

(2002) 11 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 2540 of 2002

K. Janardhanan

APPELLANT

Vs

Indian Overseas Bank

RESPONDENT

Date of Decision : 19-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 KLJ 72 : (2003) 1 RCR(Civil) 736

Hon'ble Judges : Jawahar Lal Gupta, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : B. Krishnamani, for the Appellant; Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Has the Debt Recovery Appellate Tribunal failed to exercise its discretion u/s 21 of the 1993 Act? This is the short question that arises in this appeal. The relevant facts may be noticed. The appellants stood guarantee for the loans advanced by the Indian Overseas Bank to different Companies. On default in payment, suits for recovery were instituted in the year 1987. The proceedings had culminated in a compromise decree by the Civil Court in March, 1990. The decretal amount was not paid. Proceedings for issue of recovery certificate were initiated before the Debt Recovery Tribunal. Those petitions were registered as O.A. Nos. 5/1998 to 11/1998. Ultimately, orders/certificates for recovery of more than Rs. 12 crores were issued. The appellants presented appeals. An application u/s 21 for waiver of pre-deposit was made. The application was decided vide order dated April 18, 2001. It was found that the total amount due from the appellants was more than Rs. 12 crores. An order for the deposit of Rs. 7,50,40,000/- was passed.

2. The appellants did not make the deposit instead, they approached this Court through a petition under Article 226 of the Constitution. This petition was dismissed vide order dated June 20, 2002. Hence this appeal.

3. Mr. Krishna Mani, learned counsel for the appellants, contends that Section 21 confers a discretion on the Appellate Tribunal. The dues of the Bank have been secured by providing adequate securities as delineated in paragraphs 5 to 11 of the grounds of appeal. Thus, the order for the deposit of 60% of the decretal amount should be quashed.

4. The Act has been primarily enacted to secure public funds. A summary procedure has been provided to ensure that adjudication of proceedings for recovery of debt due to Banks and other financial institutions is expedited. The obvious purpose is to ensure that one party does not retain the funds for ever so as to deprive others from getting the financial help. Even while providing for the remedy of appeal, a provision has been made in Section 21 that such an appeal "shall not be entertained by the Appellate Tribunal unless such person had deposited. Seventy-five percent of the amount of debt so due from him as determined by the Tribunal.. Thus, the statute postulates a pre-deposit. Still further, by adding the proviso, the Parliament has conferred a discretion on the Appellate Tribunal to "waive or reduce the amount to be deposited." However, this discretion has to be exercised in a judicial manner. The Tribunal is required to record the reasons in writing. Thus, the exercise of discretion under the proviso has to be for good reasons. What is the position in the present case?

5. The Tribunal, on examination of the relevant factors, had come to the conclusion that the appellants had, in collusion with the Bank Officers, managed to evade the payment for more than a decade since 1990. Yet, the Tribunal has not totally rejected the petition for waiver. It has granted partial relief and permitted the appellants to file appeals on deposit of 60% of the decretal amount. The exercise of discretion is not shown to be arbitrary. Relevant factors have been noticed. Thereafter, the Tribunal had passed the impugned order. The reasons given by the Tribunal are germane to the issue. We find no infirmity in the order.

6. Learned counsel for the appellants contends that adequate security has been provided. Thus, the interest of the Bank has been duly secured. The contention is misconceived. Despite the securities, the Bank has not been able to recover a penny since 1990. The delay is ostensibly against public interest. It appears that by adopting one or the other method, the appellants had succeeded in avoiding the payment of public dues. In this situation, we are not surprised that the learned Single Judge had found no ground to interfere with the order passed by the Appellate Tribunal. No other point has been raised.

In view of the above, we find no merit in this appeal. It is accordingly dismissed. It is a fit case where we would have been inclined to award heavy costs against the appellants. However, since we have not found it necessary to issue notice to the respondents, we make no order as to costs.