

(2002) 03 CAL CK 0011
In the Calcutta High Court
Case No : C.O. No. 2188 of 2001

Navin Jain and Others

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 34 Rule 11, 151
Constitution of India, 1950 — Article 226, 227
Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 3
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(7)

Citation : AIR 2002 Cal 223 : (2002) 2 CALLT 492 : (2002) 2 CHN 294 : (2003) 116 CompCas 62

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Joydeep Kar, Paritosh Sinha, Amitava Mitra and M. Bhattacharyya, for the Appellant; HIRAK MITRA, Saptangshu Basu, Udayan Sen and A.K. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

B. Bhattacharya, J.—This revisional application under Article 227 of the Constitution of India is at the instance of four of the defendants and is directed against order dated June 1, 2001 passed by the Chair Person, Debts Recovery Appellate Tribunal, Calcutta in Appeal No. DRAT/CAL/A-3 of 2001 thereby affirming order dated March 28, 2000 passed by the Presiding Officer, Debts Recovery Tribunal, Patna in Execution Case No. 55 of 1999.

2. There is no dispute that a Title (Mortgage) Suit No. 65 of 1995 initiated by the bank against ten persons including the present petitioners in the first Court of Subordinate Judge, Dhanbad was disposed of on compromise. The terms of the compromise are stated below :

"i) That the defendants do pay a lump sum of Rs. 7.00 crores to the plaintiffs, as per the terms of the compromise, within 90 days from the date of issuing an

objection certificate by the plaintiff for approaching of the other financial institution/bank/bodies for availing credit facilities, failing which the defendants shall pay the entire admitted claim as shown in para 1 above into Court within a period of sixty days thereafter or any later date upto which time for payment may be extended by the Court.

ii) That, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of suit and such costs, charges and expenses as may be payable under Rule 1 together with subsequent such interest as may be payable under Rule 11 of Order XXXIV of the first schedule to the Civil Procedure Code. 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property; in the Court mentioned and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall, if so required, recovery or re-transfer the said property from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

iii) And it is hereby further ordered and decreed that, default of payment as aforesaid the plaintiff may apply to the Court for a final decree for the sale of the mortgage property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purpose of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession of power relating to the mortgaged property.

iv) And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied after deduction therefore of the expenses of the sale in payment of the amount payable to the plaintiff under this decree and under any further orders, that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 10 together with such subsequent interest as may be payable under Rule 11 of Order XXXIV of the First Schedule to the CPC 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

v) And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for personal decree against the defendant for the amount of the balance and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit."

3. Subsequently, on September 2, 1996 the petitioners filed an application under Order 23 Rule 3 read with Section 151 of the CPC for setting aside the compromise decree on the ground of fraud. The bank raised objection to such application filed by the defendants but the said application could not be heard on merit as Debts Recovery Tribunal was constituted on July 16, 1997. Subsequently, on February 1, 1997 the petitioners filed a suit for declaration that the compromise decree obtained earlier was null and void. The said suit was numbered as Title Suit No. 14 of 1997 in the First Court of Subordinate Judge, Dhanbad and the same is pending. Ultimately, on constitution of Debts Recovery Tribunal on July 16, 1997 the records of the case were transferred to the Debts Recovery Tribunal along with pending application under Order 23 Rule 3 of the Code of Civil Procedure.

4. On April 22, 1999 the petitioner filed an application before the Debts Recovery Tribunal, Patna with a prayer to send back the entire records to the original Court for the purpose of deciding the issue of fraud in obtaining the compromise decree. By order dated August 6, 1999 the learned Registrar, Debts Recovery Tribunal rejected the petition for return of the records.

5. Subsequently, on September 19, 1999 the bank filed an application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. After entertaining the said application, the Tribunal issued notice requiring the company and the petitioners to file show cause and the company filed show cause. However, on June 30, 2000 the petitioners filed an application for recalling the order dated August 6, 1999 passed by the Registrar, Debts Recovery Tribunal on the ground that the learned Registrar, Debts Recovery Tribunal had no jurisdiction to pass such order. The said application was however dismissed by the Presiding Officer of the Debts Recovery Tribunal by an order dated November 28, 2000. Being dissatisfied, the petitioners filed a writ application before the High Court at Patna and the same is still pending.

6. In the meantime, the application filed u/s 19 of the Recovery of Debts Act was taken up for hearing and a certificate u/s 19(7) of the said Act was drawn up and sent it to the learned Recovery Officer for its execution under Sections 25 and 28 of the Act.

7. Being dissatisfied with the order dated March 28, 2000 the petitioners preferred an appeal before the Debts Recovery Appellate Tribunal, Calcutta alleging non disposal of the prayer for setting aside the decree on the ground of fraud.

8. By the order impugned in this application, the Appellate Tribunal has dismissed the appeal preferred by the petitioners and has affirmed the order passed by the Tribunal.

9. Being dissatisfied, the petitioners have preferred the instant revisional application under Article 227 of the Constitution of India.

10. After hearing the learned counsel for the parties and after going through the material on record I am of the view that this application under Article 227 of the Constitution of India is not maintainable before this Court, as this Court has no power of superintendence either administrative or judicial over Debts Recovery Tribunal, Patna. Merely because, the appellate Tribunal is situated within territorial limit of this Court, such fact cannot confer jurisdiction to scrutinise an order passed by such Tribunal in any appeal preferred against a decision of the Original Tribunal over which this Court has no power of superintendence. It is an admitted position that the Appellate Tribunal constituted under the Debts due to Bank and Financial Institution Act, 1993 although has its headquarter in Kolkata, such appellate Tribunal exercises powers over Debts Recovery Tribunals functioning in the entire Eastern Region consisting of Bihar, Jharkhand, West Bengal, Assam, Sikkim and other North Eastern states. In the instant case, the certificate sought to be impugned was issued by Debts Recovery Tribunal, Patna. The compromise decree as passed by a Court at Dhanbad over which this Court has no power of superintendence. Therefore, the entire cause of action leading to issue of the certificate has arisen beyond the territorial jurisdiction of this Court. The appellate Tribunal is no doubt situated within the territorial limit of this Court, but that fact cannot vest this Court with the authority to entertain this application, the object of which is to correct an order passed by Debts Recovery Tribunal, Patna. The position would have been different if the petitioner had filed a writ application under Article 226 of the Constitution of India which authorizes this Court to interfere with any order passed by a Tribunal situated within the territorial limit of this Court even though cause of action has arisen in a different state. For the purpose of appreciating the aforesaid distinction, the provisions contained in Articles 226 and 227 of the Constitution are quoted below :

"Article 226. Power of High Courts to issue certain writs.-- (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs, in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3).....

(4).....

Article 227. Power of superintendence over all Courts by the High Court --

(1) Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) call for returns from such Courts;

(b) make an issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorney, advocates and pleaders practising therein :

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any Court of Tribunal constituted by or under any law relating to the Armed Forces."

11. By virtue of Article 226 of the Constitution this High Court shall have power to issue appropriate order even if no part of cause of action arises within the territorial jurisdiction of this Court but the seat of the authority whose order is challenged is within the territorial limit of this Court; but language of Article 227 is different. According to such provisions High Court shall have power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and can call for returns from such Tribunals and may also make order, issue general rules and prescribe forms for regulating the practice and proceedings of such Courts and Tribunals. If a Tribunal is constituted as appellate Tribunal for hearing appeals against decisions of more than one original Tribunals situated in different states, in my view, in such a case, for the purpose of challenging orders of such appellate Tribunals by way of an application under Article 227 of the Constitution an aggrieved party is to approach the High Court of that State within the territorial limit of which the original Tribunal exercise jurisdiction in a particular case. A Debts Recovery Tribunal may be constituted by conferring jurisdiction over more than one State. In such a situation, the High Courts of those States will have power of superintendence over that Tribunal but depending upon the cases where cause of action has arisen within the territorial limit of a particular High Court. For instance, Guwahati Debts Recovery Tribunal has been given jurisdiction over Assam, Sikkim and other north eastern States. If, in a given case, cause of

action arises within the territorial limit of Sikkim. in such a case, Sikkim High Court will have power of superintendence; but in other cases, Guwahati High Court will exercise power of superintendence.

12. In the instant case, if the appeal was preferred against the order of Debts Recovery Tribunal, Kolkata, this Court could be moved against any appellate order passed against the decision of such Tribunal. But if an aggrieved person wants to challenge the order of the Appellate Tribunal arising out of an order of Debts Recovery Tribunal, Patna, the appropriate Court is either the Patna High Court or the Jharkhand High Court depending upon the territorial limit within which cause of action has arisen in a given case. If this Court entertains this application and sets aside the order passed by the appellate Tribunal and consequently the certificate issued by Debts Recovery Tribunal, Patna is modified, this Court will be directly interfering with the order of a Tribunal functioning beyond the territorial limit of this Court. Therefore, before entertaining an application under Article 227 of the Constitution of India, the Court must ascertain what is the effect of interference prayed for in such application. If the result of such intervention is that an order of a Tribunal over which a High Court has no power of superintendence will be scrutinized, in such a case, such High Court should not entertain the application.

13. Let us consider another situation: For the temporary absence of the regular Presiding Officer of the Debts Recovery Appellate Tribunal, Kolkata, any other appellate Tribunal situated beyond the territorial limit of Kolkata, for instance Allahabad, is for the time being vested with authority to act as appellate Tribunal in respect of orders passed by Debts Recovery Tribunal, Kolkata; in such a case, even though such appellate Tribunal is physically situated beyond the territorial limit of this Court, an application under Article 227 of the Constitution of India could be entertained by this High Court against an order passed by such Tribunal because that Appellate Tribunal was for the time being functioning as such for hearing appeals against orders of Debts Recovery Tribunal, Kolkata which exercises jurisdiction within the territorial limit of this Court although the Appellate Tribunal is apparently situated beyond that limit.

14. Thus, five different High Courts are entitled to entertain applications under Article 227 of the Constitution of India against orders passed by the Debts Recovery Appellate Tribunal at Kolkata depending upon the field of operation of the Debts Recovery Tribunal whose order is challenged before the Appellate Tribunal. This Court gets jurisdiction if the order of Kolkata Debts Recovery Tribunal is challenged in appeal. Patna High Court will entertain applications against orders of such Tribunal if such orders are passed in an appeal against order passed by Debts Recovery Tribunal, Patna excepting the cases where cause of action has arisen within the State of Jharkhand. In those cases, Jharkhand High Court is the appropriate forum. Similarly, Guwahati High Court will be moved if the order passed by Guwahati Debts Recovery Tribunal is challenged in appeal. But in respect of cases where cause of action has arisen within the State

of Sikkim, High Court at Gangtok is the appropriate Court.

15. Therefore, I am of the view that this High Court ought not to have entertained this application against the order passed by the Appellate Tribunal affirming the order passed by Debts Recovery Tribunal, Patna.

16. I now propose to deal with the decisions cited by Mr. Mukherjee appearing for the petitioner.

17. In the case of Eicher Motors Limited Vs. Union of India and Others, , the question was whether a writ application under Article 226 of the Constitution was maintainable before Delhi High Court against an order passed by the Appellate Tribunal constituted u/s 35B of the Central Excises Act. Merely because such Appellate Tribunal was located at Delhi notwithstanding the fact that the assessee/factory was situated in Madhya Pradesh. Such question was answered in affirmative because of the provisions contained in Article 226(1) of the Constitution which authorized a High Court to entertain such an application if the authority whose orders are challenged are situate within the territory of such High Court apart from the fact that Union of India itself is situated at Delhi. In my opinion, the principles laid down therein cannot have any applicability to an application under Article 227 of the Constitution of India owing to difference of language employed therein.

18. The case of Gauribidnaur Sahakara Sakkare Karkhane Ltd. Vs. The Government of Andhra Pradesh and Others, is one where the writ petitioner, a Co-operative Society registered under Karnataka Co-operative Societies Act, 1959 was running a sugar factory at Gouribidanur in Kolar District in Karnataka which is at a distance of 15 kilometers away from Karnataka and Andhra Pradesh border. The petitioner filed a writ application under Article 226 of the Constitution of India challenging the order of the Tribunals of Andhra Pradesh demanding tax from the said Co-operative Society In respect of its purchase of sugarcane from the growers in Andhra Pradesh. The prayers made by the petitioner therein are quoted below :

"Wherefore it is prayed that this Hon"ble Court may be pleased to issue a writ in the nature of mandamus or certiorari quashing :

(i) Order No. RCO 380/1977 dated 17.2.1978 issued by the 3rd respondent (annexure C);

(ii) Order No. (F2) 1558/1975 dated 29.4.1978 issued by the 2nd respondent (annexure D);

(iii) Order No. 3172/IA& S/78-4 dated 9.11.1978 issued by the 1st respondent (annexure E) and

(iv) Grant such other writ, order or direction as this Hon"ble Court deems fit in the circumstances of the case in the interest of justice."

19. The question was whether such writ application was maintainable in

Karnataka High Court. It was held by a learned single Judge that Karnataka High Court could not entertain such writ application for challenging the order passed by the Tribunal within the jurisdiction of Andhra Pradesh High Court. By relying upon the aforesaid proposition of law, Mr. Mukherjee tried to convince this Court that for the similar reason Patna High Court cannot be approached for setting aside order passed by the Appellate Tribunal situated at Kolkata. I have already mentioned the prayers made in the said writ application; there was prayer for issue of mandamus or certiorari for quashing order of Tribunals outside Karnataka and at the same time no part of cause of action had arisen within the state of Karnataka. Therefore, in the facts of the said case the Karnataka High Court rightly refused to entertain an application under Article 226 of the Constitution of India. The said decision, in my opinion, cannot help Mr. Mukherjee's client in any way for the purpose of interpretation of provisions contained in Article 227 of the Constitution of India.

20. In the case of *Oil India Limited v. G.N. Borah* reported in 1977 Lab IC 1610, a preliminary objection was taken by respondent as to the jurisdiction of this Court to issue a writ of certiorari on the allegation that the records of the case were not within its jurisdiction. Such contention was turned down on the ground that the said writ application being directed against an order of Central Government, entire proceedings had been transferred to the Central Government Industrial Tribunal at Calcutta which had its office well within the jurisdiction of this Court.

21. For the similar reasons the said decision can also be of no help to the petitioners.

22. Thus, the decisions cited by Mr. Mukherjee do not alter the position in any way.

23. Before concluding, it may be mentioned here that according to Rule 3 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 an Appellate Tribunal can hold its sitting either at headquarter or at such other place falling within its jurisdiction as it may consider convenient. Therefore, the said Appellate Tribunal constituted for the entire Eastern Region can sit at any place in the Eastern Region of this country. Thus, for the purpose of moving an application under Article 227 against an order passed by such Appellate Tribunal, the place of sitting of such Tribunal is immaterial particularly when such appellate Tribunal is constituted for hearing appeals against orders passed by Debts Recovery Tribunals situated in different places of Eastern India. Therefore, location of the Appellate Tribunal may vary from time to time according to its convenience but for that reason a litigant aggrieved by an order passed by such Tribunal is not required to move the High Court of that State where such Tribunal held its sitting at the time of passing of such order. In the present case, the Appellate Tribunal is "in the eye of law" located in the State of Jharkhand though for convenience it held office in Kolkata as the Presiding Officer had been discharging the same function for other States. Thus, this Court has no power of superintendence over the Appellate

Tribunal "legally located" beyond the territories in relation to which it exercises its jurisdiction.

24. In view of what have been stated above, I am of the view that this application under Article 227 of the Constitution of India challenging the order passed by Debts Recovery Tribunal, Patna is not maintainable before this Court. Appropriate remedy of the petitioner lies by moving Jharkhand High Court within the territorial limit of which the cause of action had arisen notwithstanding the fact that the Appellate Tribunal sat at the time of passing of order at its Headquarter in Kolkata.

I make it clear that I have not gone into the merit of the application and for want of territorial jurisdiction alone this application is dismissed. Interim order granted earlier by Samanta, J. stands vacated.

No order as to costs.