

(2003) 03 MAD CK 0173

In the Madras High Court

Case No : C.R.P. (NPD) No's. 1786 and 1787 of 2002, C.M.P. No's. 18674 and 18675 of 2002 and VCMP No's. 1169 and 1170 of 2003

R. Natesan

APPELLANT

Vs

City Union Bank Ltd. and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17(2), 20, 31A

Citation : (2003) 3 BC 133 : (2003) 2 CTC 393

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : P.L. Narayanan, for the Appellant; Chandrmouli, Sr. Council for R. Sivaraman, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—1. Second petitioner in O.A.No. 400 of 2001 on the file of the Debts Recovery Tribunal-I, Chennai is the revision petitioner in both the Revisions filed under Article 227 of the Constitution of India. In C.R.P.No. 1786/2002, the petitioner challenges the conditional order passed by the Debts Recovery Tribunal. In C.R.P.No. 1787/2002, the same petitioner challenges the final order dated 26.6.2001 passed in O.A.No. 400/2001 in and by which the Debts Recovery Tribunal issued a recovery certificate in favour of the applicant Bank to realize the sum as claimed.

2. Heard Mr. P.L. Narayanan, learned counsel for the petitioner and Mr. Chandramouli, learned senior counsel for first respondent-City Union Bank, the only contesting party in both these cases.

3. The first respondent-City Union Bank filed a civil suit in C.S.No. 1994/1994 on the file of the Original Side of this Court against Messrs. Ferrodeal Private Limited and other defendants, including the petitioner herein for recovery of a sum of Rs.

6,42,523.37 together with interest thereon in respect of various credit facilities availed by the defendants. The defendants entered appearance through counsel and the matter was pending. Subsequently, on enhancement of City Civil Court's jurisdiction, the said suit was transferred to the III Additional Judge, City Civil Court, Madras and was renumbered as O.S.No. 12273 of 1996. The petitioner entered appearance through his counsel. After setting them ex parte, preliminary decree was passed on 26.2.1999 directing the defendants to pay a sum of Rs. 6,42,523.37 with further interest and costs. Since the decreed amount exceeds Rs. 10,00,000, the first respondent Bank as per the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short "the Act"), filed an original application u/s 31-A of the said Act before the Debts Recovery Tribunal for issuance of recovery certificate under the Act. The Tribunal on consideration of the facts and materials, ordered for issuance of recovery certificate in O.A.No. 400 of 2001 by its order dated 26.6.2001. This order was duly served on the petitioner and all other respondents. A recovery certificate in DRC No. 112/01 dated 29.8.2001 was issued by the Tribunal and a copy of the same with demand notice dated 5.9.2001 was sent by the Recovery Officer by Registered Post with A.D. to the petitioner and the respondents. It is further seen that in pursuance of the recovery certificate, Recovery Officer in accordance with the second schedule to the Income Tax Act, brought the property mortgaged by petitioner herein to sale and sale was conducted on 12.7.2002, after due publication. One M. Balasubramaniam had purchased the said property through Court auction, and deposited the entire sale consideration of Rs. 43 lakhs. After the recovery certificate was issued, the petitioner herein along with 8th respondent herein filed I.A.Nos. 8954 and 8955 of 2002 on the file of the III Additional City Civil Court, Chennai in June, 2002 for setting aside the ex parte decree dated 26.2.99 with an application for condonation of delay of 1175 days. The bank filed its counter. After hearing both sides, the learned III Additional Judge, by order dated 19.6.2002, transferred the said application to Tribunal and was numbered as M.A.No. 224 of 2002. After the sale taken place, the petitioner along with 7th and 8th respondents filed MA.Nos.283 to 286/2002 to issue specific instructions regarding the amount to be recovered by the Recovery Officer and consequently stay all further proceedings. The Tribunal by its common order dated 11.10.2002, directed the petitioner to pay 50 per cent of the amount mentioned in the recovery certificate within 4 weeks, since an opportunity was given to the respondents 2 and 3 to deposit the balance 50 per cent of the amount. The Tribunal also held that in default of compliance of the order, the stay granted in respect of the confirmation of sale shall automatically stand vacated. The petitioner did not comply with the order of the Tribunal but instead, without notice to the first respondent filed an application for extension of time. The Tribunal also extended further time for payment of the amount till 19.12.2002. At this stage, the petitioner has filed the above Revisions before this Court.

4. Mr. P.L. Narayanan, learned counsel for the petitioner, at the foremost

contended that since the claim is below 10 lakhs rupees, the Debts Recovery Tribunal has no jurisdiction. In so far as the said contention is concerned, there is no dispute that the III Additional Judge, City Civil Court has passed a preliminary decree on 26.2.99 directing the defendants to pay a sum of Rs. 6,42,523.37 with further interest and costs. As per the decree amount undoubtedly the claim exceeds Rs. 10 lakhs, if that is so, in view of the Act, the proper Court to recover the amount is Debts Recovery Tribunal. Learned senior counsel for the Bank has brought to my notice that the amount due under the decree is Rs. 23,80,259.37, accordingly the said objection is liable to be rejected.

5. The other contention is that the decree, as it is, is inexecutable in law and the petitioner was not given notice before issuance of recovery certificate. Mr. Chandramouli, learned senior counsel for the first respondent Bank, would contend that in the light of Section 20 of the Act, if the petitioner is aggrieved, his remedy is to file an appeal to the Appellate Tribunal and not a Revision before this Court under Article 227 of the Constitution of India. Mr. P.L. Narayanan, learned counsel for the petitioner, raised several contentions regarding the merits of the order passed by the Debts Recovery Tribunal in O.A.No. 400/2001 dated 26.6.2001 and common order dated 11.10.2002 in M.A.No. 224/2002 and other connected applications. As per Section 20, any person aggrieved by an order made by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction within a period of 45 days from the date on which the copy of the order made by the Tribunal is received by him. The appeal shall be in such form and be accompanied by fee as prescribed. The said provision enabling the aggrieved party to file an appeal before the Appellate Tribunal has not been disputed. While considering Section 17(2) and 20 of the Act, a learned Single Judge of the Delhi High Court in *Shoes East Ltd. v. Allahabad Bank*, 1998 (2) Banking Cases 250, has held that the Act provides an adequate and efficacious remedy for obtaining relief in respect of any improper order passed by the Debt Recovery tribunal; accordingly the remedy provided under Article 227 of the Constitution of India is not intended to supersede the modes of obtaining relief before the Appellate Courts or Tribunals. In the light of the language used in Sections 17(2) and 20(1) of the Act, I am in respectful agreement with the view expressed by the learned Judge and in the light of inbuilt machinery provided under the Act, the remedy under Article 227 of the Constitution cannot be resorted to to supersede the modes provided under the Act itself. Further, after the coming into force of the Act, all matters including applications have to be dealt with only by the Forum provided under the Act and the learned City Civil Judge was perfectly right in returning all those applications with a direction to file the same before the Debts Recovery Tribunal. Though Mr. P.L. Narayanan, learned counsel for the petitioner relied on several decisions in support of his contentions relating to merits of the orders passed by the Debts Recovery Tribunal, in the light of what is stated above, more particularly in view of Section 20(1) of the Act, the proper remedy for the petitioner is to agitate the matter before the Appellate Tribunal and I hold that the present Revision under Article

227 of the Constitution is not appropriate. It is useful to refer the latest pronouncement of the Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd.*, 2003 AIR SCW 930 where Their Lordships have held that where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Regarding supervisory jurisdiction under Article 227 of the Constitution, the Supreme Court has held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record. In exercising the supervisory power under Article 227 of the Constitution, the high Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision. In the light of the categorical pronouncement of the Supreme Court, in view of my conclusion that the claim exceeded more than Rs. 10 lakhs, then the proper forum for adjudication is Debts Recovery Tribunal, all other questions relating to merits of the claim have to be agitated before the Appellate Tribunal u/s 20(1) of the Act; accordingly the contentions relating to merits of the order of the Debts Recovery Tribunal are left open. With the above observation, both the Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.