
(2014) 04 MP CK 0004
In the Madhya Pradesh High Court
Case No : Writ Petition No.14526/2012

Naresh Agrawal

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20,
20(1), 21

Citation : (2014) 04 MP CK 0004

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Satish Agrawal, Advocate for the Appellant; Rajesh Maindiratta for Respondent No. 3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Calling in question tenability of orders-dated 20.3.2012 and 2.5.2012, passed by the Chairperson of the Debts Recovery Appellate Tribunal, Allahabad dismissing an appeal filed on the ground of non-deposit of pre-deposit amount as required u/s 21 of the Debts Recovery Act, this writ petition has been filed under Article 227 of the Constitution.

2. It is seen that an ex-parte decree was passed by Debts Recovery Tribunal, Jabalpur directing for recovery of certain amount due to the bank in question. As the order was passed by the Tribunal ex-parte to the present petitioner, an application under Order IX Rule 13 of the CPC was filed for recalling the ex-parte order and hearing the matter on merit. This case was registered as M.A. No. 27/2007 and the DRT vide order-dated 29.11.2010 dismissed the application under Order IX Rule 13 of the CPC and confirmed the decree passed earlier. Challenging the same an appeal was filed before the Appellate Tribunal and in the appellate proceedings, exemption from payment of pre-deposit amount was sought for. The Tribunal by the impugned order directed the petitioner to deposit

60% of the amount due. However, when this amount was also not deposited, the appeal itself was dismissed and, therefore, challenging both these orders, the writ petition has filed under Article 227 of the Constitution.

3. Learned counsel for the petitioner tried to argue that the proceedings initiated before the DRT under Order IX Rule 13 of the CPC is a miscellaneous proceeding and when the order challenged before the appellate Tribunal was only a proceeding under Order IX Rule 13 which was dismissed on 29.11.2010, the requirement of pre-deposit as contemplated u/s 21 is not attracted and, therefore, in rejecting the application an error has been committed by the Tribunal.

4. Per contra Shri Rajesh Maindiratta invited out attention to the provisions of Section 20 and 21 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "Act of 1993"), and argued that against any passed, whatever be the nature of order, the only remedy available is filing an appeal u/s 20 and if an appeal u/s 20 is filed and if there is a direction for payment of any amount due to the financial institutes or a bank, then the provision of section 21 for deposit of the pre-deposit amount is attracted. In the present case, as there is already a direction for payment of certain debt to the bank and recovery proceedings are also being held by issuing recovery certificate, it is stated that the Tribunal has not committed any error in enforcing the provisions of section 21.

5. In support of his contention Shri Rajesh Maindiratta invites our attention to a Division Bench judgment of the Madras High Court, in the case of Kamala, Mythili Parthasarathy and Yadugiri Shridhar @ Geetha Shridhar Vs. The Presiding Officer cum Chairperson, Debts Recovery Appellate Tribunal, Chennai, State Bank of India, Commercial Branch, Industrial Estate, Bangalore and Shivaleela Desai, , to say that in all proceedings pertaining to appeal u/s 20, the provision of section 21 is attracted and in rejecting the application, it is argued that no error has been committed by the appellate tribunal.

6. We have heard learned counsel for the parties and perused the records.

7. From the records, it is clear that in these proceedings a decree was passed and proceedings were initiated for recovery of a sum of Rs. 26,23,84,964.80. When the recovery certificate was issued, proceedings were initiated under Order IX Rule 13 CPC on the ground that the ex-parte proceedings were not proper. The application under Order IX Rule 13 CPC was dismissed as a result, the original decree passed by the Tribunal came alive and in the recovery proceedings initiated, a revenue recovery certificate was also passed. Petitioner challenged all these proceedings in an appeal u/s 20 read with section 21, of the Act of 1993 and paid court fee of Rs. 29,750/- in the appeal.

8. Now, the only question is as to whether this appeal challenging rejection of the application under Order IX Rule 13 CPC is only a miscellaneous appeal and, therefore, the provision of deposit u/s 21 of the Act of 1993 is not applicable.

9. Under the Act of 1993, the provision of appeal is u/s 20. Section 20 sub-section (1) contemplates that save as provided in sub-section (2) any person aggrieved by any order made, or deemed to have been made by a Tribunal under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. However, sub-section (2) contemplates that no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of the parties. Thereafter, section 21 contemplates that where an appeal is preferred by any person from whom any amount of debt is due to a bank or a financial institution or a consortium of banks or financial institution, such appeal shall not be entertained by the Appellate Tribunal until and unless deposit to the extent indicated in section 21 is made.

10. It is, therefore, clear that against any order passed by the DRT an appeal is maintainable u/s 20. An order passed in an application under Order IX Rule 13 will also come in the category of any order as contemplated in section 20(1).

11. No other provision is brought to our notice wherein any miscellaneous appeal or appeal can be filed. Once an appeal is filed u/s 20 and when there is a debt due against the petitioner and which is being recovered by way of revenue recovery certificate, the provision of section 21 is attracted and we see no error in the order passed by the Appellate Tribunal in applying the provisions of Section 21.

12. In the facts and circumstances of the case, we see no error in the matter warranting reconsideration.

13. The petition is, therefore, dismissed.