

(1996) 01 CAL CK 0030
In the Calcutta High Court

Jitendra Kr. Khan and Another	Vs	APPELLANT
The Presiding Officer, Debts Recovery Tribunal and Others		RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Constitution of India, 1950 — Article 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22(1)

Citation : (1996) 1 CALLT 319

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Anil Mukherjee, Basudeb Mukherjee and Dilip Chatterjee, for the Appellant; Udayan Sen, for the Respondent

Judgement

Nripendra Kumar Bhattacharyya, J.—Heard the submission of the learned Advocate for the petitioners Mr. Anil Mukherjee appearing with the learned Advocates Mr. Basudeb Mukherjee, Dilip Chatterjee and the learned Advocate for the opposite party, Mr. Udayan Sen. Considered the materials on record.

2. In these revisional applications under Article 227 of the Constitution of India, the petitioners have challenged order No. 10 dated 3-1-96 and 4-1-96 passed by the Presiding Officer of the Debt Recovery Tribunal, Calcutta in T. A. Nos. 335/94 & T. A. No. 336/94 respectively, whereby the learned Tribunal dismissed the petition of the petitioners for deciding the question of Jurisdiction first and then to hear the proceeding.

3. As this is a pure question of law, we need not go into the facts of the cases but it will suffice to mention that these are cases u/s 34 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993. It was contended before the Tribunal that as a suit for Mortgage was pending before a Civil Court over the self-same matter, the tribunal has no jurisdiction and authority to adjudicate the matter which remains within the domain of the Civil Court. Accordingly, a prayer was made before the tribunal for deciding the question of jurisdiction earlier before deciding the merits of the case itself.

4. The learned Tribunal came to a finding that there is no such provision in the Act being the Recovery of Debts Due to the Bank and Financial Institutions, 1993 and as such the tribunal had no power to decide the question of jurisdiction as a preliminary point. The Tribunal further held that the question is to be decided at the time of deciding the proceeding itself.

5. Mr. Anil Mukherjee, Ld. counsel for the petitioners, inter alia, contended that the application of the CPC as contained in sub-section (2) of Section 22 of the said Act contemplates the application of certain provisions upon an application of the Bank as envisaged in Section 19 of that Act. But there is no provision in the Act specifying as to the power and method to be followed by the tribunal on an application filed by the respondent before the tribunal. Mr. Mukherjee contended that Sub-section (2) of Section 22 of the Act, inter alia, provides discovery and inspection of documents, evidence on affidavit, examination of witness etc. etc. According to Mr. Mukherjee if it was found subsequently by the tribunal that the tribunal has no Jurisdiction to try the matter, in such circumstances, these orders will be infructuous orders and according to the general principle of Law, no court shall pass an ineffective order. According to Mr. Mukherjee, in such event, as a matter of usual practice the Principle of natural Justice should be followed. In Sub-section (1) of Section 22 of the Act, it is provided that the tribunal has power to decide a question as preliminary point and as the tribunal has found that there is no such provision in the Act due to a wrong conception of law or due to wrong appreciation of law, the order suffers from illegality, incorrectness and material irregularity.

6. Mr. Sen, in his usual fairness does not dispute that proposition of law as putforth (Sic) by Mr. Mukherjee but submits that he is doing so for accelerating the proceeding itself so that the proceeding can see finality at an earlier date.

7. Having heard the submissions of the learned Advocates for the parties and considering the materials on record, I dispose of this revisional application treating the same as on the day's list by consent of the Ld. Advocates for the parties by holding that for the reasons as have been advanced by Mr. Mukherjee, the order is not sustainable in law.

8. Sub-section (1) of Section 22 of the Act, inter alia, envisages that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 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 the Appellate Tribunal shall have the powers to regulate their own procedure including the places at which they shall have their sittings, etc (under scoring is by the Court).

Sub-section (2) of Section 22 specifies the applications of CPC in the case of:

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (i) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it exparte; (h) any other matter which may be prescribed.

9. In a given case where the Tribunal orders for discovery and production of documents and for receiving evidence on affidavit and thereafter found that it has no jurisdiction to try the matter then the order passed by the Tribunal would be ineffective one. It is a fundamental principal of law that no court or for that a Tribunal, which has all the trappings of Court, shall pass an ineffective order. Sub-section (1) of Section 22 gives power to the Tribunal and Appellate Tribunal to regulate their own procedure. Whether the matter is to be heard early or subsequently is a matter of decision of the Tribunal or the Appellate Tribunal as the case may be. Act does to specify anything regarding the same. So the Tribunal shall have to fall back upon the power as has been given in Sub-section (1) of Section 22 which gives the power to the Tribunal that the Tribunal shall regulate its own procedure keeping in view the principles of natural Justice if there is no other provision in the Act and in the Rules.

10. There is no such provision either in the Act or in the Rules for hearing an application filed by the respondent either as a preliminary point or at the final hearing of the proceeding. That is to be decided keeping in view of the principles of natural Justice, and the anomalies that may crop up subsequently as has been indicated earlier. So, the natural justice demands that when the question of jurisdiction has been raised before the Tribunal the same should be decided earlier and not along with all other matters in the proceeding.

11. In that view of the matter, I am of the opinion that the impugned order Cannot be sustained.

12. I, accordingly, set aside the order impugned and direct the tribunal to decide the question of jurisdiction as a preliminary point and then to hear out the matter day-to-day if the Tribunal finds that it has jurisdiction over the matter and shall dispose of the matter at an early date not beyond a period of 4 months from the date. Mr. Mukherjee submits that yesterday was fixed for evidence of the parties and because of some difficulty the matter could not be heard by the Court yesterday. In such circumstances, the Tribunal is directed to allow the parties to adduce evidence after deciding the question of jurisdiction. Mr. Mukherjee and Mr. Sen assure this Court that their clients will not unnecessarily take time before the Tribunal.

The revisional application is thus disposed of.

If certified xerox copy of the order is applied for by any of the parties, the department shall take immediate steps for supplying the same at an early date.