

(2001) 01 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6646 of 2000

Manwani Industries Ltd. and Others

APPELLANT

Vs

Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 12, 12(1), 12(3), 12(4)

Debts Recovery Tribunal Practice Regulations, 1998 — Regulation 21

Citation : (2001) 5 MPHT 451

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; S.K. Rao, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—By this writ petition preferred under Articles 226 and 227 of the Constitution of India the petitioners have prayed for quashment of order dated 11-7-2000, Annexure-P-5, passed by the Debts Recovery Tribunal, the respondent No. 1 herein, and order dated 2-11-2000, Annexure-P-9, passed by Debts Recovery Appellate Tribunal, the respondent No. 3 herein.

2. The facts of the case lie in a narrow compass. The respondent No. 2 instituted Original Application No. 157/2000 before the Debts Recovery Tribunal, Jabalpur (hereinafter referred to as "the Tribunal") for recovery of Rs. 5,07,87,915.57 P. After the application was presented before the Tribunal it issued notice to the present petitioners, the defendants therein, to appear on 4-5-2000. The petitioners appeared on the said date and filed an application for grant of time to file their reply/written statement. The Tribunal allowed time till 11-7-2000. While granting time the Tribunal made it clear by observing that no further adjournment shall be granted and the right of defence would be closed if the reply/written statement was not filed by the said date. As averred in the writ

petition during the pendency of the proceedings before the Tribunal the petitioners approached the Bank at various levels and eventually submitted a proposal for one time settlement on 10-7-2000 for Rupees one crore and one lac only. On 11-7-2000 before the Tribunal the petitioner sought further time for filing of reply. The Tribunal took note of its previous order and observed that despite several opportunities, the defendants had not filed their reply/counteraffidavits as required under Rule 12 of the DRT (Procedure) Rules, 1993 (hereinafter referred to as "Rules"), and therefore, as per the provisions of Rule 12 (4) of the Rules read with Regulation 21 of the DRT Regulations of Practice, 1998 (hereinafter referred to as "the Regulations"), the Tribunal may proceed forthwith to pass an order on the Application as it thinks fit. Thus, the case was reserved for judgment. At that juncture the petitioner prayed for making some oral submissions which was allowed and the case was fixed to 18-7-2000. As set forth in the writ petition the aforesaid order was assailed in W.P. No. 4218/2000. This Court by order dated 17-7-2000 declined to interfere on the ground that an appeal lay to the Debts Recovery Appellate Tribunal (hereinafter after referred to "Appellate Tribunal"). However, while dismissing the case this Court directed that the Tribunal shall postpone the pronouncement of judgment till 26-7-2000. Within the time provided by this Court the petitioners, the defendants before the Tribunal, preferred an appeal before the Appellate Tribunal forming the subject-matter of Appeal No. 102/2000. The Tribunal came to hold that the aim and object of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are for speedy and expeditious disposal of the cases filed by the banks or financial institutions for recovery of their dues and as the Tribunal had granted two months time to file the written statement he was justified in rejecting the application for grant of time filed by the appellants therein. The Appellate Tribunal further observed that as per the Rules the written statement/reply is to be filed within a period of 30 days from the date of service of summons. On the basis of the aforesaid findings the Tribunal concluded that the defendants did not deserve any further indulgence, and accordingly, dismissed the appeal with cost of Rs. 2000/-.

3. Assailing the aforesaid order it is averred in the writ petition that the order passed by the Tribunal, Jabalpur as well as by the Appellate Tribunal are vulnerable inasmuch as both the authorities have not kept the concept of natural justice in view and have given undue emphasis on the concept of speedy and expeditious disposal of the case.

4. A return has been by the contesting respondent No. 2, Bank of Indore, contending, inter alia, that the Tribunal had granted enough time to file the written statement, and therefore, it was justified in passing the impugned order. In the return justification has also been given in support of the order passed by the Appellate Tribunal.

5. I have heard Mr. Kishore Shrivastava, learned counsel for the petitioners, and Mr. S.K. Rao, learned counsel for respondent No. 2. It is submitted by Mr.

Shrivastava that both the authorities have grossly erred in law in not granting opportunity to the petitioners to put forth that their case when the quantum was so heavy. It is also urged by him that the Tribunal has erred in observing that several opportunities were granted to the petitioners whereas as an actual fact only one adjournment was granted to the petitioners. Learned counsel has submitted that the peremptory order passed does not disentitle it to extend the period. In support of the aforesaid submission he has placed reliance on the decision rendered in the case of Mahanth Ram Das Vs. Ganga Das, . The learned counsel has also drawn the attention of this Court to Sub-rule (3) of Rule 12 which empowers the Tribunal to accept the written statement after the expiry of the period referred in Sub-rule (1) of Rule 12.

Combatting the aforesaid submissions it is submitted by Mr. S.K. Rao, learned counsel for the respondent No. 2, that the basic object of the Act is for speedy recovery of the dues. It is also submitted by him that by seeking adjournments impediments are created by the loanees as a result of which the purpose of the Act is frustrated. He has further propounded that when initially two months time was granted it was incumbent upon the petitioners to get the reply ready and file the same on the date fixed and should not have sought further adjournments. As the same has not been done it clearly exposes dilatory tactics adopted by the petitioners.

6. To appreciate the rival submissions raised at the Bar I have carefully perused the orders passed by the Debts Recovery Tribunal and Appellate Tribunal, Annexure-P-5 and Annexure-P-9 respectively. On a perusal of Annexure-P-5 it becomes absolutely clear that the Tribunal had granted two months time to file the written statement with the stipulation on failing to do so would entail in closure of the defence. Thus, it passed a peremptory order. As per the law laid down in the case of Mahanath Ram Das (supra) passing of a peremptory order does not estop a Court extend the period. The said principle would squarely be applicable to the Tribunals. The only condition precedent is that justice must so warrant. The second aspect which requires to be adverted to is whether the petitioners have taken recourse to dilatory tactics and acted in a way which frustrates the very object and reason of the Act. It needs no special emphasis to state here that the statute has been brought into existence for speedy and expeditious disposal of the cases filed by the banks and financial institutions of the recovery of their dues. The act has also made certain provisions requiring the Presiding Officer to endeavour to dispose of the proceedings as quickly as possible. Though expeditious disposal of the proceedings by the Tribunal is the basic requirement, the Tribunal cannot be oblivious with regard to the principles of natural justice. While taking steps for speedy disposal the Tribunal has to see further that reasonable opportunity is granted. The Tribunal should make a genuine effort to strike a balance between the concept of speedy disposal and requirements of principles of nature justice. In view of the aforesaid premises I am of the considered view that the Tribunal would have done well to offer one more opportunity to the petitioners to enable them to file the written statement/

reply. The Tribunal should have also considered the matter from the aforesaid angle and should not have based its decision solely on the concept of speedy and expeditious disposal. In view of the aforesaid, the orders contained in Annexures-P-5 and P-9 need to be lanced in exercise of extra-ordinary jurisdiction of this Court, and accordingly I so do. However, as the Bank has been compelled to be dragged to this litigation because of the adjournment sought for by the petitioners it has to be compensated. Keeping the totality of circumstances in view time is granted till 9-2-2001 to file the written statement/reply subject to payment of cost of Rs. 10000/- to the respondent No. 2 by the petitioners within the said period.

7. In the result the writ petition is allowed without any order as to costs.