(2011) 11 CAL CK 0065

In the Calcutta High Court

Case No : W.P.No. 17198 (W) of 2011

M/s. Kris Textiles Pvt. Ltd. and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 17, 17(1), 19, 30(1)

Citation : (2012) 3 BC 619 : (2012) 2 CALLT 351

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Ranjan Kali and Ms. Mital Chakraborty, for the Appellant;Debabrata Das, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioners in this Article 226 petition dated September 29, 2011 are questioning an order of the Registrar in charge, Government of India, Ministry of Finance, Kolkata Debts Recovery Tribunal dated June 24, 2011 (at p. 50). The impugned order dated June 24, 2011 is quoted below:

"Received an application u/s 17(1) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) presented by Ld. Advocate, Smt. Mitul Chakrabarty, Kris Textile Pvt. Ltd. & Another against Oriental Bank of Commerce. The application has been filed seeking relief against the Possession Notice published in newspaper on 10.05.2011. The claim of the Bank is Rs.78,10,519.80.

On scrutiny of the application it has been found that instant application has been filed on 24.06.2011, whereas limitation period of 45 days from the date of the impugned notice has been completed on 23.06.2011. Hence, the application is barred by period of limitation.

As per the order passed by the Hon''ble Calcutta High Court [2010 (3) CHN (Cal) 95] on 30.04.2010 Limitation Act cannot have any application to the original proceedings u/s 17(1) of SARFAESI Act.

Hence, the instant application can not be registered."

2. In the capacity of the secured creditor Oriental Bank of Commerce took steps for recovery of outstanding debt. The authorised officer of the bank issued a possession notice dated May 10, 2011, evidently, taking measures u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Feeling aggrieved, the petitioners made an application u/s 17 of the Act with the Debts Recovery Tribunal on June 24, 2011.

3. The Registrar passed the impugned order refusing to register the application on the grounds that it was time-barred, and that in view of a decision of this Court the delay could not be condoned. Now questioning the order the petitioners have filed this petition.

4. Mr Kali appearing for the petitioners submits as follows. The Registrar had no jurisdiction to decide anything concerning the question of limitation. Quite unauthorisedly he decided the question and refused to register the application, after actually registering it under a case number. Since the order is patently without jurisdiction, the petitioners not appealing against it to the Presiding Officer of the Tribunal are still entitled to question it before the Writ Court.

5. Mr Das appearing for the bank and relying on United Bank of India Vs. Satyawati Tondon and Others, and Akshat Commercial Pvt. Ltd. & Anr. v. Kalpana Chakraborty & Ors., AIR 2010 Cal 128 has submitted that in view of the Division Bench decision of this Court and the refusal of the Supreme Court to extend stay ordered in the appeal against the Division Bench decision, there was no scope for condoning the delay by the Tribunal in making the admittedly time barred section 17 application.

6. His argument is that the Registrar finding the application ex facie barred by limitation rightly refused to register it; and that since no appeal against the order of the Registrar was lodged and this petition was filed long after the expiration of the period of limitation for lodging the appeal, the Writ court should not interfere with the order.

7. The Registrar has passed the order, presumably, under rule 5 of the Debts Recovery Tribunal (Procedure) Rules, 1993. In rule 4 of the rules the procedure for filing an application such as the one u/s 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 has been prescribed.

8. Rule 4 of the Debts Recovery Tribunal (Procedure) Rules, 1993 is quoted below:-

"4. Procedure for filing.-(1) The application u/s 19 or section 31A, or u/s 30(1) of the Act may be presented as nearly as possible in Form I, Form II and Form III respectively annexed to these rules by the applicant in person or by his agent or by a duly authorised legal practitioner to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

(2) An application sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar the day on which it is received in the office of the Registrar.

(3) The application under sub-rule (1) shall be presented in two sets, in a paper book along with an empty file size envelop bearing full address of the defendant and where the number of defendants is more than one, then sufficient number of extra paper books together with empty file size envelops bearing full addresses of each defendant shall be furnished by the applicant."

Rule 5 of the Debts Recovery Tribunal (Procedure) Rules. 1993 is quoted below:

"5. Presentation and scrutiny of applications.-(1) The Registrar, or. as the case may be, the officer authorised by him. shall endorse on every application the date on which it is presented or deemed to have been presented under rule 4 and shall sign endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the concerned applicant fails to rectify the defect within the time allowed in sub-rule (3). the Registrar may by order and for reasons to be recorded in writing, decline to register the application.

(5) An appeal against the order of the Registrar under sub-rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final."

9. It is evident from rule 5 of the rules that the Registrar can decline to register an application u/s 17 of the Act only if the applicant concerned fails to rectify a defect, not formal in nature, found on scrutiny of the application, within the time allowed by the Registrar under sub-rule (3) of rule 5 for its rectification. The Registrar cannot decline to register a section 17 application if the defect found on scrutiny cannot be rectified:

10. Hence he cannot decline to register a section 17 application on the grounds that it is barred by limitation, for the defect, if limitation is to be treated as a defect, cannot be rectified by the person filing the application. It can stand rectified only if the delay is condoned by the Tribunal. And the question whether

the delay is to be condoned is to be decided only by the Tribunal, and not by the Registrar thereof.

11. It is, therefore, evident that the Registrar has quite unauthorisedly and without jurisdiction decided the question of limitation and declined to register, after actually registering, the petitioners'' section 17 application, not otherwise defective, on the grounds that in view of a decision of this Court, he is aware of. the delay In filing the application cannot be condoned.

12. It is true that the petitioners did not appeal against the order to the Presiding Officer of the Tribunal in chamber under sub-rule (5) of rule 5, and that they have filed this petition long after expiration of the period for appealing against the order to the Presiding Officer. It is not to be decided in this case whether in view of the Division Bench decision the Tribunal should or will refuse to condone the delay, if any. in filing the section 17 application.

13. It is to be noted that correctness of the submission that the Supreme Court has refused to extend the stay initially granted in the appeal against the decision of the Division Bench of this Court has been strongly disputed by Mr Kali. It is also to be noted that Mr Das has said that there is no need to file opposition to this petition. Under the circumstances, the petition, treating it as admitted, has been taken up for final hearing at the admission stage itself.

14. In my opinion, in view of the nature of the powers that the Registrar and the Presiding Officer of the Tribunal were supposed to exercise and the patent jurisdictional error writ large on the face of the order of the Registrar, it will not be appropriate for this Court to refuse the petitioners relief on the grounds that they waiving, by conduct, their right to appeal against the order of the Registrar to the Presiding officer of the Tribunal filed this petition after expiration of the period of limitation for filing the appeal.

15. The unauthorised order of the Registrar has wrongfully extinguished the petitioners'' statutory right to get a decision of the Tribunal in their section 17 application against the measures taken by the authorised officer of the bank and to move the higher forums and Courts against orders making them aggrieved. The order, however, has not created any right of the bank. The Registrar and the Presiding Officer were not to hear the bank while deciding the question of registration of the section 17 application. The question was to be decided in administrative capacity.

16. I am, therefore, of the view that the petitioners'' failure to appeal against the order of the Registrar to the Presiding Officer of the Tribunal and filing this petition after expiration of-the period of limitation for filing the appeal having caused no prejudice to the bank, and on the contrary, the order of the Registrar having caused grave miscarriage of justice, it is necessary to interfere in the matter in exercise of power under Article 226 and grant the petitioners relief. While grant of relief will prevent a grave miscarriage of justice, its refusal will perpetuate a patent illegality that needs correction at once, for the illegality likely

to be followed until the law is declared by the Supreme Court in the appeal against the Division Bench decision of this Court, relied on by the Registrar to pass the unauthorised order, will affect many more cases such as the one of the petitioners.

For these reasons, I set aside the impugned order, allow the petition to this extent and order as follows. The Registrar of the Tribunal shall register the section 17 application and place it before the Tribunal for decision according to law. No costs. Certified xerox.

