

(2003) 11 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 48539 of 2003

Oswal Agencies and Another

APPELLANT

Vs

Recovery Officer, D.R.T. and Others

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20, 31A

Citation : (2004) 1 AWC 841 : (2004) 2 BC 395

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Shashi Nandan, A.B. Chandra and K.P. Tiwari, for the Appellant;
Sanjeev Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Sri Sanjeev Singh appearing for respondent No. 4 raises preliminary objection that recovery certificate impugned in the present writ petition amounts to order within the meaning of Section 31A of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 for which the appeal is provided u/s 20 to the appellate Tribunal and since the petitioner has statutory alternative remedy this writ petition is liable to be dismissed on this ground alone.

2. Sri Shashi Nandan, learned counsel for the petitioner, submitted that since the order that has been challenged by this writ petition is nullity and the money sought to be recovered by means of the impugned order is wholly illegal in view of the provisions of Section 21 of the Act which requires to deposit the amount of debt due on filing appeal will not come in his way and since pure question of law is being raised the petitioner should not be relegated to the alternative remedy of appeal before the appellate Tribunal.

3. In my opinion, the points raised in this writ petition can also be raised before the appellate Tribunal and in the event the appellate Tribunal passes an order

this Court will be benefited by the order passed by the Tribunal while deciding the controversy in accordance with law. Therefore, the petitioner should first approach the appellate Tribunal as contemplated u/s 20 before coming to this Court under Article 226 of the Constitution of India.

4. It is then contended by Sri Shashi Nandan that the petitioner will be saddled with the liability of an amount which cannot be said to be debt and the appellate Tribunal will not get Jurisdiction to entertain the appeal filed by the petitioner unless the deposit contemplated u/s 21 is made by the petitioner.

5. In my opinion, this argument is wholly misconceived. The petitioner's contention is that when the amount sought to be recovered against the petitioner is not debt, then he cannot be saddled with the liability of depositing the amount on filing appeal as contemplated u/s 21 of the Act. It can further be seen that the provision of filing appeal is dealt with under different section, i.e., Section 20 and deposit of amount of debt on filing appeal is dealt with under different section. Therefore, it is always open to the petitioner to satisfy the appellate Tribunal that since the amount sought to be recovered is not the amount of debt, the Tribunal cannot saddle the liability on the petitioner as condition precedent for entertaining and adjudicating the appeal filed by the petitioner.

6. In view of the above this writ petition is dismissed on the availability of alternative remedy to the petitioner.