
(2002) 05 CAL CK 0049
In the Calcutta High Court
Case No : C.O. No. 1065 of 2002

National Bank Ltd.

APPELLANT

Vs

Presiding Officer, D.R.T. and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2003) 2 BC 695

Hon'ble Judges : Narayan Chandra Sil, J

Bench : Single Bench

Advocate : S.N. Mitra, Shyamal Sarkar, Lapita Rai and S. Abedin, for the Appellant; Hirak Kr. Mitra, S.K. Dutta, D. Basak and A. Ganguly for Respondent No. 2, Pratik Prokash Banerjee, Sagar Bandhyopadhyay, Tapas Saha and S. Dutta for Respondent No. 3 and Asish Chakraborty and Anjan Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Chandra Sil, J.—This is to consider the maintainability of the application under Article 227 of the Constitution of India which arose out of the Order dated 10th April, 2002 passed by the Presiding Officer, Debts Recovery Tribunal-1, Kolkata in connection with O.A.No. 128 of 2001.

2. The O.Ps. have challenged the maintainability of the application and as such the question of maintainability has been taken up for consideration.

3. It appears from the impugned order of the Presiding Officer, Kolkata Debts Recovery Tribunal-I, dated 10th April, 2002, that the application dated 18th February, 2002 filed by the applicant-Bank was taken up for consideration by him. After hearing both the parties the learned Presiding Officer passed the interim order of status quo restraining the defendant Nos. 2 and 3 from operating the Bank account bearing No. 412800566 of the defendant No. 3 maintained with the defendant No. 2 without touching a sum of U.S. Dollar

3,52,250. In arriving at such decision the learned Presiding Officer after having considered the materials placed before him found prima facie case in favour of the applicant-Bank for recovery of a sum of Rs. 1,43,67,841/- against the defendants including the defendant Nos. 2 and 3. Thereafter the learned Presiding Officer fixed the date on 30th April, 2002 for hearing the main application itself giving opportunities to the defendants for filing written objection.

4. On hearing the submissions of the learned Advocates for all the parties it appears to me that the main question for determination at this stage is whether the present application under Article 227 of the Constitution of India is maintainable particularly in view of the provisions of appeal against the impugned order passed by the learned Presiding Officer.

5. It is argued on behalf of the petitioner that the impugned order is devoid of any reason as to why such status quo order was passed and unreasoned order is a nullity. In support of this contention the learned Advocate for the petitioner has referred to the ratio decided in the case of *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, in which it was held that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes and every quasi-judicial order must be supported by reasons. Then the Hon'ble Apex Court also held that the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. In this connection the learned Advocate for the petitioner has also referred to the ratio decided in the case of *The Calcutta Municipal Corporation and Ors. v. Paresh R. Kampani and Ors.* (1998) 2 C.L.J. 87, where the similar decision was made.

6. Taking the case of the O.Ps. that since Section 20 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 (hereinafter referred to as "Act" only) has provided the alternative remedy in appeal, an application under Article 227 is not maintainable and as regards the decision made in the case of *Punjab National Bank Vs. O.C. Krishnan and Others*, the learned Advocate for the petitioner submits before me that the contention of the O.Ps. is not correct inasmuch as it is now the settled principle that the alternative remedy will not operate as a bar at least in case of three contingencies, viz., (i) enforcement of any fundamental right or (ii) where there has been a violation of principle of natural justice or (iii) the order or proceeding is wholly without jurisdiction. In this connection the learned Advocate for the petitioner has referred to the ratio decided in the case of *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, in which it was inter alia held as below:

"The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there

was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Article 226 or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even, if it were it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

The learned Advocate for the petitioner has also referred to the ratio decided in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in which it was, inter alia, held that it has been consistently held by the Hon"ble Apex Court that the alternative remedy is not a bar for the High Court to exercise its discretion under Article 226 of the Constitution at least in case of three contingencies namely where the writ petition has been filed for the enforcement of any fundamental rights or where there has been a violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The learned Advocate for the petitioner has also referred to the ratio decided in the case of Jenson & Nicholson v. Industrial Investment Bank of India and Ors. (2002) 1 C.L.J. 219. In the said case it was observed by the Single Bench of this Court that there is no dispute with the proposition of law that existence of an alternative remedy is not the absolute bar in the matter of entertaining an application under Article 227 of the Constitution of India. But law is equally settled that such discretion should not be exercised unless it is established that the order impugned in such application was passed without jurisdiction or against the principle of natural justice or is manifestly illegal. Then the learned Judge differed with the ratio decided in the case of M/ s. P. Ch. Dey v. Allahabad Bank AIR 1999 Cal. 96, and held that it is not correct that only a "final order" u/s 19 of the Act is appealable u/s 20 of the Act but any order made or deemed to have been made by the Tribunal can be challenged in appeal if such order prejudicially affects an aggrieved appellant. And in doing so the learned Judge dismissed the application for review in considering an application under Article 227 of the Constitution of India holding that there was no error even apparent on the face of record.

7. Mr. Debansu Basak, learned Counsel appearing with Mr. H.K. Mitra for the O.P. No. 2 has pointed out to me that the interim impugned order was passed on 10th April, 2002 by the learned Presiding Officer and the next date of hearing of

the injunction petition was fixed on 30th April, 2002 but the injunction petition could not be heard for filing of the present application under Article 227 of the Constitution of India by the petitioner before this Court. It is also pointed out by him that if there was any grievance of the petitioner against the interim order of status quo that could be agitated before the appellate authority u/s 20 of the said Act. It is also submitted before me that the judgment passed in the case of Jenson & Nicholson (supra) speaks of the exigencies including the question of jurisdiction, but there is no doubt about it that the Presiding Officer of the Debts Recovery Tribunal has got the perfect jurisdiction to entertain the matter and the case of the petitioner that the Bank of India which is the O.P. No. 2 in the instant case had no cause of action to agitate before the Presiding Officer of the Tribunal. Mr. Basak then submits that the two suits one before the Presiding Officer of the Tribunal and the other before the High Court are different inasmuch as in the case before the Tribunal the maintainability of the same was challenged whereas in the suit before the High Court the maintainability has not been challenged. Mr. Pratik Prokash Banerjee, learned Counsel appearing for the O.P. No. 2, the exporter submits before me that money does not belong to the National Bank of Bangladesh and only interim order has been passed by the Presiding Officer of the Tribunal. It is submitted by him that there is no dispute as regards the general principles adopted in the various case laws cited by the learned Advocate for the petitioner. Mr. Banerjee has referred to the ratio decided in the case of General Manager Northern Railways and Another Vs. Sarvesh Chopra, , in which it was inter alia, held:

"A decision of this Court is an authority for the proposition which it decides and not for what it has not decided or had no occasion to express an opinion on. The two decisions relied on by the learned Counsel for the respondent hold a clause providing a departmental or an in house remedy and attaching finality to the decision therein to be an "excepted matter" because such were the clauses in the contracts which came up for the consideration of this Court. Those decisions cannot be read as holding nor can be relied on as an authority for the proposition by reading them in a negative way that if a departmental remedy for settlement of claim was not provided then the claim would cease to be an "excepted matter" and such should be read as the decision of this Court."

8. Mr. Ashish Chakraborty, the learned Advocate appearing for the O.P. No. 5 has drawn my attention to the impugned order.

9. Now, after having considered the submissions made by all the parties before me and the different case laws referred to by the learned Advocates for the parties I like to take the decision made by the Hon"ble Apex Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay (supra) as a mother decision and an authority on this issue. Thus, after having followed the ratio decided in that case the principle of which appears to have been taken in the other subsequent judgments of the different High Courts including that in the Hon"ble Apex Court, it appears to me that the exigencies or the conditions of complete

lack of jurisdiction, prejudice to either of the parties, violation of the principle of natural justice, etc. are all dependent on the facts and circumstances of each case. And in this connection I would like to recall the underlined portion of the judgment passed in the case of A.V. Venkateswaran, (supra) appearing in my order at page 4 ante.

10. What is the background of the instant case here before me? The Presiding Officer of Kolkata Debts Recovery Tribunal-I passed an interim order which is very much within his jurisdiction and thereafter fixed the date for hearing of the main application on 30th April, 2002. The main application could not be heard on that day due to the filing of the instant petition under Article 227 of the Constitution of India. In such circumstances, even keeping the controversy of availing the efficacious remedy from the Appellate Court under the provisions of Section 20 of the said Act aside, which is apparent is that the finality of the order, and who knows the relief sought for by the petitioner here before this Court under Article 227 of the Constitution of India, could not be achieved, at the time of final hearing of the application by the Presiding Officer of the Tribunal on the date fixed i.e., on 30th April, 2002. To my considered view the provisions of Article 227 of the Constitution of India is not only for stalling the proceeding before the authority of proper jurisdiction and as such in view of what has been discussed in the foregoing lines I am of the view that the present application under Article 227 of the Constitution of India is liable to be dismissed.

11. Accordingly, the application under Article 227 of the Constitution of India is dismissed on contest without any order as to costs. The learned Presiding Officer, Kolkata Debts Recovery Tribunal-I is directed to dispose the matter expeditiously.