

(2012) 09 MAD CK 0131

In the Madras High Court

Case No : Writ Petition No's. 24590 and 22872 of 2012 and M.P. No's. 1 and 1 of 2012

Kamala, Mythili Parthasarathy and Yadugiri Shridhar @
Geetha Shridhar

APPELLANT

Vs

The Presiding Officer cum Chairperson, Debts Recovery
Appellate Tribunal, Chennai, State Bank of India, Commercial
Branch, Industrial Estate, Bangalore and Shivaleela Desai

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

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

Citation : (2012) WritLR 1072

Hon'ble Judges : V. Ramasubramanian, J;D. Murugesan, J

Bench : Division Bench

Advocate : V. Jayachandran, for the Appellant; S. Geetha for Mr. Rajnish Pathiyil for R-2 and Mr. A. Edwin Prabakar for R-3, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—As the issue involved in both the writ petitions is common, they are disposed of by this common order. The petitioners are the legal heirs of one of the partners of M/s. K.S.D. Extrusions, which availed a loan from the second respondent-State Bank of India, Commercial Branch, Bangalore. As the loan was not repaid in full, the second respondent-bank filed O.A. No. 855 of 1999 for recovery of a sum of Rs. 1,11,22,208.45 together with future interest at the rate of 16.81%. By an ex parte order dated 26.12.2003, the Debts Recovery Tribunal, Bangalore, decreed the O.A. and a recovery certificate was also issued. The borrowers filed an application in M.A. No. 35 of 2004 before the Debts Recovery Tribunal to set aside the ex parte certificate of recovery dated 26.12.2003. It appears that the said application was filed within time. Subsequent to the filing of the application, the second respondent-bank issued the following letter to the Firm, viz., M/s. K.S.D. Extrusions, on 29.11.2004:-

With reference to your letters No. DGM/SRRB/SBI/02/2004-05 dated 20.07.2004 and No. DGM/SRRB/SBI/03/2004-05 dated 29.11.2004, we advise our consent for your compromise offer, of payment of Rs. 45.00 lacs in full and final settlement of your dues in the above case. The entire compromise amount of Rs. 45.00 lacs (inclusive of payment of 0.90 lacs already paid at the time of processing the proposal) is to be paid as per the terms of compromise detailed below:

- i) The entire balance compromise amount of Rs. 44.10 lacs to be paid in one lump sum within six months time from the date of filing a joint memo before the DRT.
- ii) You have to withdraw your suit application filed against the Bank in DRT/or any other Courts immediately and submit documentary evidence in proof of the same.
- iii) You are required to sign a Joint Memo before DRT, Bangalore, to this effect and this acceptance of compromise is subject to the approval by the DRT.
- iv) If any of the above conditions are not honoured by you, the Bank reserves its right to proceed with DRT for recovery of its entire suit dues.

2. On the ground that a compromise has been reached between the partners of the Firm with the second respondent-bank, the borrower-firm and its partners filed an affidavit dated 07.02.2005 before the Debts Recovery Tribunal seeking permission to withdraw the application to set aside the ex parte recovery certificate. On the basis of the same, the application was also allowed to be withdrawn. Thereafter, the partners of the firm had been making representations to the second respondent-bank to file a joint memo before the Debts Recovery Tribunal as per clause (1) of their letter dated 29.11.2004 so that the compromise amount of Rs. 44.10 lakhs could be paid in one lump sum within six months from that date. As there was no such joint memo filed before the Debts Recovery Tribunal, the petitioners, who are the legal heirs of one of the partners of the borrower-firm, lastly filed another application in 2007 to set aside the ex parte recovery certificate. As there was a delay, an application in I.A. No. 468 of 2007 was also taken out by the petitioners. That application was opposed by the second respondent-bank on the ground that the application was filed with a delay of 1108 days. By order dated 14.08.2007, the Debts Recovery Tribunal dismissed the application holding that there was no sufficient cause for condonation of delay. This order was questioned by the petitioners by filing an appeal before the Debts Recovery Appellate Tribunal, Chennai and the same was numbered as M.A. No. 230 of 2007.

3. During the course of the proceedings before the Debts Recovery Tribunal, it was pointed out that the petitioners should have filed an application seeking for waiver of pre-deposit in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as "the RDDBFI Act"). Accordingly, the petitioners filed I.A. No. 471 of 2012 seeking for

waiver. The said application was ordered on 04.06.2012, wherein and whereby the petitioners were directed to deposit a sum of Rs. 2,07,64,414/- representing 50% of the amount due to the bank as on the date of filing, viz., 22.10.2007, into the Appellate Tribunal, on or before 04.07.2012. The said order is being questioned before this Court in W.P. No. 22872 of 2012. As the aforesaid condition was not complied with, the Debts Recovery Appellate Tribunal, by a subsequent order dated 05.07.2012, dismissed the application filed by the petitioners seeking for waiver. It is the said order which is questioned in W.P. No. 24590 of 2012.

4. The only question that arises for our consideration is as to whether the Tribunal is justified in directing the petitioners, who are the legal heirs of one of the partners of the borrower-firm, to deposit 50% of the amount due to the bank.

5. Section 21 of the RDDBFI Act empowers 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 to file an appeal before the Debts Recovery Appellate Tribunal on condition that such person shall deposit 75% of the amount of debt so due from him as determined by the Tribunal u/s 19. There is no dispute that the amount determined by the Tribunal as on date was Rs. 4,15,28,828/-. Therefore, the Appellate Tribunal would be competent to consider the waiver application and direct the pre-deposit at the rate of 75% or any other lesser amount.

6. An argument is advanced by the learned counsel for the petitioners in challenging the order of the Debts Recovery Appellate Tribunal dated 04.06.2012 stating that by virtue of Section 21 of the RDDBFI Act, the Debts Recovery Appellate Tribunal was not competent and for that matter, is not justified in imposing a condition on the petitioners, who are neither borrowers nor guarantors. In the event an appeal is filed by a person, who is neither a borrower nor a guarantor, an application u/s 21 of the RDDBFI Act with regard to pre-deposit does not arise. For this submission, the learned counsel would rely upon the judgment of the Debts Recovery Appellate Tribunal, Chennai, in Kerala Financial Corporation and Anr. vs. Union Bank of India, reported in II (2003) BC 51 (DRAT/DRT) and the judgment of the Debts Recovery Appellate Tribunal, Delhi, in Prem Prakash (Deceased) Through his Legal Heirs, Santosh and Anr. vs. United Commercial bank and Ors., reported in II (2001) BC 59 (DRAT/DRT).

7. We have gone through the above judgments. Insofar as the judgment in Kerala Financial Corporation's case is concerned, the Debts Recovery Appellate Tribunal, Chennai, was considering an appeal filed at the instance of a Financial Institution, which was holding *pari passu* charge over the same secured asset. That apart, in the said judgment, there is absolutely no discussion as to the provisions of the Act except stating that "With regard to the waiver of the mandatory deposit of the 75% of the decree amount as contemplated u/s 21 of the Act, as rightly pointed by the Counsel for the appellant petitioner, the appellant is neither a borrower nor recovery certificate has been issued as

against him....". This finding of the Debts Recovery Appellate Tribunal was not on the basis of the discussion of law with reference to the purport of Section 21 of the Act. Insofar as the judgment of the Debts Recovery Appellate Tribunal, Delhi, in Prem Prakash's case is concerned, though it is a case of the appellants therein, being the legal representatives of the guarantor, there is no discussion as to the purport of the provisions of the Act. In view of the above, we are not inclined to adopt the ratio laid down in those judgments.

8. The provisions of Section 21 read as under:-

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.

The section empowers any person who had suffered an order u/s 19 to file an appeal before the Debts Recovery Appellate Tribunal and the Appellate Tribunal shall not entertain the appeal unless such person deposits 75% of the amount of debt so due from him as determined by the Tribunal u/s 19. The Act being a special enactment intended for recovery of the loan, the provisions of the said Act should be read in consonance with the legislative intent. When the legislature has prescribed a condition for filing an appeal at the instance of any person, we cannot allow such a right of appeal to be exercised by such person without complying with the mandatory condition of pre-deposit. That apart, it is not as if that the legal heirs are not the persons from whom the debt of the partners of the borrower-firm could not be recovered. Once they admit that they are the legal heirs of the partners of the borrower-firm and they inherited the property of the partners, the liability of the partners to repay the debt shall fall on the legal heirs also to the extent of the value of the property inherited by them. In that sense, the legal heirs can be brought under the words "by any person from whom amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions". If once that conclusion is arrived, even in case of an appeal being filed by the legal heirs of the partners of the borrower or that of the guarantor, as the case may be, such appeal could be entertained only on compliance of the pre-deposit, if any ordered. Hence, the contention of the learned counsel for the petitioners that the petitioners being the legal heirs cannot be directed to make any pre-deposit is unacceptable and accordingly, the same is rejected.

9. This takes us to the next question as to whether the impugned order dated 04.06.2012 could be sustained even on merits. Of course, the Debts Recovery Appellate Tribunal has not given reasons elaborately for directing the petitioners

to make a deposit of 50%. However, taking into consideration the over-all factors, we are not inclined to interfere with the order. The respondent-bank filed the O.A. sometime during the year 1999 and had obtained an ex parte recovery certificate on 26.12.2003. The borrowers filed an application to set aside the ex parte recovery certificate. However, the said application was withdrawn by filing an affidavit dated 07.02.2005. The only contention of the petitioners, who are the legal heirs of one of the partners of the borrower-firm, who have filed the sworn affidavit, is that there was a compromise as could be seen from the proceedings of the respondent-bank dated 29.11.2004. As the second respondent-bank did not file the joint memo of compromise before the Debts Recovery Tribunal, the balance of amount of Rs. 44.10 lakhs had not been paid in a period of six months therefrom and therefore, the petitioners have requested the bank to file a joint memo and as such a memo was not filed, they were forced to file an application to set aside the ex parte recovery certificate in 2007.

10. We are not inclined to agree with the said submission. Clause (1) of the letter of the respondent-bank dated 29.11.2004 shows that a joint memo should be filed before the Debts Recovery Tribunal. The joint memo is with reference to a memo filed by the bank as well as the borrowers. In the event the borrowers have not signed the joint memo, the bank cannot be found fault with and for the same reason, the petitioners, who are the legal heirs of one of the partners of the borrower-firm, cannot take advantage of the fact that a joint memo was not filed and therefore, in bona fide belief, the borrowers have withdrawn the application seeking to set aside the ex parte recovery certificate. The letter dated 29.11.2004 cannot be considered to be one of a compromise arrived at between the parties towards full and final settlement. Of course, it contains four clauses. Only on compliance of the said four clauses, the compromise could be considered to be concluded. Even before the conditions of the compromise are to be complied with, the application seeking to set aside the ex parte recovery certificate was sought to be withdrawn by the borrowers, which fact cannot be an explanation for the present petitioners, who are the legal heirs of one of the partners of the borrower-firm.

11. Also, there is absolutely no reason except stating that there have been representations made by the petitioners to the bank, to explain the delay. Even assuming, from the date of withdrawal of the application on 07.02.2005 till another petition is filed in the year 2007, there has been a delay of more than 700 days as has been stated by the respondent-bank. We have perused the affidavit filed in support of the petition filed before the Debts Recovery Tribunal seeking to condone the delay. That application is silent about the number of days delay in filing the application. When the number of days delay to be condoned itself is silent, consequently there cannot be any explanation for that. Hence, the Debts Recovery Appellate Tribunal has rightly rejected the application seeking to condone the delay.

12. There is one more factual aspect to be referred. After the application to set

aside the ex parte recovery certificate was withdrawn by the borrowers, the second respondent-bank had proceeded to issue the recovery certificate and third party interest had been created some time during the year 2006 and the person, who had purchased the property is not even able to enjoy the benefit, as the petitioners are still in possession and are successfully preventing the purchaser from taking possession. If the above factual aspects are taken into consideration, we are of the view that the petitioners are not bona fide in approaching the Debts Recovery Appellate Tribunal questioning the orders of the Debts Recovery Tribunal. That apart, the delay has not been properly explained and no purpose would be served in sending the matter back to the Debts Recovery Appellate Tribunal on the ground that the order does not give reason elaborately.

13. For all these reasons, we find no infirmity in the order of the Debts Recovery Appellate Tribunal dated 04.06.2012. Accordingly, W.P. No. 22872 of 2012 stands dismissed. Consequently, W.P. No. 24590 of 2012 is also liable to be dismissed, as the said writ petition questions the consequential order of the Debts Recovery Appellate Tribunal dismissing the I.A. filed by the petitioners seeking for waiver on the ground of non-compliance of the pre-deposit. Hence, W.P. No. 24590 of 2012 also fails and the same is dismissed. In the result, both the writ petitions are dismissed. No costs. Consequently, connected M.Ps. are also dismissed.