

**(2008) 07 OHC CK 0004**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 8162 of 2008**

Pramod Kumar Mohapatra

APPELLANT

Vs

Presiding Officer Debts Recovery Tribunal CTC and Another

RESPONDENT

**Date of Decision :** 24-07-2008

**Acts Referred:**

Financial Institutions Act, 1993 — Section 20

**Citation :** (2008) 07 OHC CK 0004

**Hon'ble Judges :** B.S. Chauhan, C.J.; B.N. Mahapatra, J

**Bench :** Division Bench

**Advocate :** Ramakanta Nayak, R.K. Parida, B.K. Das and G.N. Das, for the Appellant; G.B. Dash, for O.P. No. 2, for the Respondent

**Final Decision :** Dismissed

## Judgement

B.S. Chauhan, C.J.—This writ petition has been filed to set side the impugned order dated 21.5.2008 and direct opposite party No. 2 - bank to re-schedule the loan amount of the Petitioner by easy installments.

2. By the impugned order dated 21.5.2008 the Debts Recovery Tribunal, Cuttack allowed O.A. No. 43 of 2008 for realization of a sum of Rs. 10.42,943/-with interest at the rate of 12% per annum from 16.1.2008 till full and final settlement of the loan dues is made. In order to execute the said order certificate has already been issued by the Presiding Officer, Debts Recovery Tribunal. However, grievance has been raised in the writ petition that the order has not been passed after observance of the principles of natural justice. It is alleged in the petition that when the matter was listed before the Tribunal on 21.4.2008 counsel for the present Petitioner appeared, however, he was told that the order had already been passed to proceed ex parte against the Petitioner. Petitioner moved an application to set aside the ex parte order and the said application was heard on 19.5.2008 and the order was reserved. However, subsequently after disposal of the case the Petitioner came to know that the application for recall had been decided vide order dated 19.5.2008 itself allowing

the application and issuing the direction to deposit 10% of the claim amount item Rs. 1,04,294/- on or before 10.6.2008. As the Petitioner was not aware of the said order, he could not deposit the said amount and the matter has been finally disposed of ex parte.

3. Learned Counsel for the Petitioner has raised large number of issues mostly relating to non-observance of principles of natural justice and not adopting a fair procedure in quasi-judicial proceedings. It has been contended that on all the relevant dates the Petitioner's counsel was present and submissions had been advanced, but orders had been passed behind his back. Therefore, the final order dated 21.5.2008 is liable to be set aside.

4. On the other hand, learned Counsel for opposite party No. 2 - bank has vehemently opposed the petition contending that writ petition has been filed suppressing material facts. Pleadings have been taken to mislead the Court and the same do not reveal true facts. Petitioner had been aware of the order, but no deposit had been made by him as directed vide order dated 19.5.2008. Order impugned is appealable under the provisions of Section 20 of the Act, thus writ petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the records. Undoubtedly the order impugned is appealable u/s 20 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 and generally the writ petition should not be entertained unless the Petitioner has exhausted the statutory remedy.

6. Be that as it may, the Petitioner has raised the issues in respect of the proceedings before the Tribunal and the main argument of the Petitioner has been that he had not been aware of the order dated 19.5.2008. The order was reserved, though it appears to have been passed on the same date. It was not passed in his presence and had never been communicated to the Petitioner. Such an issue cannot be agitated and adjudicated upon in a writ petition, as the issue involved herein relate to factual controversy. The only remedy available to the Petitioner in such an eventuality is to file an application to recall the said order or seek modification of the same or make an application for extension of time or file an appeal against the final order u/s 20 of the Act.

7. In *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, the Hon'ble Supreme Court while dealing with a similar case, held as under:

We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena if a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party to call the attention of the very Judges. While deciding the said case the Hon'ble Apex Court placed reliance upon the judgment of the Privy Council in *Madhusudan Chowdhri and Ors. v. Mst. Chandrabati Chowdhri and Ors.* AIR

1917 PC 30; and RM.K.RM. Somasundaram Chetty v. M.RM.V.L. Subramanian Chetty AIR 1926 PC 136. In the latter case, it has been observed as under:

Judgment cannot be treated as mere counters in the game of litigation.

A similar view had been taken by the Calcutta High Court in Sarat Chandra Maiti and Others Vs. Bibhabati Debi and Others, , observing that the record of the Judge is conclusive and it is not permissible either for the lawyer or litigant to contradict it except by moving application before the same Judge.

8. In The King Emperor Vs. Barendra Kumar Ghose, , the Full Bench of. Calcutta High Court reiterated the same view observing that the judgment of the Court "is not to be criticized or circumvented; much less has to be exposed to any animal version.

9. Thus, in view of the aforesaid settled legal proposition, the writ Court cannot conduct the enquiry as what has transpired in the Court below. If a party is aggrieved that some of the issues agitated by it have not been dealt with or proceedings have not correctly been recorded, the appropriate remedy available to it is to file an appropriate application before the same Court/Tribunal as those issues cannot be adjudicated upon by the appellate or Revisional Court.

10. In view of the above, we are not inclined to entertain the writ petition and dismiss the same. However, it is open to the Petitioner to agitate the issue by making an appropriate application for recall of the order or extension of time to deposit of the amount or by filing an appeal against the final order before the Appellate Forum, if so advised.