
(2000) 09 PAT CK 0094
In the Patna High Court
Case No : L.P.A. No. 494 of 2000

Ram Laxman Glass (P) Ltd. and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 11-09-2000

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 3, 31

Citation : (2001) 1 BLJR 59 : (2000) 4 PLJR 572

Hon'ble Judges : Nagendra Rai, J; D.P.S. Choudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment dated 17.2.2000 passed by a learned Single Judge of this Court in C.W.J.C. No. 1248 of 2000 dismissing the writ application filed by the appellant against the order dated 19.1.2000 passed by the Presiding Officer of the Debts Recovery Tribunal, Patna (hereinafter referred to as "the Tribunal"), constituted under the Recovery of Debts Due to the Bank and Financial Institutions Act, 1993 (hereinafter referred to as "the Act") rejecting the application of the appellant for setting aside the ex parte order dated 2.2.1999 decreeing the claim of respondent-Bank passed by it in Case No. 32 of 1998 as well as for a direction to issue a certificate u/s 19(7) of the Act for execution of the aforesaid order against the appellants.

2. In the writ application, the appellants have also prayed that Money Suit No. 21 of 1994 and Misc. Case No. 1 of 1996, which were pending before the Subordinate Judge prior to the transfer before the Tribunal, be sent back to the Court of the Subordinate Judge-III, Deoghar, for disposal of Misc. Case No. 1 of 1996 filed for setting side the ex parte decree passed in Money Suit No. 21 of 1994.

3. The facts lie in a narrow compass. The Respondent-State Bank of India (for short "the Bank") through its Branch Office, Madhupur, District Deoghar,

sanctioned a cash credit facility to the appellant-Company in the year 1988. The Company defaulted in payment of the amount. The Bank instituted Money Suit No. 21 of 1994 in the Court of the Subordinate Judge-1, Deoghar, for recovery of about Rs. 45 lacs. In spite of service of summons, the appellant-company did not appear in the suit and Court proceeded to dispose of the suit ex parte and, accordingly, passed an ex parte judgment and decree on 18.12.1995 against the appellants and, thereafter, the appellants (defendants in the suit) filed an application under Order IX, Rule 13 of the CPC for setting aside the ex parte decree, which was registered as Misc. Case No. 1 of 1996.

4. The Central Government in terms of the provisions contained in Section 3 of the Act established the Tribunal at Patna on 24.1.1997 having jurisdiction over the States of Bihar & Orissa. On 10.3.1997, the Registrar of this Court issued a general direction to the Civil Courts directing them to transfer the relevant cases to the Tribunal in view of the provisions contained in Section 31 of the Act. Thereafter, the miscellaneous case, which was pending before the Sub-Judge was transferred to the Tribunal along with the records of Money Suit No. 21 of 1994. The Tribunal, thereafter, in exercise of power conferred u/s 31(2)(b) of the Act decided to proceed de novo with the claim of respondent-Bank and despite service of notice, the appellants did not appear and the Tribunal passed an ex parte order and allowed the claim of respondent-Bank by order dated 2.2.1999. The appellants filed an application for setting aside the ex parte order passed by the Tribunal, which was rejected by the impugned order dated 19.1.2000. Thereafter, the writ application was filed, which has been dismissed by the learned Single Judge of this Court.

5. Earned Counsel for the appellants submitted that the transfer of miscellaneous case pending before the Subordinate Judge for setting aside the ex parte order was impermissible in law as the same is not covered by the words "other proceedings" mentioned in Section 31 of the Act, which contains a provision with regard to the transfer of the pending cases. In other words, he submitted that the miscellaneous case filed either for restoration of the suit or setting aside the ex parte decree has to be filed before the Court, which has dismissed the suit or decreed the suit and, thus, the said proceeding after coming into force of the Act shall not stand transferred to the Tribunal in terms of the provisions contained in Section 31 of the Act. In support of the aforesaid submission, he relied upon a judgment of a learned Single Judge of this Court in the case of Arbind Kumar Vs. State Bank of India and Others, . He further submitted that the aforesaid decision was placed before the learned Single Judge. The said decision was binding upon him and in case of disagreement with the said decision he should have referred the matter to a larger Bench and should not have heard that the judgment was per incuriam and was not binding upon him.

6. Earned Counsel for the respondent-Bank submitted that point raised by the appellants is already settled and after creation of the Tribunal, it is the exclusive jurisdiction of the Tribunal to decide all the matters as enumerated in Section 17

of the Act and suits and other proceedings pending before any Court immediately before the date of establishment of the Tribunal shall stand transferred on that date to the Tribunal. The words "other proceedings" have a wide connotation and it include even the miscellaneous case filed for setting aside an ex parte decree. This controversy has been settled by the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, and the judgment tendered by the learned Single Judge of this Court in the case of Arbind Kumar (supra) is no longer a good law.

7. The primal question that falls for consideration is as to whether the application filed for setting aside the ex parte decree pending before the subordinate Court on the date of the establishment of the Tribunal under the Act shall stand transferred to the Tribunal or not?

8. The Act has been enacted for the establishment of the Tribunal for expeditious adjudication of the recovery of the debts due to Bank and financial institution or for matters connected therewith or incidental thereto. Section 17 of the Act contains provision with regard to the jurisdiction, powers and authority of the Tribunals. It, inter alia, provides that on and from the appointed day, the Tribunal shall exercise jurisdiction, powers and the authority to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such banks. Section 18 of the Act provides that on and from the appointed day, no Court or authority shall have jurisdiction or power in relation to the matter specified in Section 17 of the Act. However, the said provision does not apply with regard to exercise of power by the High Court and the Supreme Court. Section 31 of the Act at the relevant time dealt with the transfer of pending cases and it runs as follows:

31. Transfer of pending cases - (1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where-on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court.

(2) Where any suit or other proceedings stands transferred from any Court to a Tribunal under Sub-section (1).

(3) the Tribunal may, on receipt of such records, proceed to deal with such suit or proceedings, so far as may be, in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

9. By the Act of 2000 the word "or de novo" has been omitted with effect from 17.1.2000. According to the said provision, every suit and other proceedings pending before any Court immediately before the establishment of the Tribunal

with regard to the matters covered by Section 17 of the Act shall stand transferred on that date to such Tribunal. However, the said provision will not apply to appeal pending before any Court. Sub-section (2)(b) thereof provides that after the transfer of the suit or other proceedings, the Court concerned will transmit the records of the suit or other proceedings to the Tribunal. The Tribunal on receipt of such records, shall proceed to deal with such suit or other proceedings in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

10. Thus, it is clear that the main object to enact Section 31 is that once the Tribunal is constituted, all suits and the other proceedings in connection with the matters cognizable by the Tribunal after its constitution shall stand transferred to the Tribunal for the reason that it has exclusive jurisdiction to deal with the matter and no other Courts, except the Supreme Court and the High Court as mentioned in Section 18, have jurisdiction to deal with the matter.

11. A wider meaning has to be given to the words "other proceedings" and any proceeding connected with or incidental to the suit, which is cognizable by the Tribunal after coming into force of the Act shall also stand transferred otherwise the very object of the Act and Section 31 will be frustrated.

12. In the case of Allahabad Bank (supra), while dealing with the question as to whether the Tribunal has exclusive jurisdiction with regard to adjudication of the liability and recovery of the amount, the apex Court held that the adjudication of the liability and recovery of the amount by execution of the certificate respectively are within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act.

13. In view of the said authoritative pronouncement of the apex Court, now it is a settled law that the Tribunal has exclusive jurisdiction with regard to adjudication of the matters cognizable by it and no Civil Court or Company Court has such power to entertain suit or proceeding with regard to the said matter.

14. If the submission of the earned Counsel for the appellant is accepted, then that will result into an absurd situation. The suit pending for adjudication of the liability by the Bank and the financial institutions in the Civil Court will stand transferred, whereas, the other proceedings with regard to the suit of such nature shall remain pending before the Civil Court. Such interpretation would frustrate the object of the Act as well as the object of Section 31 of the Act. The words "other proceedings" have to be given a wider meaning and the miscellaneous case filed for restoration of the suit or for setting aside the exparte decree passed in the suit filed by the Bank or the financial institutions for recovery of debts due to such bank and the financial institutions is included in the words "other proceedings" and the same shall also stand transferred to the

Tribunal.

15. Thus, the transfer of the miscellaneous case before the Tribunal was fully justified and once the matter came before the Tribunal, the Tribunal decided to proceed de novo in terms of the provisions contained in Section 31(2)(b), as it then was, and gave opportunity to the appellants but the appellants again did not appear and, thereafter, it passed an ex parte order. Therefore, the Tribunal was competent to decide the matter and it has rightly rejected the application filed by the appellant for setting aside the ex parte order. The appellants cannot take benefit of their own laches and inaction.

16. Thus, we hold that the order passed by the learned Single Judge does not suffer from any infirmity, much less legal infirmity. We also hold that the decision rendered by the learned Single Judge of this Court in the case of Arbind Kumar (supra) is no longer a good law in view of the judgment of the Supreme Court in the case of Allahabad Bank (supra). The words "other proceedings" as mentioned in Section 31 of the Act include the miscellaneous case filed for setting aside the ex parte decree passed in a suit by the bank and financial institutions for recovery of debts due to the bank and the financial institutions. We would, however, like to observe that the learned Single Judge was not justified in holding that the judgment rendered by the Co-ordinate Bench was per incurium and was not binding on him. In our view, in case of disagreement with the view taken by the earlier learned Single Judge in Arbind Kumar's case (supra), he should have referred the matter to a larger Bench and he should not have taken upon himself to decide the correctness of the aforesaid judgment and to render a contrary view. This is against the judicial decorum and discipline which forms the basis of judicial procedure.

17. The apex Court as far back as in the year 1960 in the case of Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, observed as follows:

Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case, lawyers would not know how to advise their clients and all Courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

(Underlining is mine)

18. The same view has been reiterated by the Supreme Court in the case of

State of Maharashtra v. Keshav Ramchandra Pangare (1999) 9 S.C.C. 479.

19. In the result, we find no merit in this appeal and it is, accordingly, dismissed.