(2016) 04 MP CK 0050

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8646 of 2013

M/s Dinesh Agarwal & Associates — APPELLANT

Vs

Pawan Kumar Jain — RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29, 30

Citation : (2016) 3 BankJ 257 : (2017) 1 BC 516 : (2016) 2 DRTC 292

Hon'ble Judges : Mr. Alok Aradhe and Mr. Vivek Agarwal, JJ.

Bench : Division Bench

Advocate : Shri D.K. Agarwal, learned counsel, for the Petitioner; Shri K.N. Gupta, learned senior counsel with Shri R.S. Dhakad, counsel, for the Respondents No. 1; Shri M.P. Agarwal, learned counsel, for the Respondents No. 2; None, for the Respondents No. 3 and 4

Final Decision : Disposed Off

Judgement

Alok Aradhe, J.—In this writ petition, the petitioner, who is an auction purchaser, has assailed the validity of the order dated 29.10.2013 passed by Debt Recovery Appellate Tribunal, Allahabad (hereinafter referred to as the "Appellate Tribunal"), by which the order dated 8.3.2013 passed by the Debt Recovery Tribunal has been set aside. In order to appreciate the petitioner''s challenge to the impugned order, few facts need mention which are stated infra.

2. The respondent No.1, who is sole proprietor of M/s Arpit Brothers, had availed of loan facility from the respondent No.2-Bank. However, he failed to honour his commitment to repay the amount of loan. Thereupon, the respondent-Bank initiated the proceedings against him before the Debt Recovery Tribunal by filing OA No. 79/2005, which was decided by judgment dated 8.11.2005 and the respondent No.1 was held liable to make payment of sum of Rs. 21,49,778.92/- along with interest at the rate of 12% per annum from 12.1.2005. In another case, namely, OA No. 77/2005 the respondent No.1 was held liable to pay a sum of Rs. 14,77,038.33 with interest at the rate of 12% per annum from 12.1.2005.

Thus, under the orders passed in aforesaid two proceedings initiated against the respondent No. 1, he was liable to pay a sum of Rs. 36,26,817.25/- with interest at the rate of 12% per annum from 12.1.2005.

3. For recovery of the aforesaid amount an auction notice was published on 14.12.2007 and auction was scheduled to be held on 21.1.2008. The petitioner participated in the auction proceeding held on 21.1.2008 and deposited the earnest money of Rs. 2,50,000/- on 18.1.2008. The petitioner was declared the highest bidder, as his offer of Rs. 25,12,000/- was found to be the highest. Thereupon, the petitioner deposited a further sum of Rs. 3,78,000/- on 21.1.2008. The remaining amount was deposited by the petitioner on 28.1.2008. It is pertinent to mention here that the respondent No.1 did not challenge the proceeding for auction under Rule 61 of Second Schedule of Income Tax Act, 1961.

4. However, the respondent No.1 filed a writ petition, namely, Writ Petition No. 2868/2008 before the Principal Seat of this Court, in which an ad interim order was passed on 12.3.2008, by which it was directed that since the petitioner has expressed his willingness to retain the property by depositing the entire amount received in the auction, hence for sale of the property further steps for confirmation of sale and issuance of sale certificate in pursuance to the auction shall remain stayed till next date of listing. Thereafter, on 19.8.2008, the respondent No.1 handed over two cheques in the sum of Rs. 25.00 Lacs and Rs. 15.00 Lacs dated 19.8.2008 and 5.9.2008 to the counsel for the respondent No.2-Bank. The order dated 19.8.2008 was subject matter of challenge in Writ Appeal No. 939/2008, which was disposed of by Division Bench of the Principal Seat of this Court by order dated 2.9.2008 with the direction to the respondent No. 1 to pay a sum of Rs.25.00 Lac by way of Demand Draft and a further sum of Rs. 7.5 Lacs by 13.10.2008 positively failing which it was observed that it will be open to the Bank to take appropriate steps against the respondent No. 1. It was further held that if such directions are complied with by the respondent No. 1, learned Single Judge was requested to take up the writ petition and to decide the same.

5. In compliance of the observation made by the Division Bench, the Writ Petition No. 2868/2008 was disposed of by another Division Bench by order dated 9.12.2009 on the following terms :-

"Let the appeal be filed by the petitioner within 30 days. Same shall be treated as agreed within period of limitation before the Presiding Officer. Presiding Officer is directed to decide the appeal in accordance with the law after hearing the parties within a period of four months."

6. It is not in dispute that the respondent No. 1 in compliance of the order dated 9.12.2009 ought to have filed an appeal on or about 8.1.2010. However, the appeal was preferred by the respondent No. 1 on 8.2.2010, i.e., beyond the period of limitation. The Debt Recovery Tribunal by order dated 28.11.2011 held

that the appeal filed beyond the prescribed period of limitation, i.e., on 8.2.2010 as directed by the High Court is not maintainable. The aforesaid order was challenged by the respondent No.1 by filing an appeal before the Debt Recovery Appellate Tribunal under Section 20 of the Recovery of Debts due to Bank and Financial Institution Act, 1993 (hereinafter referred to as the "Act"). The Debt Recovery Appellate Tribunal by the order dated 7.8.2012 remitted the matter to the Debt Recovery Tribunal on the ground that the limitation of 30 days was not computed by the Debt Recovery Tribunal while passing the order dated 28.11.2011.

7. The Debt Recovery Tribunal by order dated 8.3.2013 dismissed the appeal preferred by the respondent No.1 inter alia on the ground that the respondent No.1 did not deposit the amount as required under Rule 61 of the Second Schedule appended to Income Tax Act, 1961, therefore, the appeal was dismissed. Being aggrieved, the respondent No.1 filed an appeal before the Appellate Tribunal. The Appellate Tribunal by order dated 29.10.2013 inter alia held that the sale was not confirmed in favour of the auction purchaser and, therefore, the auction purchaser has no enforceable right in law. It was further held that the respondent No.1 has deposited an amount of Rs. 32.50 Lacs. Accordingly, the appeal was disposed of with the direction contained in concluding paragraph of the order passed by the Appellate Tribunal. In the aforesaid factual background, the petitioner has approached this Court.

8. Learned counsel for the petitioner has submitted that the Debt Recovery Tribunal has not decided the appeal on merits. It is further submitted that the Appellate Tribunal has neither set aside the auction held on 21.1.2008 nor has recorded any finding about the illegality in the auction. It is further submitted that the Appellate Tribunal ought to have appreciated that the appeal preferred by the respondent No.1 before the Debt Recovery Tribunal was barred by limitation and the same was filed beyond the period of 30 days. In support of his submissions, learned counsel for the petitioner has placed reliance on decisions of the Supreme Court in the cases of State of West Bengal v. Atul Krishna Shaw and another (AIR 1990 SC 2205); Union of India and another v. Delhi High Court Bar Association and others [(2002) 4 SCC 275]; Mathew Varghese v. M. Amritha Kumar and others [(2014) 5 SCC 610]; Annapurna v. Mallikarjun and another [(2014) 6 SCC 397]; Ram Karan Gupta v. J.S. Exim Limited and others [(2012) 13 SCC 568; and, M/s Hotel Paras Garden and another v. Central Bank of India and others 2015(2) Bankers'' Journal 516.

9. On the other hand, Shri K.N. Gupta, learned senior counsel for the respondent No.1 submitted that the petitioner is not an aggrieved person and at his instance the writ petition is not maintainable as the petitioner is a prospective purchaser and the sale certificate has not been issued in his favour. It has further been submitted that the petitioner had not challenged the auction proceeding before this Court under Rule 61 contained in Schedule II, appended to the Income Tax Act, 1961. It is further submitted that the petitioner had deposited the amount in

compliance of the various interim orders passed by this Court in Writ Petition No. 2686/2008. However, the learned senior counsel was unable to point out from the record that the appeal filed by the respondent No.1 before the Debt Recovery Tribunal was filed within a period of limitation.

10. We have considered the rival submissions made by learned counsel for the parties. The writ petition preferred by the respondent No. 1 was disposed of by the Division Bench at Principal Seat at Jabalpur vide order dated 9.12.2009 with the direction that if the appeal is filed by the respondent No. 1 within a period of 30 days, same shall be treated as agreed within a period of limitation before the Presiding Officer and the Presiding Officer was directed to decide the appeal in accordance with law after hearing the parties within a period of four weeks. Along with the appeal, neither any application for condonation of delay was filed nor the appeal was filed up to 8.1.2010. The appeal was filed beyond the period of limitation, i.e., on 8.2.2010. The appeal preferred before the Debt Recovery Tribunal itself was not maintainable as the same was barred by limitation. Therefore, the Debt Recovery Tribunal, in our considered opinion, committed grave error of law in dealing with the appeal preferred by the respondent No. 1 on merits without even an application for condonation of delay. An order on merits can be passed only in a duly constituted appeal. The appeal could have been entertained on merits if it was filed up to 8.1.2010, as directed by this Court vide order dated 9.12.2009. In other words, the Debt Recovery Tribunal has dealt with the issue on merits in an appeal which was barred by limitation, which is impermissible in law. The aforesaid aspect of the matter has also not been appreciated by the Appellate Tribunal as well.

11. In view of preceding analysis, the orders passed by the Debt Recovery Tribunal dated 8.3.2013 as well as the Debt Recovery Appellate Tribunal dated 29.10.2013 cannot be sustained in the eye of law. They are accordingly quashed. The matter is remitted to the Recovery Officer to take the action in accordance with law.

12. With the aforesaid directions, the petition is disposed of.