

(2010) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3443 of 2010

Ram Niwas Dalmia and Others

APPELLANT

Vs

DRAT and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21, 3, 31

Citation : (2010) 2 WLN 620

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against order dt. 17/02/ 2010 (Ann.3) rejecting application seeking exemption from deposit of 75% of amount under recovery certificate issued vide order dt. 24/07/2006.

2. Civil suit for recovery of dues was filed on 11/04/1985 and pendente suit proceedings, Recovery of Debt Due to Banks & Financial Institutions Act, 1993 ("the Act") came into force on 27/08/1993 and in terms of Section 31 of the Act pending proceedings were transferred to Debt Recovery Tribunal ("DRT") by getting it registered as Org. Appl. u/s 19 of the Act and the DRT after adjudication of the dispute passed judgment on 24/07/2006 - against which present petitioners preferred appeal-163/2007 before Debts Recovery Appellate Tribunal, Delhi ("DRAT").

3. It is relevant to mention that while filing appeal before DRAT, application was filed u/s 21 of the Act read with Rule 9 of Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 seeking exemption from depositing 75% of the amount of recovery certificate for entertainment of appeal. However, petitioner indisputably preferred appeal without complying with pre-requisite condition regarding the deposit of 75% amount as provided u/s 21 of the Act; and sought

exemption from complying with the condition u/s 21, on the premise that since the suit was instituted prior to Act, 1993 came into force; as such he is not required to pre-deposit the amount in terms of Section 21 of the Act; however, application was rejected by learned DRAT vide order dt. 17/02/2010.

4. Counsel submits that once the suit was filed prior to the Act, 1993 came into force, the law prevalent on the date of filing of the suit will apply even in course of the appeal being filed and that apart, since these are intra proceedings, appeal can be preferred u/s 20 of the Act without complying with prerequisite deposit u/s 21. In support, Counsel placed reliance upon decisions of Apex Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, State of Bombay Vs. Supreme General Films Exchange Ltd., Mukund Deo v. Mahadu AIR 1965 SC 703; Ramesh Singh and another Vs. Cinta Devi and others,

5. Submission made by Counsel is without substance for the reason that pending suit was transferred u/s 31 to the Debts Recovery Tribunal after it being constituted u/s 3 of the Act w.e.f. 27/08/1993. However, proviso (b) to Sub-section (2) of Section 31 of the Act clearly provides that after receipt of records the DRT should proceed to deal with by registering such transferred suit or other proceedings in the same manner as in case of an application u/s 19 of the Act from the stage having reached before such transfer or from any earlier stage as the Tribunal may deem fit. Once transferred suit was registered as Original Application u/s 19 of the Act, and was decided under the DRT Act, the appeal could be preferred u/s 20 before DRAT, after complying with pre-requisite condition of deposit provided u/s 21 of the Act.

6. Legislative intent in my opinion is manifest and interpretation of statute would not depend upon a contingency. It is trite law that the Court would ordinarily take recourse to golden rule of literal interpretation. The statutory provisions of the Act are self explicit and requires no interpretation as has been urged by Counsel.

7. Judgments relied upon by Counsel are of no assistance in the facts & circumstances for the reason that they only relate to the amendments made under the respective Act while in the instant case, as per requirement under statutory provisions, after the suit was transferred to the DRT, has to be decided in under provisions of DRT Act.

8. At this stage, Counsel submits that since time granted by DRAT while rejecting application under order impugned is going to expire on 17/03/2010, further time may be granted to deposit of amount in terms of Section 21 of the Act.

9. Consequently, writ petition fails and is hereby dismissed. However, this Court considers it appropriate to grant further four weeks time to deposit the amount in terms of Section 21 of the Act and if such deposit is made, the DRAT may proceed in accordance with law.