
(2013) 03 KL CK 0031
In the High Court Of Kerala
Case No : O.P. (DRT) No. 1067 of 2013

Mathew Antony

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 76, 76(1)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20,
20(3), 36

Citation : AIR 2013 Ker 124 : (2013) 1 BC 600 : (2013) 3 ILR (Ker) 318 :
(2013) 2 KHC 95 : (2013) 2 KLJ 351 : (2013) 2 KLT 184

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Dinesh R. Shenoy and G. Harikrishnan Tripunithura, for the
Appellant;

Judgement

Antony Dominic, J.—Petitioner was the 5th respondent in O.A. No. 71/02 filed by the respondent Bank before the Debts Recovery Tribunal, Ernakulam (Kerala and Lakshadweep). Before the Tribunal, petitioner remained ex parte and the O.A. was allowed by the Tribunal on 19.3.04. According to the petitioner, during the aforesaid period, he was abroad and he came to know of the O.A. only on 4.10.2009. It is stated that thereupon he submitted Ext. P1 application for reviewing/recalling the order allowing the O.A. Along with the said application, he also applied for condonation of delay of 2136 days. By Ext. P3 order of the Tribunal, the delay was condoned as sought for in I.A. No. 2624/09. However, by Ext. P4 order, the Review Petition which was numbered as Review Application No. 3/12, was dismissed by the Tribunal. Challenging Ext. P4 order, petitioner filed appeal before the Debts Recovery Appellate Tribunal, Chennai which was numbered as AIR No. 861/2012. In the appeal, the petitioner remitted only Rs. 250/- as court fee. In Ext. P6 proceedings, the Appellate Tribunal held that the court fee of Rs. 30,000/- is payable under R. 8(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 and that the petitioner should pay the

balance court fee of Rs. 29,750/- within two weeks.

2. In this Original Petition, petitioner is challenging Ext. P6 order and also R. 8(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994. The contention raised by the counsel for the petitioner is that for Ext. P1 application to review the order dated 19.3.2004 passed by the Tribunal in O.A. No. 71/02, the Court fee payable in terms of R. 7(2)(4) of the Debts Recovery Tribunal (Procedure) Rules is Rs. 250/-. It is stated that when the Debts Recovery Tribunal (Procedure) Rules prescribed different rates of court fee for different applications, for appeals filed against orders on such petitions, the same basis should be adopted and that it is not permissible to prescribe a uniform court fee based on the amount of debt due. It is on that basis, counsel seeks to invalidate the impugned proceedings.

3. Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, occurring in Chapter IV thereof provides for appeal to the Appellate Tribunal. This section reads thus;

20. Appeal to the Appellate Tribunal.-- (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

4. A reading of this provision shows that sub-section (3) of the section provides that the appeal shall be filed within 45 days from the date on which a copy of the

order made is received by the person aggrieved and that the appeal shall be in such form and be accompanied by such fee as may be prescribed. S. 36 of the Act provides that the Central Government may, by notification, make rules to carry out the provisions of the Act. Clause (e) of sub-s. (2) provides that without prejudice to the generality of powers under sub-s. (1), such rules may, provide for any other matter which is required to be, or may be, prescribed. It was in exercise of the powers under S. 20(3) read with S. 36 that the Central Government have framed the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994, in which R. 8 providing for fee has been incorporated. This rule reads thus;

8. Fee.-- (1) Every memorandum of appeal u/s 20 of the Act shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawn on a nationalised bank in favour of the Registrar and payable at the station where the Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar and payable in Central Post Office of the station where the Appellate Tribunal is located.

(2) The amount of fee payable in respect of appeal u/s 20 shall be as follows:-

5. A reading of this rule shows that every memorandum of appeal submitted under S. 20 of the Act shall be accompanied with fee as provided in sub-rule (2). Sub-rule (2) provides that the amount of fee payable in respect of the appeal shall be as prescribed in the second column and that is related to the amount of debt due as indicated in the first column. In other words, the fee prescribed and payable under R. 8(2) is directly related to the amount of debt due in respect of which the proceedings are instituted. It is in spite of the aforesaid provision that the petitioner has remitted only Rs. 250/- along with the appeal filed by him challenging Ext. P3 order. Admittedly, the remittance made by the petitioner does not satisfy the requirements of R. 8(2) and therefore the appeal was a defective one.

6. Learned counsel for the petitioner contended that in Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, different court fee have been prescribed depending upon the nature of the application and therefore it was impermissible for the Central Government to prescribe a different method and levy a uniform court fee in so far as the appeals filed against orders passed on such applications to the Debts Recovery Appellate Tribunal. He also contended that similar method has been adopted in the Court Fees and Suits Valuation Act, be it framed by the Central Government or by the State Governments.

7. Admittedly, the Rules in question are framed by the Central Government and are in the nature of a subordinate legislation. A subordinate legislation can be challenged if it is against the provisions of the parent act or any other plenary law. Petitioner has not shown me any provision in the Recovery of Debts Due to Banks and Financial Institutions Act, or any other law preventing the Central

Government from framing a rule as R. 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules. In other words, petitioner has not succeeded in proving before this Court that the Rule is violative either of the parent act or any other plenary law. Since the validity of a statute cannot be judged merely by comparison with another, the fact that a different method has been accepted in so far as the Court Fees and Suits Valuation Act will not by itself invalidate R. 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules.

8. One of the other grounds on which subordinate legislation can be invalidated is that it is beyond the scope of the power conferred by the parent statute on the delegate. I have already referred to S. 20(3) which expressly authorises the Central Government to prescribe the fee payable for maintaining an appeal under S. 20 of the Act. Therefore, R. 8(2) is well within the scope and ambit of S. 20 read with S. 36 of the Act. The third and the last ground available is a situation where the rule infringes upon any fundamental rights or other limitations imposed by the Constitution. Appeal is only a statutory right and this right can be validly circumscribed by the statute. Therefore, when fee is prescribed for maintaining an appeal, such prescription cannot be said to be offending any constitutional provision. Therefore, this Rule is a valid piece of subordinate legislation and the contention to the contrary has to be rejected.

9. In this context I should also refer to the judgment of this Court in *Ismail Vs. State of Kerala*, . That was a case where S. 76 of the Kerala Court Fees and Suits Valuation Act, 1959 and the Circular No. 1/04 were challenged before this Court. S. 76 of the Court Fees Act provided for the constitution of Legal Benefit Fund. S. 76(1) authorises the Government to levy an additional court fee, by notification in the Gazette, in respect of appeals or revisions to Tribunals or appellate authorities at a rate not exceeding 1% of the amount involved in the dispute in cases where it is capable of valuation and in other cases, at a rate not exceeding Rs. 100/- for each appeal or revision. By S.R.O. No. 226/02, the Government prescribed that the fee shall be at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation and in other cases at the rate of Rs. 50/- in each case. The position was clarified by Circular No. 1/04. The statutory provision and also the circular were challenged on different grounds including that it was disproportionately high and that the imposition was confiscatory in nature and partakes the characteristics of tax. The contentions were dealt with by this Court including on the legislative competence and the Writ Petition was dismissed. This judgment was confirmed by the Division Bench in the judgment in *Chackolas Spinning and Weaving Mills Ltd. Vs. State of Kerala*, . What is important to be noticed in this context is that the statutory provision viz., S. 76 of the Kerala Court Fees and Suits Valuation Act, which was the subject matter of challenge, authorised levy on the basis of the amount involved in the dispute in cases where it was capable of valuation. This provision is almost similar to R. 8 where the levy is based on the amount of debt due. In view of the above, I do not find any substance in the challenge raised. Once the rule is upheld, the impugned order viz., Ext. P6 also will have to be upheld.

10. Yet another factual defect in the Original Petition is that though the petitioner has challenged the validity of R. 8(2), petitioner has not impleaded the Union of India which framed the Rule as a party to this Original Petition. Therefore, the Original Petition has to fail for non joinder of necessary parties also. Despite the legal position as above, having regard to the fact that for a technical defect, the petitioner will be losing an opportunity to get the appeal decided on merits, I direct that, it will be open to the petitioner to make an application before the Tribunal to permit him to remit the balance court fee and if such an application is filed within two weeks from today, the Tribunal shall allow the petitioner to remit the court fee and on that basis, consider the appeal in accordance with law.

Subject to the above, the OP (DRT) is dismissed.