
(2004) 05 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4703 of 2004

Sant Nirankari Mandal

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20

Citation : AIR 2004 P&H 307 : (2005) 1 BC 587 : (2004) 138 PLR 183 : (2004) 3 RCR(Civil) 490

Hon'ble Judges : Swatanter Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : R.K. Kapoor and R.K. Garg, for the Appellant; Sunil Chadha and K.S. Dadwal, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—In this writ petition Sant Nirankari Mandal, a registered body, has raised a challenge to the order dated 5.3.2003 passed by the Debt Recovery Appellate Tribunal, Delhi in Appeal No. 110 of 2000 titled as Rajeev Associates Private Limited and Ors. v. Punjab National Bank.

2. In order to substantiate this challenge to this order of the Appellate Tribunal, learned counsel appearing for the petitioner heavily relied upon the language of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the Act, to contend that while calculating the amount of 75% as an amount depositable as a pre-requisite to the entertainment of the appeal by the Appellate Tribunal, the amount has to be calculated as on the date of entertainment of the appeal and/or passing of the order and not on filing of the appeal. However, before we proceed to discuss the effect of the statutory provisions on the merits of the contentions raised before us, it will be appropriate to make a reference to the bare minimum facts necessary for decision of this writ petition.

3. M/s Rajeev Associates Private Limited have taken financial assistance from Punjab National Bank hereinafter referred to as the Bank. Being in default, the Bank filed O.A. No. 107 of 1998 before the Debt Recovery Tribunal, Jaipur, against the company for recovery of Rs. 93,98,226/- with interest thereupon at the rate of 21.75% p.a. with quarterly rests. The Debt Recovery Tribunal vide its order dated 29.1.1999 held that the Bank was entitled to recover Rs. 57,05,464/- with costs and further interest at the rate of 18% p.a. with quarterly rests. Against this order the company filed an appeal before the Appellate Tribunal, Mumbai. They also prayed for waiver of pre-deposit in terms of Section 21 of the Act. An order was passed on 4.4.2000 by the Chairperson of Debts Recovery, Appellate company to deposit Rs. 7.50 lacs with the respondent bank in four weeks. Upon such deposit, the bank was directed to release the title deed of the plot mortgaged with the bank so that the appellant could sell the same and deposit sale consideration thereof with the bank. The order of the Appellate Tribunal, Mumbai was challenged in this Court by the bank by filing CWP No. 4890 of 2000. The writ petition of the bank was allowed partly and the company was directed to deposit the balance amount within a period of 60 days from the date of the order. Before the Appellate Tribunal the company had sought lime to deposit a sum of Rs. 49,55,464/- and keeping in view the deposit already made to the extent of Rs. 7.50 lacs, according to the appellate company, it was sufficient compliance of the provisions of Section 21 and as such the appeal has to be entertained in accordance with law.

4. The bank had contended before the Appellate Authority that the appeal cannot be entertained as it was not sufficient compliance to Section 21 of the Act read in light of the judgment of the Court. The correct amount should be calculated and deposited and after deposit of the amount of 75% only the appeal can be entertained. The Appellate Tribunal accepted the contention of the appellant bank and came to the conclusion that there was proper deposit in terms of the order of the Court and it was held as under:-

"I agree with the learned counsel for the appellants in this respect. As per Section 21 of the Act, 75% of the amount decreed by the DRT has to be deposited as a condition precedent for entertaining the appeal. Therefore, the relevant date would be the date of filing the appeal, because, but for this provision the appeal has to be entertained, if it is otherwise in order on the same date on which it was filed. It is because of this provision that the appellants have to deposit 75% of the amount decreed by the DRT as a pre-condition for entertaining the appeal, the Tribunal has to insist upon the compliance of the provision contained in Section 21 of the Act or pass an order waiving or reducing the amount to be deposited in terms of this Section. Therefore, the amount to be deposited under this Section has to be calculated as on the date of filing of the appeal only. As pointed out already, the appeal has been presented on 11.6.99.

The learned counsel for the appellants also points out that the appeal was filed on 11.6.99, and as on the date, the amount deposited will cover more than 75%

of the amount ascertained by the DRT u/s 19 of the Act. In view of the discussion made above. I am of the view that if the appellants have deposited 75% of the amount decreed less Rs. 7.50 lacs already deposited by them, then the appellants would have complied with the orders of the Hon"ble High Court. The appellants have made a deposit of Rs. 49,55,464/- apart from Rs. 7.50 lacs already deposited making a total of Rs. 57,05,464/-. We have now to see whether by this total deposit made, 75% of the decreed amount has been deposited.

For this purpose, the appellants are directed to file a calculation memo calculating the amount payable as on 11.6.1999. In so calculating, the appellants will have to take into consideration the sum of Rs. 57,05,464/- decreed, add the interest thereon (as granted by the DRT) that has accrued till 11.6.99 i.e. the date of filing of appeal, arrive at the total amount payable as on the date, then indicate as to what is 75% of the said total amount. Let the memo be filed accordingly into this Tribunal by the appellants within two weeks from today, with an advance copy of the calculation memo to the counsel for the respondent-bank.

List this appeal for further orders on 1.4.2003."

5. Petitioner in this petition who became the auction purchaser of the property belonging to the company, which was mortgaged to the. respondent-bank in the auction held on 6.11.2002 for a sum of Rs. 1,53,40,000/-, as challenging the above findings on the basis afore-noticed. An order passed by the Debt Recovery Tribunal is appealable to the Appellate Tribunal u/s 20 of the Act. In accordance with the provisions of Section 21 of the Act, an appeal shall not be entertained by the Appellate Tribunal unless the person deposits the prescribed amount. The entire controversy raised by the petitioner in the present case is founded upon the interpretation of Section 21 of the Act. This Section reads as under:-

"21. Deposit of amount of debt due, on filing appeal. Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19:

Provided that the Appellate Tribunal may for reasons to be recorded in writing waive or reduce the amount to be deposited under this Section." A bare reading of the Section shows that an amount has to be determined by the Debt Recovery Tribunal in accordance with the provisions of Section 19 of the Act. Once such an amount is determined by the Tribunal u/s 19, that becomes the basis for calculating 75% of the debt due from the appellant. In other words, the appellant is obliged to deposit 75% of the amount determined as debt due to the Financial Institution by the Tribunal. The language of the section is clear, unambiguous and calls for no other interpretation than the one which has been taken by the Appellate Authority.

6. Learned counsel appearing for petitioner contended that the amount should be calculated as on the date of passing of the order i.e. 5.3.2003 and the appellant should be directed to deposit 75% of the said amount. This argument is without any basis. The language of the section does not permit such an interpretation. The golden rule of interpretation is to give meaning to the simple and clear language as has been used by the Legislature in the statutory provisions unless there are compelling circumstances for taking a different approach. We see no such reason existing in the present case. The amount has to be determined by the Debt Recovery Tribunal against which an appeal is to be filed within 45 days from the date on which a copy of the order is received by the appellant. Thus, there is apparent restriction in the provisions of Section 20 in relation to time which an appellant can take to file an appeal. The applicant-appellant would be required to deposit the amount as well as prefer the appeal within the prescribed period of limitation unless sufficient cause is shown for seeking exemption in that regard.

7. Now we must examine another aspect of this case and that is the conduct of the petitioner itself. Admittedly, the petitioner is only an auction purchaser. He cannot get any better right or title to the property in question than what are the rights of the owner-mortgagor or the bank, that too, in accordance with law. The auction purchaser would have no right to raise any dispute with regard to the liability determination of the debt due between the borrower and the bank. The debt has to be settled between the bank and the borrower company. To that extent he is a stranger to the proceedings. His rights are limited as an auction purchaser. The auction price would obviously and cannot in fact in law, be varied on the variation of the amount due from the company to the bank. The auction purchaser would be liable to pay the said sum of Rs. 1,53,40,000/- which he claims to have paid. He is entitled to enforce the transfer of the property in his favour in accordance with law and nothing more. We may also noticed that this petitioner was respondent No. 9 in CWP No. 4890 of 2000. The said writ petition was disposed of on 25.11.2002 and he raised no such plea in that petition. Still in another writ petition being CWP No. 16701 of. 2003 the present petitioner was respondent No. 7 which was dismissed as pre-mature by another Division Bench of this Court vide its order dated 8.12.2003. In CWP No. 16701 of 2003 the challenge was raised to the order dated 5.3.2003 which, as already noticed, was dismissed.

8. We are of the opinion that the present writ petition is nothing but an abuse of the process of law and deserves to be dismissed. For the reasons aforesaid we find no error of jurisdiction or otherwise in the order of the Tribunal dated 5.3.2003, Annexure P/5 to the writ petition and we dismiss this writ petition while leaving the parties to bear their own costs.