
(2002) 02 MP CK 0072

In the Madhya Pradesh High Court

Case No : Writ Petition No. 313 of 2002

P.C.C. Constructions Co. and Others

APPELLANT

Vs

Debt Recovery Tribunal and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2002) 02 MP CK 0072

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioners by this writ petition are assailing the interlocutory order dated 15.1.2002 (Annexure P-5) passed by Debt Recovery Tribunal. Respondent No. 2-Oriental Bank of Commerce has filed an application before that Recovery Tribunal for recovery of amount of Rs. 25,77,068.11. The petitioners had filed written statement. It appears that after filing of the written statement when the pleadings were complete, rejoinder was filed by the Bank and case was posted for final arguments on 10.1.2002. Application D-1 was filed for calling an expert for examination of documents-Exhibit A/9, A/10, A/24 and A/25 on the ground that signatures of the executants were not there and signatures are forged. The Debt Recovery Tribunal has rejected the application firstly on the ground that application is belated, secondly the Tribunal has observed that Tribunal can also act as an expert and if it is considered necessary at a later stage, Tribunal can direct examination of documents by an expert by a separate order. The application has been held to be non-bona fide one and Tribunal has come to the conclusion that there was no such satisfactory reason to allow it.

2. Learned Counsel submits that against the interlocutory order, there is no other remedy for the petitioners except to file writ petition to this Court. He places reliance on the case of The Industrial Credit and Investment Corporation of India

Ltd. Vs. Grapco Industries Ltd. and Others, , paragraph 14 which is quoted below :

"The High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that the High Court itself considered the merits of the case. The objection of the High Court was two-fold; (1) the Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. The judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that the High Court can even interfere with interim orders of the Courts and Tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in a vacuum."

Learned Counsel further submits that it is hazardous for the Tribunal to compare the signatures itself.

3. Reading of the case of I.C.I.C.I. v. Grapco Industries Limited (supra) makes it clear that High Court can interfere even in the interim orders of the Courts or Tribunals under Article 227 of the Constitution of India if the order is made without jurisdiction, Too technical approach is to be avoided. However, in the instant case, it does not appear that the Tribunal has made up the mind finally. Tribunal has observed that if at a later stage it comes to the conclusion that examination of signatures is necessary to be conducted through a hand writing expert, it may issue such a direction. True it is that application could not be dismissed simply on the ground of delay. There was no such enormous delay in the instant case as after filing the written statement on 26.7.2000, the application was moved probably some time in the month of December. Original documents were produced as per statement made by Counsel of the petitioners on 23.31.2001. The application could not have been dismissed by the Tribunal simply on the ground of delay. Whatever that may be, the Tribunal has kept question in open to be considered at a later stage, I do not think that at interlocutory stage any interferences is called for to be made in the extraord"nary jurisdiction of the Court. The petitioner is obviously free to approach that Recovery Tribunal in the light of the observation made by the Tribunal in page No. 4, paragraph 7 of the impugned order.

4. In the case of Punjab National Bank Vs. O.C. Krishnan and Others, , it was laid down by the Supreme Court that if the remedy of appeal is available, no interference should be made by the High Court under Article 227 of the

Constitution of India. For the aforesaid reason, the writ petition is dismissed.

Learned Counsel submits that appeals are not being entertained by the appellate Tribunal against interlocutory orders, whatever that may be, this question is not to be decided at this stage and is left open to be decided at a later stage.

5. With the aforesaid observations, the writ petition stands dismissed.