
(2009) 03 OHC CK 0090
In the Orissa High Court

Manoranjan Parida

APPELLANT

Vs

Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Citation : (2009) 108 CLT 78 : (2009) 2 OLR 770 Supp

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed challenging the Judgment and order of the Debts Recovery Tribunal, Cuttack Bench, Cuttack (hereinafter called "the DRT) passing an ex parte Judgment and Order Dated 18.08.2005 in O.A. No. 54 of 2001 against the present Petitioner and rejecting his applications for recalling the ex parte order and condonation of delay vide Judgment and Order Dated 28.02.2008 in M.A. Nos. 27 and 28 of 2008.

2. The facts and circumstances giving rise to this case are that the Petitioner stood guarantor (though stated before this Court first time that his signatures had been forged by the borrower) and as loanee did not make the payment, the Opposite Party-Bank i.e. Union Bank of India initiated the proceedings for recovery. Petitioner claims that he had not been served any notice nor aware of the proceedings and finally ex parte Judgment and order had been passed against him on 18.08.2005. Subsequent thereto, when the notice was published on 8.8.2007 in the newspaper The Sambad" a friend of the Petitioner informed him about the notice and proceeding. Thus, he immediately filed an application i.e. M.A. No. 27 of 2008 in O.A. No. 54 of 2001 to recall the ex parte Judgment and order on the ground that Petitioner had never been served any notice whatsoever. The said application has been rejected by the DRT vide Order Dated 28th February, 2008. Hence this petition.

3.The Judgment and order impugned shows that the application has been

rejected on a ground of unexplained inordinate delay. However, we have examined ourselves the case and the entire record. It appears from petition filed by the Petitioner himself that notice was issued to the Petitioner on 12.10.2001 (Annex.-1) on an address in which Petitioner was not residing. Subsequent notices had been issued which were returned back showing that Petitioner was not present. However, order sheet dated 28.11.2002 of the DRT reads as under:

Counsel for Applicant Bank and Counsel for D1, D2 & D5 present. D3 personally served. D4 severally substituted service i.e. by publication in News paper. Service on D3 & D4 (D3 & D4) held sufficient. D3 & D4 called absent and set ex parte. Time petition filed by D1, D2 and D5 on the ground of compromise letters. Time granted either for reporting settlement or for filing WS peremptorily by 26.12.2002.

4. Admittedly, the Petitioner was the Defendant No. 3 in the said case and the Tribunal had recorded a finding that he had personally been served with the notice. Learned Counsel for the Petitioner Shri Mallik, was confronted with the proceedings recorded by the Tribunal. He could not furnish any explanation as to why the Petitioner had not taken any ground before the Tribunal while filing the application to set aside the ex parte Judgment and order that the said proceeding dated 28.11.2002 had wrongly been recorded. We have gone through the entire application submitted by the Petitioner. He had never disputed that proceeding. In the Writ Petition, he has seriously challenged the said proceeding. The Writ Petition has been filed against the Judgment and order of the Tribunal wherein no pleadings have been taken in this regard. In such a fact-situation, there is no occasion for us to examine this issue and record any finding as to whether the Petitioner had been aware of subsequent proceedings before the Tribunal which are continuing till now.

5. It is settled legal proposition that Court is bound to accept the statement of the Judges recorded in their Judgment, as to what transpired in Court. Judges' record was conclusive. Neither lawyer nor litigant may contradict it, except before the Judge himself. It is for the party that if any proceeding had wrongly been recorded by the Court, there is a course to file recall or review before the same Court. (vide *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*,).

6. In *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, , the Apex Court held that the record of the proceeding made by the Court is sacrosanct. The correctness thereof cannot be doubted merely for the asking.

7. Similar view has been reiterated by the Apex Court in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, ; *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, ; and *Bhagubhai Dhanabhai Khalasi and Another Vs. The State of Gujarat and Others*, , placing reliance upon its earlier Judgment in *Ramdas Shrinivas Nayak* (supra).

8. In the instant case, Learned Counsel for the Petitioner not able to furnish any

explanation as under what circumstances Petitioner could not take this course before the Tribunal that the proceedings have wrongly been recorded. In such fact-situation, there is no occasion for us to examine the case further accepting the contention of the Petitioner.

Petition is devoid of any merit and is accordingly dismissed.

B.N. Mahapatra, J.

9. I agree.