

(2014) 01 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 58964 of 2013 (GM-DRT)

M/s. Shivaganga Leather Crafts

APPELLANT

Vs

Chief Manager, Canara Bank

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 AKR 699 : (2014) 3 BC 70 : (2014) 2 KarLJ 12 : (2014) 2 KCCR 1539

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : T.V. Vijay Raghavan, for the Appellant; A. Ravishankar, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 29.10.2013 passed on I.A. No. 2976/2013 in O.A. No. 879/1998. The order is impugned at Annexure-A to the petition. The instant case has a checkered history. At the first instance, when the petitioners had not been granted opportunity of cross-examining AW-1, the petitioners were before this Court in W.P. No. 14158/2007. Despite this Court by its order dated 26.11.2007 directing the Tribunal to permit cross-examination, the same had not been permitted. Ultimately, when the order of the Debts Recovery Tribunal was passed against the petitioners, the petitioners had approached the Debts Recovery Appellate Tribunal (for short the "DRAT"), Chennai. The DRAT while considering URA No. 47/2008 had taken note of the fact that the direction issued by this Court had not been complied and therefore, there was denial of opportunity of cross-examination of AW-1. In that view, the order passed by the Debts Recovery Tribunal was set aside and the matter was remitted for reconsideration after permitting cross-examination of AW-1.

2. Subsequent to the remand, AW-1 has been permitted to be cross-examine.

The respondent-Bank had also filed the affidavits of AW-2 to AW-4 in support of their case. It is in that circumstance, the petitioners once again sought opportunity to cross-examine the witnesses, whose affidavits had been filed in support of the case of the respondent-Bank. Since, the opportunity sought for had not been acceded to by the Tribunal, the petitioners were before this Court in W.P. No. 16134/2013 which was disposed of on 09.07.2013. This Court had indicated that the Tribunal at that stage was justified inasmuch as the petitioners herein had not filed an application seeking leave to cross-examine and if such application is filed, it would be open for the Tribunal to consider and dispose of the same one way or the other in accordance with law.

3. Pursuant thereto, the petitioner has filed an application and the said application in IA. No. 2976/2013 has now been disposed of by the order dated 29.10.2013 impugned at Annexure-A. The respondent has filed the objection statement to the instant petition and the action of the Tribunal is sought to be justified. Though detailed contentions have been urged and the learned counsel for the respondent has also relied on the provisions contained in Rule 12(6) of the Debts Recovery Tribunal (Procedure) Rules, 1993 and the decision of the Hon"ble Supreme Court in the case of Union of India and Another Vs. Delhi High Court Bar Association and Others, , I am of the opinion that the correctness or otherwise of the order need not be gone into at this stage since from the perusal of the order impugned, it is seen that the Tribunal was of the view that the reasons indicated in the application was not sufficient. At the same time, what is also to be noticed is that the matter has been pending before the Tribunal for quite some time.

4. Therefore, in a matter of the present nature, when at the first instance the DRAT had remanded the matter for the purpose of cross-examination of AW-1 and since the same has been permitted and presently since the petitioner is seeking cross-examination of AW-2 to AW-4 and the Tribunal not having permitted the same and proceeded further and in that circumstance, if the ultimate order is passed against the petitioners while disposing of O.A. No. 879/1998 and in that circumstance, if the petitioners are to file any appeal before the DRAT, the question as to whether the rejection of the application would amount to denial of opportunity to the petitioners in putting forth their case before the Tribunal is also an aspect which could be looked into by the DRAT at that stage. Therefore, taking note of the situation that the petitioners would have the remedy of putting forth their case at an appropriate stage and proceedings, the correctness or otherwise of the order impugned herein is left open to be agitated at that stage if the need arises to do so. Hence, no opinion is expressed at this stage while considering a petition under Article 226 of the Constitution of India. All contentions on the merits of the order is left open to be taken into consideration at that stage. However, at this stage one other aspect which requires to be noticed is that the learned counsel for the petitioners contend that after rejection of the application, the matter has been set down for arguments without providing opportunity to the petitioners to file their additional

affidavits since after remand from the DRAT, AW-1 has been cross-examined and the respondent-Bank has also cross-examined AW-2 to AW-4 and as such by way of further evidence of petitioners, additional affidavits requires to be filed. To the said extent, I am of the opinion that the learned counsel is justified. The Tribunal shall now permit the petitioners to file additional affidavits by way of further evidence of the petitioners and thereafter the Tribunal shall proceed to consider the matter in accordance with law.

In terms of the above, the petition stands disposed of.