
(1996) 01 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition No. 70 of 1996

M.C. Mittal

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Citation : (1996) 1 AD 482 : (1996) 36 DRJ 233

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ashok Gumani and Vivek Sharma, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) In this writ petition the petitioners (defendants 2 to 4) seek to challenge the order of the Banking Debt Recovery Tribunal, New Delhi, dated November 28, 1995. By that order the Tribunal dismissed the application of the petitioners Filed under Order 6 Rule 17 CPC . on the ground that the amendment sought by the petitioners was of such a nature that if permitted to be introduced by way of amendment would completely change the nature of the original defense.

(2) The plea of the petitioners is that the order of the Tribunal is erroneous in law and the Tribunal did not appreciate the true nature of the amendment sought by the petitioners.

(3) The question whether the order of the Tribunal was erroneous or otherwise cannot be a subject-matter of a writ petition as under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (for short "the Act") appeal is provided from any order made or deemed to have been made by a Tribunal under the Act. Section 20 of the Act provides for an appeal to an Appellate Tribunal having jurisdiction in the matter. It is not disputed that the Appellate Tribunal has since been constituted. Therefore, the petitioners could have invoked the provisions of section 20 of the Act. Since there is an adequate alternative remedy available to the petitioners, the writ petition would not lie.

(4) However, learned counsel for the petitioners submits that the order passed by the Tribunal was not one under the Act as order was passed on an application of petitioners under Order 6 Rule 17 CPC . and such an order cannot be construed as an order passed under the provisions of the Act. I am afraid this argument of the learned counsel for the petitioners cannot be accepted. When the petitioners Filed the application under Order 6 Rule 17 before the Tribunal they were seeking an order under the Act. Otherwise, if the matter was outside the province of the Tribunal such an application would not have been made by the petitioners. u/s 22 of the Act, the Banking Debt Recovery Tribunal and the Appellate Tribunal have the discretion not to be bound by the procedure laid down by the Civil Procedure Code, but that does not mean that the Tribunal or the Appellate Tribunal cannot follow the procedure laid down by the Code. When the Tribunal entertains the application under a particular provision of the Civil Procedure Code, surely an order passed on that application would be one under the Act.

(5) For the foregoing reasons the petition is dismissed as being without any merit. Dismissed in limine.