

(2004) 09 GAU CK 0014

In the Gauhati High Court

Case No : W.A. No's. 116, 117, 142, 152, 170 and 201 of 2004 in Writ Petition
(C) No's. 8030, 8031, 8032, 8035, 8036 and 8037 of 2003

Jitendra Kumar Kothari and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 8, 9

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21

Citation : (2005) 1 GLT 269

Hon'ble Judges : D. Biswas, Acting C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : A.K. Phukan and O.P. Bhatti, for the Appellant; P.C. Deka, S.K. Medhi and N. Deka, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—Being aggrieved by the orders dated 11/8/2003, passed by the learned Single Judge, thereby vacating the interim orders dated 25/9/03, passed earlier in the above writ petitions aforementioned, the Appellants/writ Petitioners are before us.

2. By the interim orders dated 25/9/2003, further progress of the corresponding proceedings before the Debt Recovery Tribunal at Guwahati (hereinafter referred to as the Tribunal) was stayed.

3. We have heard Mr. A.K. Phukan, Sr. Advocate, assisted by Mr. O.P. Bhatti, Advocate, for the Appellants/writ Petitioners and Mr. P.C. Deka, Sr. Advocate, assisted by Mr. S.K. Medhi and Mr. N. Deka, Advocates for the Respondent Bank. None has appeared for the other Respondents.

4. As a common question of law has arisen out of the same setting of facts, the appeals were heard together and are being disposed of by this judgment and

order.

5. Sans unnecessary details, the facts relevant for disposing of the appeals have to be noticed at the out set. The State Bank of India (hereafter referred to as the Bank) had filed applications u/s 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (hereafter referred to as the Act) against the Appellants/writ Petitioners and others praying inter alia, for recovery of varying amounts jointly and severally from the Respondents therein. The applications were registered as OA 117/98, OA 120/98, OA 44/99, OA 1/99, OA 125/98 and OA 36/99. An application was filed by the Appellants/writ Petitioners in the above proceedings for striking out their names from the array of Respondents on the ground that they had no connection, what so ever, with the process of loan availed by the other Respondents/Defendant in the proceedings. By orders dated 11/8/03, passed thereon the learned Tribunal rejected the prayer. The Appellants/writ Petitioners, therefore, approached this Court with the aforementioned writ petitions assailing the orders dated 11/8/03 separately. They also questioned the vires of Rule 8 of the Debt Recovery Appeal Tribunal (Procedure) Rules, 1994 (hereafter referred to as Rules).

6. The learned Single Judge by orders dated 25/9/2003, while issuing rule stayed further proceedings of the related original applications pending before the Tribunal. The Respondent Bank eventually filed applications for vacating the interim orders and the prayer was acceded to. In vacating the interim orders, the learned Single Judge entertained a presumption in favour of the Constitutionality of Rule 8 and held that a mere challenge to the validity thereof did not entitle the Appellants/writ Petitioners to a suspension of further proceedings of the original applications. It was also noticed that the orders impugned were appealable under the Act but the Appellants/writ Petitioners had not availed the said remedy, if need be with a prayer for waiver of the pre-deposit in terms of Rule 9 of the Rules.

7. Mr. Phukan has argued that as in the case in hand, the amount of debt payable by the Appellants/writ Petitioners had not yet been determined by the Tribunal, no fee or deposit as comprehended under Rule 8 and 9 respectively was payable by them and consequently no question of waiver or reduction of the amount of deposit as envisaged under Rule 9 of the Rules being relevant, the learned Single Judge had erred in vacating the interim order on that consideration. According to him, the materials on record did not even, prima facie, establish any nexus between the Appellants/writ Petitioners and the loan process or the liability thereunder and the order rejecting the prayer for striking out their names from the array of the Respondents being perse, illegal, it is a fit case for exercise of power of superintendence of this Court under Article 226/227 of the Constitution of India. As the proceedings before the learned Tribunal, qua the Appellants/writ Petitioners, if not suspended in the above factual premises would visit them with serious adverse consequences, they are entitled to the interim relief of stay of the said proceedings.

8. Mr. Deka, in reply, while controverting the above submissions, has principally argued that the proceedings before the learned Tribunal have been initiated for recovery of amounts due to the Bank which is public money and the stay thereof, in any view of the matter would not only be against the interest of the Bank but would underline public interest as well. Supporting the impleadment of the Appellants/writ Petitioners, the learned Sr. Counsel urged that if ultimately, they are adjudged neither necessary nor proper parties, it would at best be a case of misjoinder not affecting the maintainability of the proceedings. In such a case, he contended, no decree would be passed against the Appellants/writ/Petitioners. But such a hypothetical eventuality cannot be projected as a ground for striking out their names from the proceedings or for stalling the progress thereof, he contended.

9. Before we proceed to weigh the competing arguments it has to be noticed that the appeals are only against the orders vacating the earlier interim orders staying further proceedings in the original applications before the Tribunal. In other words, the appeals are not against any decision on merits to the challenge to the vires of Rule 8 or the order dated 11/8/2003, rejecting the prayer of striking out of Appellants/"Writ Petitioners" names.

10. The learned Single Judge thought it fit to vacate the interim orders entertaining an assumption in favour of the validity of Rule 8 till the challenge thereto, was adjudicated on merits and further noticing that the Appellants had not approached the Appellate Tribunal under the Act assailing the order dated 11/8/2003 on merits, the same being available by way of alternative remedy.

11. We have taken note of the contentions relatable to Rule 8 which deals with the fee payable for preferring an appeal as contemplated u/s 20 of the Act. Slabs of fees at uniform rates depending on the amount of debt due have been prescribed thereunder. Rule 9 requires deposit of 75% of the amount of debt due as determined by the Tribunal in a proceeding u/s 19 of the Act. The Appellate Tribunal has been empowered for reasons to be recorded to waive or reduce the said amount of deposit. Rule 9 deals with appeals u/s 21 of the Act.

12. Reference to Section 20 and 21 of the Act, therefore, becomes necessary. Relevant particulars thereof are extracted hereunder.

20. Appeal to the Appellate Tribunal--(1) Save as provided in Sub-Section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

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21. Deposit of amount of debt due, on filing appeal -- Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19.

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section.

A plain reading of the above two provisions of the Act, according to us, reveals that Section 20 contemplates appeals against any order made by a Tribunal under the Act. Section 21 makes it incumbent on the Appellants against whom the amount of debt due to a Bank or a Financial Institution or consortium of Banks or Financial Institutions has been determined by the Tribunal, to deposit 75% of the said amount to be a condition precedent for entertaining his appeal. The proviso to Section 21 further empowers the Tribunal to waive or reduce the amount of deposit for reasons to be recorded in writing.

13. Rule 8 and 9 quoted herein below replicate essentially the above requirements.

Rule 8. Fee--(1) Every memorandum of appeal u/s 20 of the Act shall be accompanied with a fee provided in Sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawn on a nationalized bank in favour of the Registrar and payable at the station where the Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar and payable in Central Post Office of the station where the Appellate Tribunal is located.

(2) The amount of fee payable in respect of appeal u/s 20 shall be as follows.

Rule 9. Deposit of amount of debt due -- Where an appeal preferred by a person referred to in Section 21 of the Act, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19 of the Act, provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited u/s 21 of the Act.

14. In our view, considering the scheme, outlined u/s 20 and 21, Rule 8 and 9 the requirement of deposit arises only when the amount of debt due from the Appellant has been determined by the Tribunal. In other words, while preferring an appeal against any order of the Tribunal fee at the rate prescribed by Rule 8 is compulsorily payable. Deposit contemplated u/s 21 and Rule 9 would be an essential precondition for entertaining an appeal in case by then the amount of debt due from the Appellant had been determined by the Tribunal. As admittedly, the amount of debt, in the cases in hand had not yet been determined by the

Tribunal, the question of making the deposit as envisaged u/s 21 and Rule 9, does not arise. The fee, as prescribed by Rule 8, however, is payable.

15. The grievance sought to be made by the Appellants in the writ petition is that as the impugned order is of interlocutory nature, the requirement of payment of fee at unduly high rates, uniformly applicable in all classes of appeals is harsh, unethical and unrealistic and therefore Rule 8 is liable to be declared ultra vires so far as it relates to imposition of fee on appeals against interlocutory orders. The contention, to arrive at a final decision would require closer scrutiny on merits. As the writ petitions are pending, having regard to the scope of the appeals, we are not inclined to undertake that exercise at this stage lest the issue is predetermined by us.

16. There is yet another aspect. The contention of the Appellants regarding Rule 8 visibly has a bearing on the remedy of appeal provided under the Act. The attack on the vires of Rule 8, by implication signifies a complaint of denial of such right in view of the high rates of fees prescribed. The writ petitions filed by the Appellants having been entertained by this Court, the Appellants for the time being cannot be heard to complain about want of forum to voice their grievance.

17. We are, therefore, inclined to agree with the learned Single Judge that merely because the constitutionality of Rule 8 has been questioned, stay of further proceedings in the original applications before the Tribunal would not be justified.

18. We have perused the applications filed u/s 19 of the Act by the Respondent bank before the Tribunal. It has been categorically pleaded therein that mortgages were created by/or on behalf of the Appellants as well to secure the loan obtained from the Bank for the realization of consequential debt. The applications also mention about the confirmatory letters issued by the Appellants and/or their Attorneys and/or their authorized representatives about the creation of mortgages in favour of the Respondent bank and extensions thereof, securing payment of the outstanding amounts involved. The applications contains an allegation that the Appellants along with other Respondents are intending to dispose of the mortgaged properties for which proper orders are necessary to protect and preserve the same to be available as securities for repayment of the amounts of debt. Relief has also been sought for realization of the amount due from the Respondents in the proceedings, jointly and severally.

19. The learned Tribunal, on a consideration of the pleadings of the parties and more particularly, the contents of the original applications, entertained the view that the presence of the Appellants was necessary for "proper disposal for the matter". According to it, the documents relied upon by the Bank demanded disposal of the matter in the presence of the Appellants.

20. The issues raised in the proceedings before the Tribunal have not yet been finally determined. The object of the Act is to ensure expeditious adjudication and recovery of debts due to Banks and Financial Institutions by following a

summary procedure. This indication can be gathered from Section 22 as well which provides that the Tribunal and the Appellate Tribunal would not be bound by the procedure laid down by the CPC and would have powers to regulate their own procedure while acting as Civil Courts for matters enumerated therein. The Bank has instituted the proceedings under the Act for realization of its debt being the custodian of public money. Considering the stage of the proceedings before the Tribunal and the pleadings before it, we find no good and sufficient reason to stay further proceedings of the original applications before the Tribunal. The appeals, therefore, have no merit and are dismissed.

Before parting, we wish to record that the views expressed by us are tentative and are only for the purpose of disposing the present appeals. The learned Single Judge would independent thereof decide the writ petitions. Having regard to the fact that we have declined to stay the proceedings before the learned Tribunal, we feel that the writ petitions need be heard and disposed of early. No costs.