

(2003) 02 MAD CK 0032

In the Madras High Court

Case No : Civil Revision Petition NPD No. 1558 of 2002

K.R. Subbiah and Thenammal Achi

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 1 BC 456 : (2005) 124 CompCas 328 : (2003) 1 MLJ 600

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : N.R. Chandran for K. Rajasekar, for the Appellant; S. Rengasamy, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The petitioners / defendants in D.R.C. No. 43 of 2001 on the file of Debt Recovery Tribunal, Coimbatore, have

preferred the present revision petition under Article 227 of the Constitution of India, to quash the proceedings pending before the Debt Recovery

Officer, Coimbatore.

2. The case in brief is as follows:- The first petitioner was working as a Manager of Manimelkudi Branch in the respondent Bank. He caused loss

to the bank of Rs.11 lakhs due to his conduct in 1983-84. Enquiry was conducted and he agreed to pay a sum of Rs.11,95,200/= by selling his

properties on 21.06.1984. He also executed a demand promissory note for the aforesaid amount on 16.10.1984. The respondent bank filed O.S.

No. 585 of 1985 on the file of Principal Sub Court, Madurai and a preliminary decree was passed on 07.01.1986. Final decree was also passed

on 12.11.1986. Two properties belonging to the 1st petitioner was sold and the

bank collected a sum of Rs.4,07,000/=. After formation of the Debt Recovery Tribunal, u/s 19(7) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act, 1993), the proceedings were transferred to the Debt Recovery Tribunal. O.A. No. 1803 of 1998 was also ordered ex parte on 26.04.2000. An attachment order was passed on 09.08.2002. Debt Recovery Certificate was also issued on 16.08.2002. The order of proclamation of sale was passed in R.P. No. 85 of 2002 on 11.10.2002. The date for auction was also fixed by the Debt Recovery Officer on 15.11.2002. Aggrieved against this, the defendants have come forward with the revision petition invoking Article 227 of the Constitution of India.

3. The learned counsel for the Bank contended that the present revision petition invoking Article 227 of the Constitution of India is not maintainable under law. There is an alternative remedy available to the revision petitioners u/s 20 of the Act, 1993. They have not preferred any appeal aggrieved against the orders passed by the Debt Recovery Officer. The stand now taken by the revision petitioners cannot be entertained. They have neither appeared at any point of time and contested the suit before the Civil Court or before the Tribunal. Only when the properties were proclaimed for sale, now a stand has been taken by the revision petitioners questioning the debt itself and also a new plea has been taken that the claim is also barred by limitation. Even assuming that the rate of interest is not mentioned in the final decree passed by the Civil Court, by virtue of Order 34 Rule 11 of Civil Procedure Code, the Bank is entitled to claim the same interest and accordingly the rate of interest has been calculated and the amount is due and payable by the revision petitioners.

4. Heard the learned counsel for the parties.

5. The points that arise for consideration are

(1) Whether the revision petition filed by the petitioners under Article 227 of the Constitution of India is maintainable ?

(2) Whether the objections raised by the revision petitioners are sustainable ?

(3) To what relief ?

6. Points:- There is no dispute that the 1st petitioner was employed in the respondent bank during 1982-84 and he caused loss to the bank to the

tune of Rs.11 lakhs. The bank conducted an enquiry and he agreed to pay the sum of Rs.11,95,200/= and ultimately executed a demand

promissory note for the said amount. Due to non payment of the amount, the bank was constrained to file a suit in O.S. No. 585 of 1985 and in

spite of service, the defendants remained ex parte and a preliminary decree was passed as prayed for with interest at 18% per annum. Time for

payment was given as one month and as it was not paid, final decree application was also filed and even the revision petitioners remained ex parte.

It is admitted that the two properties belonging to the judgment debtor were sold by the bank and a sum of Rs.4.07 lakhs has been adjusted.

Now, after passing of the Act, 1993, the suit and the proceedings in the Sub Court have to be necessarily transferred to Debt Recovery Tribunal

and accordingly, the bank filed an application before the Debt Recovery Tribunal under sub-clause 7 of section 19 of the Act, 1993. It is seen

from O.A. No. 1803 of 1998 itself that the Tribunal passed an ex parte order on 26.04.2000 declaring that the bank is entitled to recovery

certificate against the defendants for a sum of Rs.15,66,731.49 with future interest at 18% per annum on Rs.11,95,200/=. No appeal has been

preferred against the order dated 26.04.2000 also. An order of attachment of immovable property was also passed subsequently by the Debt

Recovery Tribunal at Coimbatore in R.P. No. 85 of 2002 and only when the properties are proclaimed for sale, the revision petitioners have come

forward with this revision petition.

7. The learned Senior Counsel for the revision petitioners contended that the proceedings before the Debt Recovery Tribunal is void ab initio as it

erred in exercising the jurisdiction when there is no debt due from the petitioners as defined u/s 2(g) of the Act, 1993. The Tribunal also erred in

exercising the jurisdiction over a matter which was already barred by limitation. Final decree has been passed in the year 1986 itself and even the

execution proceedings were initiated in 1993 itself and the properties were also brought for sale in the execution petition. The Act did not provide

for transfer of suit in which decree was already passed and hence in 1998 the Tribunal would not have any jurisdiction to entertain the recovery

proceedings. The Tribunal erred in granting a recovery certificate, in the teeth of the decree of the Civil Court as the same is without jurisdiction,

after the Act, 1993 came into force. As per section 31 of the Act, 1993, the bank ought to have applied for a certificate u/s 19(22) of the Act,

1993 and the question of filing a fresh original application for passing a second decree on the same subject matter is improper. The Tribunal also

fell in error when it issued a Recovery Certificate calculating interest at the rate of 18% per annum after the date of final decree. The bank is

attempting to bring the property which is not even the subject matter of mortgage or the final decree for sale. The promissory note and the

equitable mortgage were not executed in the course of business activity of the bank and only to cover the loss allegedly due to the conduct of the

petitioner, which also gave rise to a criminal liability. The revision petitioner was never served through out the proceedings because a wrong

address has been given by the bank.

8. The learned counsel for the respondent stated that the 1st petitioner during service has caused loss to the bank by way of issuing demand draft

without receiving the money, which resulted in over draft. He agreed to repay the amount due to the bank and he as well as his wife have executed

necessary documents in favour of the bank. They have also equitably mortgaged the property as collateral security for due repayment of the

amount towards the bank and created equitable mortgage. One of the equitable mortgaged property was a house built by him out of the housing

loan availed by him from the bank itself. The bank already filed I.A. No. 735 of 1985 before the Sub Court for attachment before judgment and

only after due notice and after due service, the attachment was ordered. The property was also duly attached by the Court Amin. The bank filed

another execution petition in the year 1997 and due to the constitution of Debt Recovery Tribunal, the court below has directed the respondent

bank to present it before the Debt Recovery Tribunal. After due verification of the case, recovery certificate was issued by the Debt Recovery

Tribunal. In all proceedings, notices were taken to the petitioners and they wantonly evaded the same. Even if the petitioners really have any right

or defence, they have to prefer an appeal before the Debt Recovery Appellate Tribunal and not before this Court. The rate of interest calculated at

18% per annum from the date of decree is also correct. The petitioner had alleged in his petition in M.A. No. 29 of 2002 that he will sell the

property already mortgaged to the respondent and also without any permission of the respondent. The petitioner had assured to pay the same before 30.12.2002. Till date nothing has been done. The petitioner had submitted a compromise proposal for Rs.15 lakhs, but it was negated by the bank. Once the attachment was effected, the petitioners have no locus standi to sell any attached property without clearing the debt. The 2nd petitioner had also sold the property to a third party purchaser by hiding the attachment order. The intention of the petitioners is to defeat the claim of the bank. The loss caused to the respondent bank also will come in the jurisdiction of Debt Recovery Tribunal. The total amount due to the bank is more than Rs.40 lakhs. It is nothing but a vexatious petition and liable to be dismissed.

9. The learned senior counsel for the revision petitioners contended that an offer was already made by the petitioners to pay a sum of Rs.15 lakhs in full quit of the claim. There cannot be a second decree passed by Debt Recovery Tribunal when already final decree has been passed by a Civil Court. No proceedings were pending when the Act 1993 came into force and, as such, it is not necessary to file any application u/s 19(7) and they should have invoked only section 19(22). The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

10. It is seen from the order dated 26.04.2000 that a recovery certificate against the defendants alone had been granted in favour of the bank.

There is nothing to show that any subsequent decree was passed in favour of the bank. It is also seen from the records that when the second

execution petition was filed before the Civil Court, Act 1993 came into force and because of this only, the bank was directed to move Debt

Recovery Tribunal and accordingly, they have filed on 17.10.1998 itself within the time and hence, the contentions of the learned senior counsel

that the claim is barred by time is without any force.

11. Section 20 of Act, 1993 deals with appeal to the appellate tribunal. Admittedly, the revision petitioners have not chosen to prefer any appeal

aggrieved against the orders granted by the Debt Recovery Tribunal. It is quite probable that by virtue of section 21 of the Act, 1993, 75% of the

amount has to be deposited and only to avoid the same, it appears that the revision petitioners had come forward with the revision petition invoking

Article 227 of the Constitution of India. There is also no basis in the contention of the learned senior counsel that the transaction between the

revision petitioners and the bank will not come as a debt u/s 2(g) of the Act, 1993. Section 2(g) relates to definition of debt, which clearly includes

the amount payable under a decree or order of any civil court or any award or otherwise or under mortgage and subsisting on and legally

recoverable on the date of the application. It is therefore evidently clear that the decree passed by the Court also would come within the definition

of the debt.

12. The learned counsel for the respondent relied on the decision reported in United Bank of India Vs. The Debts Recovery Tribunal and Others, :

under Act 1993 relating to section 2(g) that expression ""debt"" is wide enough to include claim of an undetermined sum. Entire averments made in

plaint has to be looked into while deciding whether claim can be adjudicated upon by tribunal constituted under Act.

13. It has also been held in J.U. Mansukhani and Co and Another Vs. The Presiding Officer and Others, : u/s 2(g) of the Act, 1993 that in the

case of issuance of bank drafts to petitioners without consideration and drafts alleged to be fraudulently obtained in direct or indirect collusion with

bank officers, it is clearly business activity of bank and it is "debt" since liability thereunder is legally recoverable and the application is triable by

Debt Recovery Tribunal and it is maintainable.

This decision is applicable to the case on hand.

14. It has also been held in Punjab National Bank Vs. O.C. Krishnan and Others, : wherein it has been observed as follows:-

The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and financial institutions. There is

hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast track procedure cannot be allowed to be derailed either by

taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a

provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there

is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional

provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have

directed the respondent to take recourse to the appeal mechanism provided by the Act".

It is therefore evidently clear that when Debt Recovery Tribunal directed sale of the mortgaged property, such an order is appealable u/s 20 of the

Act, 1993. In the aforesaid decision, it is clearly stated that writ petition under Article 227 of the Constitution challenging the said order passed by

the Debt Recovery Tribunal is barred on ground of alternative and efficacious remedy and the civil suit also is expressly barred. This decision

exactly applies to the case on hand in all fours. Hence, there is no difficulty in coming to a conclusion that the revision petition filed by the

petitioners is not maintainable and there is a efficacious remedy, namely, to prefer an appeal before Debt Recovery Appellate Tribunal and it is

always open to the revision petitioners to prefer an appeal, if advised.

15. The learned senior counsel for the revision petitioners further stated tat the amount of interest claimed at 18% per annum even after the decree

is not proper and correct and in fact, the revision petitioners are always willing to pay a sum of Rs.15 lakhs in full quit of claim. It is stated that an

application has been filed before the Tribunal and when once the sale of the property has been ordered, the only remedy available to the revision

petitioners is to prefer an appeal and claim reduction of interest. Now, the lending rate by the bank has also been reduced and as such, a it is

always open to the revision petitioners to canvass the same before the appropriate forum and claim reduction of interest. It is seen from the

calculation memo filed on behalf of the bank that the amount as per decree is Rs.15,66,730/=; but the interest for the period 07.01.1986 to

31.12.2002 at the rate of 18% per annum comes to Rs.36,53,776/=. It therefore follows that the interest comes more than double the decree

amount. It is always open to the appellate forum to take into consideration of the aforesaid material and reduce the rate of interest to a reasonable

rate from the date of final decree. The sale proceeds of Rs.4 lakhs and odd has also been realised through court auction and it was given credit to

for the interest amount itself. Hence, I am of the view that the revision petition filed by the petitioners is not maintainable; but at the same time, if

and when the petitioners prefer an appeal before the appropriate forum, namely, Debt Recovery Appellate Tribunal, it is open to the forum to

consider the reduction of interest and the points are answered accordingly.

16. For the reasons stated above, the revision petition fails and is dismissed. No costs. The question of reduction of interest from the date of

passing of final decree can be considered by the Debt Recovery Appellate Tribunal if and when the petitioners prefer an appeal u/s 20 of Act,

1993. Consequently, CMP No. 16500 of 2002 is closed.