

(2013) 04 JH CK 0171
In the Jharkhand High Court
Case No : WP (C) No. 5748 of 2012

Pradeep Kumar

APPELLANT

Vs

The Debt Recovery Tribunal and Others

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 4 JLJR 517

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Anil Choudhary, Saroj Kumari Agrawal and Pradeep Modi, for the Appellant; Gyanendra Kumar, for the Respondent

Judgement

P.P. Bhatt, J.—Petitioner by way of filing the present writ application under Articles 226 and 227 of the Constitution of India has prayed for issuance of an appropriate writ/order for setting aside the judgment and order dated 18.7.2012 (Annexure-11) passed by the Presiding Officer, Debt Recovery Tribunal, Ranchi, Jharkhand in P.T. Case No. 45 of 2002 with Counter Claim Case No. 2 of 2003. Heard the learned counsel for the petitioner as well as the respondents. Perused the impugned judgment and order as well as other materials placed on record.

2. From the order-sheet produced on record, it transpires that on 27.3.2012 the matter was adjourned to 3.4.2012 but, it appears that the matter could not be taken up on that day as the learned Tribunal was not available. It appears that thereafter, the matter was adjourned to 9.4.2012. Thereafter, it was adjourned to 10.4.2012.

Learned Debt Recovery Tribunal passed following order on 10.4.2012:--

The case is called out as per previous order.

Learned counsel on behalf of the applicant Bank appears and submits.

Learned counsel on behalf of the Defendants appears and submits.

The matter was fixed for final hearing of captioned Transferred application bearing P.T. No. 45 of 2002 on date and where the learned counsel who is appearing on behalf of the applicant Bank as well as on behalf of the Defendants argued their cases and completed their arguments, on date.

The matter was also fixed for final hearing of counter claim case bearing C.C. No. 2 of 2003 on date and where the learned Counsel who is appearing on behalf of the applicant as well as on behalf of the Defendant bank argued their cases and completed their arguments, on date.

Now, let the matter be fixed for pronouncement of final order of captioned Transferred Application bearing P.T. No. 45 of 2002 and counter claim case bearing C.C. No. 2 of 2003 at a later date which shall be intimated through daily cause list of DRT, accordingly.

Thereafter, on 18.7.2012 the learned Debt Recovery Tribunal passed following order:--

The case is called out as per previous order.

Learned counsel on behalf of the Applicant Bank appears and submits

No one appears on behalf of the Defendants on date.

The matter was fixed for pronouncement of final order of captioned Transfer Application and Counter Claim Case bearing P.T. No. 45 of 2012 and C.C. No. 2 of 2003 on date, which is pronounced in the open tribunal and let the copies of the order be provided to the parties and also to Recovery Officer of this Tribunal for their perusal and for doing their needful, if any, in the matter.

Let the case records in the matter be consigned to the Record Room of this Tribunal at an early date.

3. In view of the aforesaid orders recorded in the order sheet of the learned Debt Recovery Tribunal, Ranchi, it appears that on 10.4.2012 it is recorded by the learned Tribunal that the learned counsel appearing on behalf of applicant Bank as well as on behalf of defendants argued their cases and completed their arguments, and matter was fixed for pronouncement of final order. Thereafter, on 18.7.2012 the order was pronounced after hearing submissions of learned counsel appearing for the applicant Bank. It appears that the learned counsel appearing for the defendants was not present at the time of pronouncement of the order.

4. The thrust of the argument advanced by the learned counsel appearing for the petitioner is that the order passed by the learned Debt Recovery Tribunal is in clear violation of principle of natural justice. According to him no effective hearing was ever afforded by the learned Debt Recovery Tribunal, Ranchi before delivering the final judgment and order. It is submitted that in the order sheet it is recorded that learned counsel appearing for the parties argued their case but, in fact no such opportunity of detail argument was afforded to the learned

counsel appearing for the petitioner. Now in this context the judgment and order delivered by the learned D.R.T., Ranchi is required to be appreciated by this Court while exercising writ jurisdiction.

5. On perusal of the judgment, it appears that only reference has been made in two-three lines that the arguments of the learned counsel for the applicant and defendants were heard but, nowhere in the judgment such arguments/submissions advanced by the learned counsel for the parties have been recorded. There is nowhere mention about the submissions advanced by the learned counsel for the parties in the judgment. It further appears that usually the submissions made by the learned counsel for the parties are dealt with issue-wise and at the end the finding on a particular issue either in affirmative or negative is recorded/expressed by the court/Tribunal. But, in the instant case nowhere in the body of judgment issues have been mentioned nor any discussion has been made issue-wise incorporating the submissions made by the learned counsel for the parties in respect of particular issue.

6. The learned counsel appearing for the respondent Bank while supporting the judgment and order tried to justify that the order passed by the tribunal is in accordance with law and not required to be disturbed. It is also submitted that alternative efficacious remedy to prefer appeal is also available to the petitioner if he is aggrieved by the order. But learned counsel for the respondent Bank unable to controvert or point out about the recording of submission by the learned Debt Recovery Tribunal.

7. Thus, the exception carved out in the judgment delivered by the Hon''ble Apex Court in case of United Bank of India Vs. Satyawati Tondon and Others, is required to be made applicable. The relevant abstract i.e. Para-46 of the above referred judgment is reproduced hereinbelow:--

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

8. The exception carved out in judgment delivered by the Hon''ble Apex Court in

case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, is also relevant for deciding the present case. The relevant Paragraphs 14 and 15 of the said judgment are being reproduced hereinbelow:--

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part-III of the Constitution but also for "any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

9. Likewise the another decision delivered by the Hon"ble Apex Court in case of Mariamma Roy Vs. Indian Bank and Others, is also appears to be relevant for the purpose of deciding the present case. The relevant abstract i.e. Para-3 of the said judgment is being reproduced hereinbelow:--

3. We have heard the learned Counsel for the parties and examined the impugned order as well as the other materials on record. After examining the impugned order as well as the materials on record, we are of the view that the order of the High Court cannot be sustained. Before the High Court, the appellant sought to contend that before passing the impugned order, the appellant was not at all issued with any notice. The High Court, however, without going into the question whether the notice was at all served on the appellant or not, dismissed the writ petition only on the ground that the appellant has got a right of appeal against the impugned order under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. In our view, the High Court was not justified in passing the impugned order on the aforesaid ground. It is well settled that even if an alternative remedy was available to an aggrieved party against a particular order, but if it was open to such party to move a writ application and the court has the power to entertain the same if it finds that while passing the order there has been a violation of the principle of natural justice. That being the position, in the present case the appellant was not served with any notice before passing the impugned order. That being the position and without going into the

merits, the impugned order is set aside and the matter is remitted back to the High Court for decision on merits in accordance with law. The High Court is requested to dispose of the writ petition at an early date preferably within six months from the date of supply of a copy of this order to it. We make it clear that we have not gone into the merits of the dispute raised by the parties before us, all questions are left open to be decided by the High Court in accordance with law. The impugned order is, therefore, set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs.

10. The another decision given by the Hon"ble Apex Court in case of Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India (UOI) and Others, also appears to be relevant for the purpose of deciding the present case, where in paragraph 21 it is held that:--

Brevity in judgment writing has not lost its virtue. AH long judgments or orders are not great nor brief orders are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves.

11. In view of the above stated facts and circumstances of the present case and also in view of the above referred judgments the order passed by learned D.R.T., Ranchi is required to be quashed and set aside as their was no effective hearing given to the present petitioner before delivering of the judgment and it amounts to violation of principle of natural justice and, therefore, on this ground the matter is required to be remitted to the learned D.R.T., Ranchi to decide afresh after taking into consideration the submissions of the learned counsel appearing for both the parties. Accordingly, the impugned order dated 18.7.2012 is ordered to be set aside and the matter is remitted to the learned Tribunal to decide the matter afresh after taking into consideration the submissions of both the parties.