(2009) 12 DEL CK 0391

In the Delhi High Court

Case No : Writ Petition (C) 10632 of 2009

Satinder Kapur — APPELLANT

Vs

PNB and Others — RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 3
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 22

Citation : (2009) 12 DEL CK 0391

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rajeev Mehra, Manish Gandhi and Praveen Agrawal, for the Appellant; Manish Miglani, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed challenging the order dated 21.07.2007 passed by the Debts Recovery Appellate Tribunal in an appeal from an order dated 11.05.2009 passed by the Debts Recovery Tribunal. The question to be considered in this writ petition is whether the Debts Recovery Tribunal can refuse to grant permission to the applicant/Bank to withdraw a pending application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the said Act) when both the Bank and the debtor have entered into an out of court settlement?

2. The question arises in the backdrop of an application which was filed by the Bank for withdrawal of the original application No. 110/1996. In the said application, it was clearly stated that during the pendency of the said original application No. 110/1996, the defendants therein and the petitioner herein had approached the Bank for a compromise. The compromise proposal was duly accepted by the Bank and in terms of the same, the petitioner herein deposited a sum of Rs 125 lakhs along with interest of approximately Rs 13.71 lakhs with the Bank. The said amount was accepted by the Bank as full and final settlement of

the dues. Consequently, it was stated in the application that the Bank, having received the total amount of Rs 1,38,71,661/- inclusive of delayed period interest from the debtors, had issued a No Dues Certificate. in favour of the latter. It was then contended in the application that in the light of these events, the Bank wished to withdraw the original application No. 110/1996. However, in the prayer, the Bank did mention that the application be dismissed as withdrawn in terms of the compromise. The learned Counsel appearing for the petitioner as well as for the respondent/Bank submit in unison that the words in terms of the compromise ought to be disregarded inasmuch as neither party sought a compromise decree from the Debts Recovery Tribunal. And, all that the respondent/Bank was seeking, was permission to withdraw the original application in view of the settlement which had already been arrived at between the parties.

3. When the said application for withdrawal of the O.A. came up for hearing, the Debts Recovery Tribunal took a different view of the matter and felt that the compromise. needed examination. The order passed by the Debts Recovery Tribunal is as under:

I.A. No. 361/2009

This OA was filed by the bank for recovery of a sum of Rs. 5,66,39,886.16 (rupees five crores sixty six lakhs thirty nine thousand eight hundred eighty six and paise sixteen only) plus future interest in the year 2000. In the I.A., it is stated that the parties have arrived at one time settlement for a sum of Rs. 1,38,71,661.00 (rupees one crore thirty eight lacs seventy one thousand six hundred and sixty one only).

In the application, no grounds have been mentioned that for what reason the bank has sacrificed such a huge amount. The acceptance of such a compromise therefore needs examination. I, therefore direct the bank to file an affidavit on the following facts:

1) What are the securities available with the bank? Details of securities, values thereof.

2) Whether the defendants own and possess any other personal properties apart securities in favour with the bank.

The defendants shall also file their affidavits disclosing their personal assets, if any including their source of income.

Post this OA on 10.8.2009 for further proceedings.

Let this order be communicated to all the parties for compliance by the Registry as per rules.

Order dasti.

4. Being aggrieved by the said order dated 11.05.2009 passed by the Debts

Recovery Tribunal, the petitioner filed Miscellaneous Appeal No. 184/2009 before the Debts Recovery Appellate Tribunal. The Appellate Tribunal also did not agree with the viewpoint of the petitioner and upheld the order dated 11.05.2009 passed by the Debts Recovery Tribunal. The operative portion of the impugned order dated 21.07.2009 passed by the Debts Recovery Appellate Tribunal is as under:

6. In my view, the impugned order dated 11.5.2009 passed by the Tribunal below cannot be flawed at all. Even going by the principle enshrined in Order 23 Rule 3 CPC, it is to be proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise.

7. The Tribunal below has not rejected the OTS. Instead, it has only ordered for the filing of certain affidavits by both the sides so as to verify that the OTS has been arrived at for bona fide and valid reasons and there is no foul-play. None of the parties should be shy to come up with the true facts. Needless to say, the Banks and Financial Institutions deal in public money and the issue of larger public interest is involved to ensure that maximum recovery is made against the money lent by them and there is transparency in the system. The court''s power to ensure and oversee the same cannot be challenged. The ruling cited by the learned Counsel for the appellant does not justify the with-holding of the affidavits containing the information desired by the Tribunal below to be placed before it.

8. Nothing more is required to be said and I would like the matter to rest here.

9. The appeal is dismissed.

5. This is one of those curious cases in which both the sides support each other but the authorities below have disagreed with them. The question that arises is whether the Tribunal could, at all, have required examination of the settlement terms when no approval or satisfaction of the Tribunal was asked for? If we examine the operative portion of the impugned order, we find that the Appellate Tribunal was perhaps examining the principles akin to that of Order 23 Rule 3 of the Code of Civil Procedure, 1908 which pertain to recording of compromise and, consequently, passing a compromise decree in a suit. However, in the present case, the principles which are required to be examined are those which are more in the nature of the provisions of Order 23 Rule 1 CPC which deal with withdrawal of suit simpliciter. In fact, the learned Counsel for the parties submitted that since no leave of the court was necessary as stipulated in the proviso to Order 23 Rule 1, the elaborate procedure set out in Sub-rules (2) and (3), etc. was also not required to be followed in this case.

6. In this background, reference to a decision of the Supreme Court in the case of Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co., would be instructive. The Supreme Court was interpreting the provisions of Order 23 Rule 1 of the Code of Civil Procedure. While doing so, the Supreme Court observed that the said provision gives an unqualified right to a plaintiff to withdraw from a suit and if no

permission to file a fresh suit is sought under Sub-rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of the subject matter under Sub-rule (3) of that Rule. More importantly, the Supreme Court held:

There is no provision in the CPC which requires the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with it.

7. In the present case, there is no set-off or counter-claim involved and, therefore, the principles indicated by the Supreme Court would be clearly applicable. Although, the CPC is not strictly applicable to or binding in proceedings under the said Act because of the provisions of Section 22 thereof, principles akin to those of the CPC have been applied from time to time. Keeping in mind the observations made by the Supreme Court with regard to the unfettered right of a plaintiff to withdraw a suit, we feel that the Tribunal ought not to have refused permission to withdraw the original application No. 110/1996.

8. Moreover, neither party sought any stamp of approval or imprimatur of the Tribunal with regard to the compromise that they had entered into. Thus, there was no occasion for the Debts Recovery Tribunal to enter upon an examination of the terms thereof.

9. In view of the foregoing discussion, the impugned order dated 21.07.2009 passed by the Debts Recovery Appellate Tribunal as well as the order dated 11.05.2009 passed by the Debts Recovery Tribunal are set aside. The Debts Recovery Tribunal shall pass a formal order permitting the withdrawal of the original application being O.A. No. 110/1996. The matter be placed before the said Debts Recovery Tribunal for this purpose on 18.01.2010.

10. With these directions, the writ petition stands disposed of.

