
(1997) 12 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 34736 of 1997

S. Ravichandran

APPELLANT

Vs

Debt Recovery Tribunal and Another

RESPONDENT

Date of Decision : 06-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (1997) 90 CompCas 455

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : H.S. Dwarakanath, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The petitioner is the third defendant in O. A. No. 182 of 1995 filed by the second respondent on the file of the Debt Recovery Tribunal, Bangalore. The petitioner claims that he became aware of the said proceedings only during June, 1997, and immediately thereafter filed an application (I. A. No. I) on July 10, 1997, to recall the order placing him ex parte and seeking permission to contest the proceedings. The Tribunal allowed the said application on August 7, 1997, subject to payment of costs of Rs. 500. The case was adjourned on September 3, 1997, for payment of costs and for filing his statement (reply). As the petitioner did not file his statement, the following order was made on September 3, 1997 : "D3 absent. Reply not filed. No representation for the defendants. Hence, place the file before Bench for further trial by September 24, 1997".

2. On September 24, 1997, there was no representation and A. Ws. 1 and 2 (bank's witnesses), who were present for cross-examination were discharged, and the evidence of the applicant-bank was closed and the matter was posted to October 29, 1997, for the defendants' evidence. On October 29, 1997, petitioner (third defendant) filed an application (I. A. No. 8) requesting the Tribunal to

recall the orders dated September 3, 1997, and September 24, 1997, and permit him to contest the matter. In his affidavit filed in support of the said application, the petitioner stated that on September 3, 1997, his counsel had instructed him to appear before the Tribunal and pay the costs, but he could not reach the court in time ; again on September 24, 1997, he was instructed by his counsel to appear before the court, but on account of heavy traffic, he could not reach the Tribunal in time and his nonappearance was due to bona fide reasons. The Tribunal considered I. A. No. 8 and allowed the application by the following order : "Heard I. A. No. 8. The witnesses were present on September 24, 1997, at the request of defendants to cross-examine. The defendants and counsel remained absent on that day without any reason. Again the defendants have sought for recall of the witnesses. This calls for serious action since the defendants have no regard for the orders of the court. Hence, I. A. No. 8 is allowed on payment of costs of Rs. 2,500. Cost and witnesses to be kept present by December 9, 1997".

3. Feeling aggrieved the petitioner has filed this petition and sought quashing of the said order dated October 29, 1997. The petitioner has also sought a direction to the Tribunal to post the matter for the petitioner's objections and consider his contentions. The petitioner has urged the following grounds :

(i) When I. A. No. 8 was allowed, the case ought to have been posted for filing of statement of objections (reply) by the petitioner and not for evidence. Posting the case straightaway for evidence violates the principles of natural justice.

(ii) The claim of the bank ran into crores of rupees and, therefore, sufficient time and opportunity ought to have been granted to the petitioner.

(iii) Levy of costs of Rs. 2,500 by the Tribunal, is excessive and penal in- nature.

Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the Act" for short), provides that any person aggrieved by an order made or deemed to have been made by the Tribunal may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. Thus, an efficacious alternative remedy is available under the Act in regard to the impugned order. The mere fact that the Appellate Tribunal is situated at a distant place, cannot be a ground for holding that appeal is not an efficacious alternative remedy.

4. A writ petition is not intended to be a substitute for appeals and revisions that may be provided under a statute. Where there is an efficacious alternative remedy in respect of the order, under the statute itself, the party aggrieved should avail of such remedy and normally a writ petition filed by such aggrieved person ignoring the statutory remedy, will not be entertained. But there is a growing tendency on the part of the defendants to challenge interim orders passed in proceedings before Debt Recovery Tribunals by filing writ petitions, many a time, only with the intention of protracting the proceedings. Such a tendency requires to be discouraged.

5. It is true that the existence of an efficacious and adequate alternative remedy by itself had never come in the way of High Courts entertaining writ petitions under Article 226 where (a) there is complete lack of jurisdiction on the part of the authority or Tribunal ; (b) the order or action impugned, prejudicial to the petitioner has been passed in violation of the principles of natural justice ; or (c) the order or action impugned is arbitrary, unreasonable and unfair, resulting in a clear injustice to the petitioner and shocks the judicial conscience of the court.

6. In this factual and legal background let me examine the grievance of the petitioner that the order of the Tribunal, in posting the matter for evidence, instead of for objections, having set aside the orders dated September 3, 1997 and September 24, 1997, violates the principles of natural justice and is unreasonable and unjust.

7. The preamble to the Act makes it clear that the Tribunals are established for expeditious adjudication and recovery of debts due to banks and financial institutions. Banks and financial institutions faced considerable difficulties in recovering the dues from borrowers on account of delays in disposal of their civil suits filed by them. A large portion of the funds of the banks and financial institutions was thus blocked and became unproductive. Therefore, a need arose for the Act, providing for speedy disposal of the claims of banks and financial institutions. Section 22 of the Act provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 ("the Code" for short), but shall be guided by the principles of natural justice, and subject to the other provisions of the Act and the Rules, the Tribunal shall have power to regulate its own procedure. But, the defendants-borrowers who are accustomed to adjournments and delaying tactics, under the detailed procedure prescribed under the Code, are unwilling to adapt themselves to the quicker procedure under the Act. There is a general assumption and expectancy on the part of defendants that the Debt Recovery Tribunals should follow the procedure laid down in the Code, and as usual grant numerous adjournments running into months and years. This court often comes across submissions by learned counsel appearing for the borrowers from banks, that the case is hardly six months or one year old and that the stakes are heavy and, therefore, the Tribunal ought to have granted adjournments liberally. There is neither any basis nor logic in such submissions. The Tribunal is established for speedy disposal and grant of adjournments just because the case involves a large claim or is not sufficiently "old", defeats the very purpose of the Act.

8. The principles of natural justice require that the applicant and opponent should be heard and the procedure adopted by the Tribunal in deciding the matters should be fair and reasonable, free from arbitrariness and discrimination. Whenever a Tribunal is required to follow its own procedure, being guided by the principles of natural justice, normally the basic principles of a trial in a civil suit before a civil court is followed, without of course, the elaborateness contemplated under the Code, and laying emphasis on expeditious disposal. This

envisages, subject to any special provisions that may be contained in the Act, Rules or Regulations, the following procedure : (a) the applicant shall be permitted to file its application with supporting documents ; (b) the copies of the application and documents shall be furnished to the defendant and the defendant shall be given an opportunity to file his statement of objections with supporting documents ; (c) the applicant may be permitted to file a reply if the Tribunal feels that on the facts, a reply is warranted ; (d) the Tribunal shall frame issues or formulate the points in dispute for decision ; (e) the applicant shall be permitted to produce evidence (either oral or in the form of an affidavit) with an opportunity to the defendant to cross-examine the witnesses/deponents ; (f) the defendant shall be given an opportunity to produce his evidence (either oral or in the form of an affidavit) with an opportunity to the applicant to cross-examine the defendants' witnesses/deponents; (g) opportunity to each party, if they so request, to call for documents from the other party by resorting to discovery/ inspection ; (h) an opportunity to both parties to address or submit arguments (either oral or written) ; and (i) the Tribunal shall consider the pleadings, evidence and arguments and give its decision by assigning reasons. Only these basic tenets need to be observed. The elaborate procedure which the Code prescribes and contemplates need not be observed. The intention of the Act is to provide for expeditious disposals of applications relating to recovery of debts due to banks. If the Tribunals are required to follow the detailed, elaborate and time-consuming procedure as civil courts, under the Code of Civil Procedure, the very purpose of constituting the Tribunal under the Act will be defeated. If the procedure adopted by the Tribunal does not violate the basic principles of natural justice set out above, the interim or final orders of the Tribunals will not be disturbed on the ground that they have not complied with procedure laid down in the Code.

9. If the Tribunal has to conduct the proceedings like civil courts, there was no need to establish Tribunals for expeditious disposal. Several enactments provide for establishment of Tribunals for deciding the special types of cases arising under the respective enactments, examples being Debt Recovery Tribunals, Family Courts, Industrial Tribunals, Revenue or Income Tax Appellate Tribunals. The judicial officers who preside over the Tribunals, are expected to adapt themselves to the needs, requirements and expectations of the Act, under which the respective Tribunal is created. If the purpose for which the Tribunal is created is lost sight of and the Tribunals start functioning like civil courts under the Code, the special Tribunals will lose their identity and become mere extensions of civil courts thereby defeating the very purpose of creating such Tribunals. I may hasten to add that these observations are neither intended to belittle the functioning or importance of civil courts, nor intended to advise the judicial officers presiding over Tribunals to give up their judicial temperament, but are only intended to highlight the difference in the basic nature and functioning of civil courts on the one hand and Tribunals on the other. Each has a distinct function and is intended to serve different needs of the society.

10. Now, the facts. The application had been filed by the bank in the year 1995. By August, 1997, when the petitioner entered appearance and sought setting aside of the order placing him ex parte, the bank had already examined two witnesses. The Tribunal accepted the petitioner's application (I. A. No. VII) for setting aside the order placing him ex parte and gave him about four weeks time to file objections. The petitioner did not choose to file his objections on September 3, 1997. Hence, the Tribunal passed an order on September 3, 1997, posting the case for further trial on September 24, 1997. Neither the petitioner, nor his counsel appeared either on September 3, 1997, or on September 24, 1997. The Tribunal, therefore, passed an order discharging the bank's witnesses and closing the bank's evidence and posting the case for defendants' evidence on October 29, 1997. On October 29, 1997, the petitioner filed an application for merely recalling the orders dated September 3, 1997, and September 24, 1997, and permitting him to contest the matter. The petitioner neither tendered his statement of objections, nor sought leave to file objections nor sought time to file statement of objections. All he sought was permission to contest the matter. In the circumstances, the Tribunal rightly posted the case to December 9, 1997, to enable the petitioner to contest the matter and directed the bank to keep its witnesses present. The said order is neither arbitrary nor opposed to the principles of natural justice. Sufficient and adequate time was granted to the petitioner on every occasion. In fact, even in civil suits governed by the Code, the courts are not expected to grant long adjournments in part heard cases. A far stricter time frame is expected to be followed by the Tribunal. In the circumstances, there was no need for the Tribunal either to list the matter again for objections of the petitioner or grant longer adjournments. The case was rightly posted for the cross-examination of the witnesses.

11. On the facts and circumstances, the costs of Rs, 2,500 awarded to the bank as a condition for allowing the petitioner's application (I. A. No. 8) is neither exorbitant nor unreasonable. In fact the repeated attempts by the petitioner to protract the matter requires to be deprecated by award of punitive costs even though the petition is being rejected at the stage of preliminary hearing, without notice to the respondents.

12. Hence, this petition is rejected with costs of Rs. 2,500 payable by the petitioner to the second respondent and the petitioner shall pay the total costs of Rs. 5,000 as a condition for further participation in the case before the Tribunal. Let a copy of this order be sent to the Tribunal for information and being placed on the record of O. A. No, 182 of 1995 on its file.