

(2014) 11 KAR CK 0308

In the Karnataka High Court

Case No : Writ Appeal No. 1790/2014 (GM-DRT)

Perfect Polybaags Private Ltd.

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2014) ILR 6280

Hon'ble Judges : D.H. Waghela, C.J.; Budihal R.B., J

Bench : Division Bench

Advocate : Shivayogi B. Hallur, Advocate for the Appellant; Brijesh Chander Guru, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.

1. The appellants have preferred this appeal from order dated 24.07.2014 of learned Single Judge in Writ Petition No. 58039/2013, whereby the appellants" challenge to order dated 25.11.2013 in petitioner"s interim application No. 3685/2013 in O.A. No. 239/2011 pending before DRT, Bengaluru, has been spurned. The short interim order which was under challenge before learned Single Judge read as under:

"2. Having heard Sri. R.L. Patil, learned senior counsel and perused Rule 12(6) of the RDDBFI (Procedure) Rules, 1993 and regard being had to the admitted fact that petitioner, a party defendant in O.A. 239/2011 did not file an affidavit by way of evidence, but filed IA No. 3685/2013 to permit cross-examination of AW-1, the witness for the Bank, no exception can be taken to the rejection of that application."

2. While dismissing the petition, learned Single Judge has clearly observed in the operative part of the order as under:

"3. Reserving liberty to the petitioner to file the affidavit of evidence before the

DRT and thereafter wards, if so desirable, file an application to permit cross-examination of the witnesses for the Bank, which, if made, there is no reason to believe that DRT would not consider the same in accordance with law, petition is accordingly rejected."

3. There is no dispute about the fact that, while appearing as defendant in the original proceeding, the appellant has not filed any affidavit and directly made the application for cross-examination of the witness of the applicant -bank. It was vehemently argued for the appellant that, it was the basic right of a party to cross-examine a witness, in the interest of justice and in compliance with the principles of natural justice. He further submitted that the relevant part of Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993 specifically provides as under:-

"12. - (6) The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted."

4. Learned counsel specifically submitted that, if the appellants were required to file affidavit on behalf of the appellant, it would disclose their defence and a party cannot be forced to file an affidavit, even as the appellant has admittedly filed their reply in terms of Rule 12(1) of the Rules. He relied upon judgment of the Apex Court in *Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, , wherein it is observed, in the context of salutary principles of natural justice, that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing such opportunity to cross-examine witnesses would violate the principles of natural justice.

5. It is trite that principles of natural justice apply when no specific procedure is prescribed and express provisions of law can override the principles of natural justice; and the principles of natural justice may in fact be restricted by necessary implication, by specific legislative provision in that behalf. In the facts of the present case, Rule 12 of the Rules prescribes the whole procedure with necessary discretionary powers to the tribunal for conducting the proceeding

before DRT and the step-wise procedure prescribed under all the sub-rules of Rule 12 are apparently designed to fulfill the object of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("the Act" for short), which is expeditious adjudication and recovery of debts due to banks and financial institutions. Read in that context, Rule 12 prescribes that the defendant may file his reply to the application alongwith documents with the Registry within one month of service of notice of filing of the application. The defendant is required to serve a copy of the reply alongwith documents to the applicant and the tribunal has the discretion, on application by the defendant, to allow the filing of reply after expiry of the period of one month. In case the defendant fails to file the reply, the tribunal is empowered to proceed forthwith to make an order on the application, as it thinks fit. Where the defendant makes an admission of full or part of the amount of debt, the tribunal is duty bound to order such defendant to pay the amount to the extent of the admission within a period of one month from the date of such order, failing which the tribunal is empowered to issue a certificate in accordance with Section 19 of the Act for the amount of debt due, admitted by the defendant.

6. It is after the above provisions, that sub-rules (6) and (7) would come into operation. The composite scheme of sub-rules (6) and (7) indicates that the tribunal may, at any time and for sufficient reason, order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the tribunal thinks reasonable. This main provision of sub-rule (6) empowers the tribunal to call upon, for sufficient reason, any of the parties, to prove any particular fact or facts by affidavit. By virtue of that provision, the tribunal was within its rights to ask the appellant herein to file the affidavit. By way of proviso to that provision, it is provided that "after filing of the affidavits by the respective parties" where it appears to the tribunal that either the applicant or the defendant desires the production of a witness for cross-examination and that such witness can be produced and it is necessary to do so, the tribunal shall, for sufficient reasons to be recorded, order the witness to be present for cross-examination. That provision clearly stipulates as a pre-condition, before a party desires the production of a witness for cross-examination, that affidavits are filed by respective parties. Even if that condition is fulfilled, the tribunal has to find out sufficient reasons and those reasons must be recorded in writing to make an order for the witness to remain present for cross-examination.

By virtue of the provision of sub-rule (7) of Rule 12, if the defendant denies his liability to pay the claim made by the applicant, the tribunal may act upon the affidavit of the applicant, who is acquainted with the facts of the case or who has, on verification of the record, sworn the affidavit in respect of the contents of application and the documents as evidence. The scheme of these provisions would clearly and indisputably reveal a scheme where it is not an absolute right of the defendant to not file an affidavit and insist upon cross-examination of witness of the applicant. There is no scope for building up a defence on the basis

of cross-examination of witness of the applicant, which the appellant admittedly intends to do.

7. Even reading the judgment, relied upon for the appellant, for the observations relevant for the present purpose, it is necessary to refer to para 27 of the same judgment, which may be reproduced as under:

"27. In *K.L. Tripathi Vs. State Bank of India and Others*, , this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India (UOI) and Another Vs. P.K. Roy and Others*, and *Channabasappa Basappa Happali Vs. The State of Mysore*, . In *Transmission Corporation of A.P. Ltd. and Others Vs. Sri Rama Krishna Rice Mill*, , this Court held: (SCC p.80, para 9)

"9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official."

8. In view of the above scheme of the express legal provisions and the observations quoted hereinabove, it is clear that the impugned order is in favour of the appellant insofar as it reserves liberty to the appellant to file an affidavit of evidence before DRT and thereafter, if it is desirable, file an application to permit cross-examination of the witnesses of the bank. It has also to be always kept in view that when a discretionary interim order is made by the tribunal in exercise of the powers and discretion vested in it, a party would not be justified in rushing to the High Court with a writ petition for interference in exercise of its extraordinary jurisdiction under Article 226 or 227 of the Constitution. Such recourse to the High Court is often resorted to only with a view to delaying the proceeding before DRT and defeating the purpose of the special legislation enacted for the purpose of expeditious adjudication and recovery of debts due to banks and financial institutions. Under the circumstances, the appeal is found to be not only misconceived and wholly devoid of merit, but it can be viewed as a further attempt at delaying the proceeding before DRT. Therefore, it is required

to be dismissed with appropriate order as to cost.

9. In the facts of the present case, however, before parting with the judgment, it is necessary to mention the interim order dated 10.11.2014, which was made herein pending disposal of the appeal. That order read as under:

"Learned counsel Mr. B.C. Guru appearing for the respondent submitted that the respondent has already sold the debt to asset re-construction company, which is required to be brought on record by the appellants. He further submitted that on the same ground the matter which is pending before the Debt Recovery Tribunal is not likely to be proceeded and the bank will seek adjournment on the aforesaid ground.

List on 25.11.2014."

10. After reproducing the above interim order, the appeal is dismissed with cost of Rs. 10,000/-, being the actual cost as stated by learned counsel for the respondent, which shall be paid by the appellant to the respondent -bank within a period of fifteen days.

In view of dismissal of the appeal, the pending interim applications do not survive and are accordingly disposed.