
(2016) 06 KAR CK 0111

In the Karnataka High Court

Case No : Writ Petition No. 18282 of 2016 (GM-DRT)

Naveed Ahmed

APPELLANT

Vs

Karnataka Bank Ltd.

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10
Constitution of India, 1950 — Article 226

Citation : (2017) 172 AIC 741 : (2016) 4 AirKarR189 : (2016) ILRKarnataka 3848 : (2016) 6 KantLJ 647 : (2016) 4 KCCR 3809

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : Abdul Razak, Advocate, for the Petitioner; S.R. Harish Kumar, Advocate, for the Respondent Nos. 1 to 2

Final Decision : Allowed

Judgement

S. Abdunazeer, J.—The first respondent/Bank initiated proceedings against the petitioner and the second respondent before the Debt Recovery Tribunal, Bengaluru, (for short "Tribunal"), in OA No. 1823/2014 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, for recovery of its dues. Since the petitioner did not file the reply, the Tribunal by order dated 11.2.2016, allowed the OA under Order 8, Rule 10 of the Code of Civil Procedure (for short "CPC") r/w. Rule 12 of the Debt Recovery Tribunal (Procedures) Rules, 1993, (for short "the Rules"). The petitioner has called in question the legality and correctness of the said order in this writ petition.

2. Learned Counsel for the petitioner submits that due to certain unavoidable circumstances, the petitioner could not file the reply. He further submits that the Tribunal has not assigned any reasons for allowing the application.

3. Learned counsel for the first respondent submits that an alternative remedy of filing an appeal for challenging the order is available to the petitioner. Therefore, writ petition should not be entertained by this Court.

4. As regards the availability of an alternative remedy, it is well established that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction, especially when the statutory body has not acted in accordance with the provisions of the enactment in question.

5. The Tribunal has allowed the OA under Order 8, Rule 10 of the CPC r/w. Rule 12 of the Rules on the ground that the defendants have not filed the written statement. It has directed the office to issue recovery certificate. Order 8, Rule 10 of the CPC states that where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up.

6. A judgment is defined as an adjudication of rights of the parties in respect to the claims involved. It is a statement given by the Judge containing the grounds for drawing a decree. Sub-section (9) of Section 2 of CPC defines the expression "judgment" as the statement given by the Judge on the grounds of a decree or order.

7. Sub-rule (4) of Rule 12 of the Rules states, if the defendant fails to file the reply under sub-rule (1) or on the date fixed for hearing of the application, the Tribunal may proceed forthwith to pass an order on the application as it thinks fit.

8. An order is an authoritative direction, injunction or mandate. It is the decision of a Court or Judge made or entered in writing. Therefore, it should necessarily contain the reasons.

9. It is settled that if the defendant does not file the written statement, it may be lawful for the Court to pronounce the judgment on the basis of the facts contained in the plaint. Merely because it is lawful, it does not mean that the Court should abdicate its function of finding out as to whether the plaintiff has made out a case or not. The provisions of Order 8, Rule 10 of the CPC are not mandatory, in the sense, giving no option to the Court except to pass a judgment in favour of the plaintiff. The Court has to comprehend the facts and circumstances of each case and consider the plaintiff's case set up in the plaint and the documents, if any, attached therewith and see if the case is made out in favour of the plaintiff. In a given case, after considering them all, it may still call upon the plaintiff to substantiate his case in the plaint. If a written statement is not filed, Order 8, Rule 10 does not postulate a judgment to be pronounced and decree passed automatically. The judgment pronounced under Order 8, Rule 10 should indicate that Court has applied its mind to the merits of the case before decreeing the suit. This Court in *M/s. Kuvarp Industries v. State Bank of Mysore*, ILR 1984 KAR 1086 : (AIR 1985 Kar 77) has held as under:

"Therefore, the principles laid down by this Court in the said case require that

even in ex parte cases the Court should apply its mind to the allegations made in the plaint and should convince its conscience to find out as to whether the allegations made by the plaintiff are really sufficient and proved to the extent as to enable him to get a decree in the matter. The judgment and decree passed in this case, in my opinion, are not in consonance with law and rules at all. Therefore, the said judgment cannot be allowed to stand".

(Emphasis supplied by me)

10. In *Maya Devi v. Lalta Prasad* (2015) 5 SCC 588 : (AIR 2014 SC 1356), the Hon"ble Supreme Court has held as under:

"The absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim; nay, this feature of the litigation casts a greater responsibility and onerous obligation on the trial Court as well as the executing court to be fully satisfied that the claim has been proved and substantiated to the hilt by the plaintiff. Reference to *Shantilal Gulabchand Mutha v. TELCO Ltd.*, will be sufficient. The failure to file a written statement. thereby bringing Order 8, Rule 10 CPC into operation, or the factum of the defendant having been set ex parte, does not invite a punishment in the form of an automatic decree. Both under Order 8, Rule 10 CPC and on the invocation of Order 9 CPC, the Court is nevertheless duty bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted".

(Emphasis supplied by me)

11. The desirability of passing a speaking order cannot be lightly ignored by any judicial or quasi-judicial authority, more so, when the same is amenable to further challenge. The requirement of indicating reasons in such cases has been judicially recognised as imperative. Reason is heart beat of every conclusion and without the same, it becomes lifeless.

12. In my opinion, the Tribunal ought to have assigned reasons for allowing the OA by taking into consideration the case set up by the Bank in the OA and the documents produced even though the petitioner has not filed reply/written statement. Even otherwise, the petitioner has assigned cogent reasons for not filing the written statement within the period prescribed. Therefore, the order passed by the Tribunal cannot be sustained.

13. In the result, the writ petition succeeds and it is allowed in part. The order dated 11.2.2016 is hereby quashed. The petitioner is permitted to file reply/written statement to the OA on or before 14.07.2016 before the Tribunal. The Tribunal is directed to post the case on 14.7.2016 and proceed further in the matter in accordance with law. All the contentions on merit are kept open. No costs.