so that the writ sought from the Court can go against the Tribunal, but if the petition is for relief under Article 227 it is well settled that the Tribunal whose order is impugned in the petition need not be made a party to the petition. The reason is that by entertaining a petition under Article 227 the High Court does not seek to exercise jurisdiction to issue any high prerogative writ; the jurisdiction which the High Court exercises under Article 227 is of superintendence-- a jurisdiction somewhat analogous to the revisional jurisdiction which the High Court have under diverse statutes and just as in an application for revision it is not necessary to make the Court whose order is sought to be revised a party to the application, so also in a petition invoking the jurisdiction of the High Court under Article 227, the Tribunal whose order is sought to be challenged is not a necessary party."

5. A learned Judge of the Kerala High Court in the case of Puzhakkal Edam alias Puthen Edon and Others Vs. Kunchappan, , also, reiterated the same view and held that the Court or Tribunal, whose order was sought to be revised under Article 227 of the Constitution of India, was not a necessary party to the proceeding before the High Court. The observations of the learned Judge are quoted below:

"There is a clear cut pronouncement on this question by a Division Bench of the Gujarat High Court in Gopichand Khoobchand Sharma and Others Vs. Works Manager, Loco-shops, Western Railway, Dohand and Another, . Justice Bhagwati, who delivered the judgment of the Court stated-

"Now there can be no doubt that in a petition for relief under Article 226, the Tribunal whose order is impugned in the petition must be made a party to the petition so that the writ sought from the Court can go against the Tribunal; but if the petition is for relief under Article 227 it is well settled that the tribunal whose order is impugned in the petition need not be made a party to the petition. The reason is that by entertaining a petition under Article 227 the High Court does not seek to exercise jurisdiction to issue any high prerogative writ; the jurisdiction which the High Court exercises under Article 227 is of superintendence a jurisdiction somewhat analogous to the revisional jurisdiction which the High Court have under diverse statutes and just as in an application for revision it is not necessary to make the Court whose order is sought to be revised a party to the application, so also in a petition invoking the jurisdiction of the High Court under Article 227, the Tribunal whose order is sought to be challenged is not a necessary party."

6. In support of the above statement, the learned Judge has relied on a decision of the Supreme Court in *Muhammed Enamul Haque v. Muhammed J. Hussain*, Civil Appeal No. 985 of 1963 decided on 5.5.1964 (SC). This decision does not seem to have been reported; and I have not been able to get a copy of it. But this decision has been noted at page 142 of volume VI of the Supreme Court Notes by R. Gopalakrishnan. The relevant part of the note reads:

"There is neither practice nor binding authority to support the contention raised by the counsel for the respondent that in a proceeding for an order under Article 227 of the Constitution it is necessary to implead the Court or tribunal against the order for which the proceeding is initiated by the High Court. By entertaining a petition under Article 227, the High Court does not seek to exercise jurisdiction to issue any high prerogative writ jurisdiction which the High Court exercise under Article 227 is of superintendence-- a jurisdiction somewhat analogous to the revisional jurisdiction which the High Court for a long time past have been invested under diverse statutes. To a proceeding invoking jurisdiction of the High Court under Article 227 of the Constitution the tribunal was not a necessary party, and In an appeal against the order passed in personam against the appellant in that proceeding the tribunal is not a necessary party."

7. Similar is the view of the Karnataka High Court v. S. Malimath, J. (as His Lordship then was) in the case of *Ganapati Laxman Shet Vs. Sitabai Kom Ramdas Vernekar*, held that to a proceeding invoking jurisdiction of the High Court under Article 227 of the Constitution of India, the tribunal was into a necessary party.

8. The Apex Court in the case of *Savitri Devi Vs. District Judge, Gorakhpur and Others*, observed as under:

"Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the SLP filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and

in the SLP they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court, nor is there any justification for impleading them as parties in the SLP and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice."

9. Accordingly, the tribunal has been impleaded as opposite party No. 1 in this application unnecessarily and, therefore, the tribunal is deleted from the cause title of the revisional application. The office is directed to carry out the necessary amendment in the cause title of the revisional application.

10. u/s 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as amended by Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000, any person aggrieved by an order of the Recovery Officer made under the said Act has a right to prefer an appeal to the Tribunal. Therefore, the petitioner has an alternative efficacious remedy before the tribunal itself.

11. The Apex Court in the case of Punjab National Bank Vs. O.C. Krishnan and Others, held that the said Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. The hierarchy of the appeal has been provided in the said Act itself and the said fast-track procedure could not be allowed to be derailed either by taking recourse to proceedings under Articles 226 or 227 of the Constitution of India or by filing a civil suit, which has been expressly barred. Even though a provision under an Act could not expressly oust the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India, nevertheless, when there was an alternative remedy available, judicial prudence demanded that the High Court should refrain from exercising its jurisdiction under the said constitutional provisions.

12. In view of such clear pronouncement of the Apex Court and as the petitioner has a right to prefer an appeal before the Tribunal itself against the order of the Recovery Officer u/s 30 of the said Act, I decline to entertain the application under Article 227 of the Constitution of India and I, therefore, reject the same as not maintainable.

13. However, I make it clear that I have no occasion to go into the merits of the claim and the counter claim of the parties and it will be open to the parties to approach the appropriate forum for their proper remedy.

There will be no order as to costs in this application.

Xerox certified copy of this order, if applied for, is to be made available to the applicant within a week from the date of filing requisition for the same.