

(2002) 10 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 5794 of 2002

Mopac Plast (P.) Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(20), 21

Recovery of Debts Due to Banks and Financial Institutions Rules, 1993 — Rule 12(5)

Citation : (2003) 1 ALLMR 524 : (2003) 3 BC 46 : (2003) 3 BomCR 107 : (2003) 42 SCL 52

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : V.P. Sawant, for the Appellant; M.S. Don-Theba, for the Respondent

Judgement

A.M. Khanwilkar, J.—Leave to amend. Rule, Mrs. N.S. Don-Theba waives notice. Heard forthwith, by consent.

2. This writ petition under articles 226 and 227 of the Constitution of India takes exception to the order passed by the Debts Recovery Appellate Tribunal, Mumbai dated 20-8-2002, in M.A. No. 234 of 2002 in Appeal No. 53 of 2002, which in turn will have the effect of confirming the order passed by the Presiding Officer of the Debts Recovery Tribunal, Pune dated 26-6-2002 in O.A. No. 535-P/2001. The Presiding Officer of the Debts Recovery Tribunal, Pune, was to hear the original application for arguments on 26-6-2002. On that date a request was made on behalf of the petitioner that their advocate Smt. Kale was under medical treatment and advised rest for one month. No doubt besides Smt. Kale the petitioners had filed joint vakalatnama of one Advocate Gujar and he had appeared before the Tribunal on that day. The Tribunal proceeded with the hearing of the case on that date and passed interim order directing issuance of recovery certificate for the amount of Rs. 95,75,078.55 in favour of the respondent Bank on the basis that the petitioners have admitted that claim in the original application. For recording this opinion, the Tribunal has placed reliance

on the balance sheet of the petitioners for the year 1998-99.

3. It is, however, not in dispute that no prior notice was given to the petitioners that the Tribunal will be called upon to pass interim order in the nature of order passed against the petitioners on 26-6-2002. Moreover, admittedly, no formal application was filed by the respondent Bank requesting the Tribunal to make such an order but perhaps the Tribunal was persuaded by the counsel appearing for the respondent Bank on that day to make that order on the basis of the statement made in the said balance sheet which came to be produced only at the time of hearing on that date. From the order passed by the Tribunal it does appear that the petitioners appeared through Shri Gujar Advocate but he was at a loss to make submissions on the aspect of interim order that the Tribunal was proposing to pass, on that date. Since the order passed by the Tribunal, being an appealable order, the petitioner carried the matter in appeal before the Debts Recovery Appellate Tribunal, Mumbai, being Appeal No. 53 of 2002. In that appeal the petitioner filed application for waiver of pre-deposit in terms of the proviso to Section 21 of the Act. The Appellate Tribunal, by the impugned order, however, rejected that request.

4. Before the Appellate Tribunal, it is contended that, serious grievance was made that the order passed by the Tribunal was in breach of principles of natural justice. Inasmuch as the petitioner was not put to notice about the fact that such an order was to be passed by the Tribunal on that date, nor the petitioner was given proper or effective opportunity of being heard in respect of that relief. The Appellate Tribunal, however, placing reliance on the decision of the Apex Court in Judgment Today 2002 (3) SC 131 wherein the constitutional validity of the Act including the provision for 75 per cent of pre-deposit before entertaining the appeal u/s 21 of the Act has been held to be intra vires, observed that the aim of this enactment was expeditious adjudication of the claims. To my mind that observation is inapposite for resolving the question regarding waiver or reduction of the amount of pre-deposit. Whereas, the Appellate Tribunal in para 5 of its decision virtually affirmed the view of the Tribunal on merits of the case which was pending appeal. It is on that premise the Appellate Tribunal held that there was no question of waiving the pre-deposit and rejected the application made therefor. Even this reasoning cannot be germane to examine the question of waiver of the pre-deposit when the grievance was of breach of principles of natural justice.

5. Be that as it may, there is no doubt that the Tribunal is competent to pass appropriate interim order in a given case in exercise of express power conferred u/s 19(20) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The said provision reads thus :

"(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realization or actual payment, on the application as

it thinks fit to meet the ends of justice."

The procedure for deciding such application is set out in Rule 12(5) of the rules framed under the said Act. The same reads thus :

"(5) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission, but the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act to the extent of amount of debt due admitted by the defendant."

6. Having regard to the abovesaid provisions, the Tribunal could have passed interim order provided that an application for that relief was moved by the respondent Bank. Further, before passing any such order the Tribunal ought to have given notice to the defendant as well as afforded a fair opportunity of being heard on that question. Besides, when the defendant upon notice makes admission of any amount out of the claim amount due to the plaintiff, in the first place the Tribunal would give one month time to the defendant to make the payment and only on failure to do so that the recovery certificate to the extent of admitted claim could be issued. In the present case, nothing of this sort has happened. The abovesaid statutory provisions are nothing but in the nature of providing fair opportunity to the defendant before issuance of recovery certificate against him. Non compliance of these provisions would obviously amount to breach of procedure established by law. In the present case undisputedly the order for issuing recovery certificate is passed in absence of any application in that behalf muchless any notice to the petitioners that the Tribunal will be called upon to pass such order or for that matter having apprised the petitioners that the Tribunal was proposing to pass such order on the basis of the statement in the balance sheet. This has the inevitable effect of infraction of principles of natural justice and fair play. A priori, the order passed by the Tribunal on 26-6-2002 is vitiated. In such a case the Appellate Tribunal was obliged to exercise its power to waive the amount of pre-deposit by virtue of the proviso to Section 21 of the Act. The Apex Court in the case of Sangfroid Remedies Ltd. v. Union of India 1998 (103) ELT 5 while considering similar situation under the provisions of the Central Excise Act, 1944, has held that requiring the assessee to pay pre-deposit amount as a condition for hearing of appeal will be unsustainable. The Appellate Tribunal in this case, therefore, ought to have allowed the application preferred by the petitioners for waiver.

7. In the present case no doubt the Tribunal has relied on the balance sheet of the petitioner-company so as to proceed on the assumption that the petitioner has admitted the claim. Reliance has been placed by the counsel appearing for the respondent Bank on the decision in *In Re: Pandam Tea Co. Ltd.*, as well as another decision in *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, , to contend that if necessary declaration is made in the profit and loss accounts and the assets and liabilities side indicate the liability of the petitioner

along with the statement of the Directors made to the shareholders in the Director's report, then the same can be read together as acknowledgement and/or admission of the debt. However, on the other hand the learned counsel for the petitioner contends that the Tribunal before passing the impugned order was obliged to afford hearing to the petitioner and examine all aspects of the matter. According to the petitioners, mere provision made in the balance sheet of the claim amount will not be an admission of the claim. It is further contended that the impugned order passed in the present case virtually amounts to allowing the petition to the extent of the substantive relief claimed therein.

8. However, instead of examining the matter any further, I would think it appropriate to keep all the questions open regarding the merits of the claim including the question of admission of the claim by the petitioners or otherwise. Ordinarily, it would have been enough for this court to set aside the order of the Appellate Tribunal and allow the application for waiver. But in the present case the prayer for waiver is required to be granted by this court, being persuaded to hold that, the proceedings before the Tribunal for recording order dated 26-6-2002, was in breach of principles of natural justice. In such a situation it will be proper to relegate the parties to the Tribunal for fresh consideration of the prayer for grant of interim relief, if any.

9. In the circumstances, orders passed by the Appellate Tribunal as well as the first Tribunal are set aside. It will be open to the respondent Bank to file a formal application asserting that the petitioners-defendants have admitted the claim in respect of the amount of debt due to the respondent Bank and, if such application is filed, the Tribunal may consider the same in accordance with law.

10. Rule made absolute in the above terms. No order as to costs.