
(2003) 10 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3882 of 2001

Ratan Singh Chowdhury

APPELLANT

Vs

Debts Recovery Officer and Others

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21

Citation : (2004) 1 ALD 71 : (2004) 2 BC 115

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Milind G. Gokhale, for the Appellant; K. Gopala Krishna Murthy, for Respondent Nos. 2 to 8 and E. Ramanatham, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—We have elaborately heard the learned Counsel for the petitioner and the learned Standing Counsel appearing on behalf of respondent Nos. 2 to 8. We have also perused the notice of demand issued by the first respondent-Debts Recovery Officer as against the petitioner. Various contentions have been raised in the writ petition by the petitioner challenging the demand notice issued by the first respondent-Debts Recovery Officer.

2. After making submissions for some considerable length of time, Sri Milind G Gokhale, learned Counsel for the petitioner, made an alternative submission that in case the submissions made by him are not acceptable to the Court, leave may be granted to the petitioner to prefer an appeal.

3. The short question that falls for consideration in the instant writ petition is as to whether the impugned notice of demand issued by the first respondent-Debts Recovery Officer suffers from any jurisdictional errors so as to be interdicted by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India?

4. The learned Counsel for the petitioner has invited our attention to the contents of the Recovery Certificate issued by the Debts Recovery Tribunal, which inter alia states:

"It is further certified that in default of such payment as aforesaid the amount due shall be recoverable by sale of hypothecated movable or mortgaged immovables properties as per plaint/application schedule/s if any".

It also further provides:

"It is further certified and ordered that if the money realised by such sale not be sufficient for payment in full of the amount payable to the applicant as aforesaid the applicant shall be at liberty to proceed against the defendant or defendant/s/ certificate debtor/s personally for the amount of the balance."

5. Relying upon the said clause the learned Counsel for the petitioner, Sri Gokhale, contended that Respondents 2 to 8 are required to proceed first against the properties mortgaged or hypothecated in order to realise their money and in case the sale proceeds are not sufficient for payment in full of the amount payable, then and then alone the respondents are entitled to proceed against the petitioner, who happens to be a guarantor.

6. Sri K. Gopala Krishna Murthy, learned Standing Counsel submitted that the decree granted by the Debts Recovery Tribunal is a joint and several one. It is submitted by Sri Gopala Krishna Murthy that the Respondents 2 to 8 are entitled to simultaneously proceed against all the defendants and their properties for realisation of its money and the petitioner happens to be one of the defendants who had suffered the decree and, therefore, the respondents are entitled to proceed against the petitioner even before proceeding against other defendants. The learned Standing Counsel invited our attention to the order and decree of the Debts Recovery Tribunal in which it is inter alia held that all these things put together go to point out that the defendants are liable to pay the amount and the following order is passed:

"In the result, the application is allowed declaring that the defendants are liable to pay:-

a. A sum of Rs. 6,15,54,369.85 paise to the first applicant with cost current and future interest at 23% p.a., compounded quarterly from the date of suit till the date of realization;

b. A sum of Rs. 2,77,55,760.24 paise to the second applicant with cost current and future interest at 18.25% p.a. compounded quarterly from the date of application till the date of realization;

c. A sum of Rs. 54,62,180.74 paise to the third applicant with cost current and future interest at 19.85% p.a., compounded quarterly from the date of application till the date of realization;

d. A sum of Rs. 72,43,119.80 paise to the fourth applicant with cost current and

future interest at 21,25% p.a., compounded quarterly from the date of application till the date of realization;

e. A sum of Rs. 1,05,50,599.68 paise to the fifth applicant with cost current and future interest at 20.25% p.a., compounded quarterly from the date of application till the date of realization.

f. A sum of Rs. 88,97,097.00 to the sixth applicant with cost current and future interest at 24.25% p.a., compounded quarterly from the date of application till the date of realisation; and

g. A sum of Rs. 97,41,026.00 to the seventh applicant with cost current and future interest of 28.25% p.a., compounded quarterly from the date of suit till the date of realisation.

The defendants are given three months time to settle the claim of the bank; failing which, the applicant banks are at liberty to sell the hypothecated movable and immovable properties and to adjust the sale proceeds towards the amount due."

7. The learned Standing Counsel contended that a cumulative reading of the various clauses incorporated in the order and decretal order and the Recovery Certificate issued by the Debts Recovery Tribunal, undoubtedly, enables the Respondents 2 to 8 either to simultaneously proceed against all the respondents by bringing their properties to sale or to proceed against any of the defendants according to their own choice.

8. We have perused the order and decree passed by Debts Recovery Tribunal and as well as the Recovery Certificate and the contents of the impugned notice issued by the Debts Recovery Officer directing the petitioner herein to pay the specified amounts on the pain of initiating further proceedings.

9. In our considered opinion, the judicial review remedy sought to be availed by the petitioner is not available and we are not inclined to go into the various clauses incorporated in the order and decree and the Recovery Certificate and record and finding as to whether the respondent Nos. 2 to 8 are entitled to proceed first against the petitioner. Any such exercise by us, in our considered opinion, would amount to exercising the appellate jurisdiction. It is neither possible nor permissible for this Court to exercise any appellate jurisdiction.

10. There is no dispute raised whatsoever about the availability of an alternative and effective remedy to the petitioner by filing an appeal u/s 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the appellate Tribunal. In such view of the matter we are inclined to accept the alternative submission made by the learned Counsel for the petitioner and accordingly grant leave to the petitioner to file an appeal, if he so intends. It is needless to observe that if any such appeal is preferred, the same may have to be considered on its own merits uninfluenced by the dismissal of this writ petition.

11. The writ petition fails and shall accordingly stand dismissed with the leave granted to the petitioner to avail the alternative remedies. No order as to costs.