

(2005) 05 AHC CK 0057

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25434 of 2005

Scientific Instrument Co. Ltd., Shri Bijoyandra Narain Sinha
and Smt. Mridula Sinha

APPELLANT

Vs

Bank of India, The Chairperson, Debts Recovery Appellate
Tribunal, The Presiding Officer, Debt Recovery Tribunal and
Awaz Real Estate Pvt. Ltd.

RESPONDENT

Date of Decision : 10-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 3

Companies Act, 1956 — Section 17, 18, 19, 19(18), 19(22)

Constitution of India, 1950 — Article 226, 227

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 12(5), 25

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 25

Citation : (2005) 3 AWC 2832 : (2006) 1 BC 261

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Shashi Nandan and Amit Negi, for the Appellant; P.K. Bisaria, S.D. Singh, K.M. Aschana, P.K. Gupta and Ashok Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Shashi Nandan, Senior Advocate assisted by Sri Amit Negi Advocate on behalf of the petitioner, Sri P.K. Bisaria Advocate on behalf of respondent No. 1, Bank, Sri K.M. Asthana Advocate on behalf of respondents Nos. 2 and 3, Sri Ashok Bhatnagar Advocate on behalf of respondent No. 4 and Sri S.D. Singh Advocate on behalf of Hina Builders seeking impleadment/intervention.

2. M/S Scientific Instrument Company Limited, the petitioner, is a company duly incorporated under the Companies Act. Proceedings u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act No. 51 of 1993) (hereinafter referred to as the Act) were initiated by the Bank of India (respondent No. 1) against the petitioner. The aforesaid proceedings were

initiated before the Debts Recovery Tribunal at Jabalpur. However, with the creation of the Debts Recovery Tribunal at Allahabad the said proceedings were transferred to Allahabad and were registered as T.A. No. 1710 of 2000. The total amount for which the application was made was to the tune of Rs. 8,65,60,554.42 paise plus interest and cost as per the ledger outstanding for the various cash credit, term loans and other accounts of the petitioner, as on 30.03.2000. During the pendency of the aforesaid proceedings a settlement is said to have been proposed between the parties in terms whereof a sum of Rs. 5.65 crores was required to be paid by the petitioner Company after the sale of various properties which were charged with the Bank. The Bank vide letter dated 14.02.2002 communicated: its acceptance to the aforesaid proposal of settlement on the conditions that were specified in the letter itself. However there was specific stipulation that in case the petitioner commits default in payment of the complete agreed amount within the time specified the Bank's claim u/s 19 of the Act shall stand decreed or allowed without contest. On the strength of the aforesaid settlement an application was filed before the Debts Recovery Tribunal and accordingly an order dated 19.03.2002 was passed in terms of the aforesaid compromise. It was specifically specified that the said compromise would be incorporated and shall form part of the order of the Debts Recovery Tribunal dated 19.03.2002.

3. It is apparent from the record that the terms of the settlement could not be honoured by the petitioner for certain reasons which according to the petitioner were beyond its control. However, the Bank moved an application on 28.08.2002 before the Debts Recovery Tribunal being application No. 139 of 2003 for issue of a recovery certificate to the tune of Rs. 8.65 crores with interest and cost on the ground that the petitioner has failed to make deposit of the settled: amount within stipulated time. While the aforesaid application was still pending the Bank moved another application before the Debts Recovery Tribunal dated 11.11.2003 seeking permission to sell the charged property situate at Mumbai and further to restrain the petitioner from transferring the pledged properties during the pendency of the said proceedings. On the application for injunction filed by the Bank an order dated 20.02.2004 was passed and the petitioner was restrained from selling any charged property till the decision of the application of the Bank.

4. The petitioner then moved an application on 21.04.2004 with the prayer that the order dated 20.02.2004 be modified and the petitioner be permitted to sell the properties situate at Chennai. Both the applications for permission to sell the properties- one filed by the Bank in respect of the properties situate at Mumbai and the other filed by the petitioner in respect of the properties situate at Chennai, were decided by the Debts Recovery Tribunal by means of order dated 31.05.2004 and permission was granted for sale of properties of both the places i.e. Mumbai and Chennai on conditions stipulated in the order. However, the Bank being not satisfied with the said order another application dated 09.07.2004 for modification of the order dated 31.05.2004 and for permission to sell the properties by public auction and by private negotiations. The application filed by

the Bank dated 09.07.2004 has been allowed by the Debts Recovery Tribunal by order dated 17.08.2004 and sale of the property situate at Mumbai has been permitted by public auction.

5. The petitioner objected to public auction by way of application dated 26.08.2004 with the prayer that the original application of the Bank for issue of recovery certificate in terms of the original application itself may be decided first and till then the public auction may be kept in abeyance. The Debts Recovery Tribunal by means of order dated 31.08.2004 rejected the application of the petitioner and deferred the hearing of the application for issuance of recovery certificate till the completion of the auction sale.

6. Feeling aggrieved by the order dated 31.08.2004 the petitioner filed an appeal u/s 20 of the Act before the Debts Recovery Appellate Tribunal, Allahabad which was numbered as Appeal No. 446 of 2004. Along with the appeal the petitioner also filed an interim stay application. The interim application so filed by the petitioner was rejected vide order dated 23.09.2004. Feeling aggrieved the petitioner filed Civil Misc. Writ Petition No. 41217 of 2004. The Hon"ble High Court was pleased to pass an interim order in the said writ petition providing that the auction in respect of the property situate at Mumbai may take place but the same shall not be confirmed and in the meantime the application No. 419 of 2003 be decided Accordingly the auction of the property situate at Mumbai was made for Rs. 2 crores 50 thousand. However, the auction sale in that regard was not confirmed in view of the interim order passed by this Court.

7. Civil Misc. Writ Petition No. 41217 of 2004 was ultimately disposed of with a direction upon the appellate tribunal to decide the appeal filed by the petitioner and during this period the money fetched in the auction was directed to be invested in fixed deposit receipts with a Bank.

8. Since the Tribunal was proceeding to pass orders with regard to confirmation of sale the petitioner filed another Civil Misc. Writ Petition No. 43 of 2005 under Article 226 of the Constitution of India. The writ petition so filled by the petitioner was disposed of with a direction upon the appellate tribunal to decide the appeal No. 446 of 2004 on the next date fixed or within one week and further the confirmation of sale of the property was stayed till such decision. By means of order dated 17.03.2005 the appellate tribunal has dismissed the appeal filed by the petitioner. Subsequent to the order dated 17,03.2005 the auction sale has also been confirmed vide order dated 30.03.2005. It is against the order dated 17.03.2005 as well as against the confirmation of auction sale that the present writ petition has been filed.

9. This Court while entertaining the present writ petition on 04.04.2005 passed an order that the possession in pursuance of the auction shall not be handed over provided the petition deposits a sum of Rs. 2 crores with recovery officer within 10 days. The petitioned did not comply With the aforesaid directions and moved an application for modification of the order passed by this Court.

10. In the present writ petition counter; and rejoinder affidavits have been exchanged and with the consent of the parties the present writ petition is being disposed, of at. the admission stage itself.

11. On behalf of the petitioner the basic contention raised is that unless and until a recovery certificate is issued by the Tribunal u/s 19(22) no auction of the property can take place in view of Section 25(a). It is further contended that the power conferred upon the Tribunal u/s 19(18)(e) read with Rule 25 (a) conferred a power upon the Tribunal to appoint a Commissioner only for the purpose of preparing an inventory and to enforce the sale of the property after such a recovery certificate has been issued by the Tribunal. According to the petitioner Section 19(22) and 18(e) cannot be read in a manner so as to suggest that a power has been conferred upon the Tribunal to sell the property of the borrower during the pendency of the proceedings u/s 19 i.e. even before final determination of the total amount due against the borrower. In support of the said contention the petitioner has also referred to Section 25(a) and Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993. According to the petitioner auction of the property of the borrower can be directed without final determination of amount due by the Tribunal only when the borrower admits the amount and in such cases also a recovery certificate is required to be issued.

12. On behalf of respondents it is contended that u/s 19(18)(e) of the Act power has been conferred upon the Tribunal to appoint a Commissioner for the purpose of preparation of an inventory and for sale of the property in cases where it is found fair and just, even when recovery certificate determining the final amount due has not been issued. Counsel for the respondents submits that the language of Section 19(18)(e) of the Act has to be given its natural grammatical meaning and this Court may not add words to the provision so as to restrict the scope of the said section as suggested by the petitioner.

13. So far as confirmation of sale of the auction property is concerned it is pointed out that against the Order dated, 30.03.2005 the petitioner has the remedy of appeal against the said order. In view of the judgment of the Hon'ble Supreme Court in the case of Punjab National Bank v. O.C. Krishnan and Ors. reported in [2001 (3) CLR 1, (SC)] this Court may not entertain any petition and should insist upon the petitioner to have recourse to the statutory remedy by way of appeal.

14. Lastly it is contended on behalf of the respondents that the order dated 17.08.2004 directing sale of the pledged properties situate at Mumbai and Chennai was practically a consent order and therefore the petitioner cannot be permitted to wriggle out of the aforesaid consent and challenge the same by invoking equitable jurisdiction under Article 226 of the Constitution of India.

DECISION--

The controversy in the present writ petition revolves around the interpretation of Section 19(18) of the Act. The said section reads as follows:--

"19. Application to the Tribunal.--

(18) Where it appears to the, Tribunal to be just and convenient the Tribunal may by order.

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before, the Tribunal and for the realization, management, protection, preservation and improvement of the property, the, collection of the rents and profits thereof, the application and disposal of such rents and profit's, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof."

From a bare reading of the aforesaid section it is apparently clear that the Tribunal has been conferred a power wherever it is necessary and in the interest of justice to direct preparation of inventory and for sale of the property. The language used in the said section is unambiguous and has to be read in a plain and simple manner. It is the sound principle of construction that the statute must be given its, natural meaning and word in a statute should not be brushed aside as a being inapposite surplusage. [Reference (i) Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, (ii) Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh AIR 1951 SC 395, (iii) Jugalkishore Sarraf v. Raw Cotton Co. Ltd. AIR 1955 SC 376 , (iv) Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, and (v) Union of India and Anr. v. Deoki Nandan Agarwal AIR 1992 SC 96]

15. The power conferred upon the Tribunal u/s 19(18)(e) of the Act is an ancillary power in the aid of the power u/s 17 of the Act. [Reference State Bank of Hyderabad v. Pennar Patterson Ltd. and Anr. 2003 (114) Company Cases 66] wherein it has been held as follows:--

"The power of the Tribunal under the Act to appoint a Commissioner for preparation of an inventory of the properties of the defendant is undisputed in view of the clear and unambiguous provisions contained in Section 19(18)(e) and jurisdiction of other courts, excepting the Supreme Court and High Court exercising jurisdiction under Articles 226 and 227 is also ousted u/s 18 of the Act in relation to matters specified in Section 17. Section 17 empowers a Tribunal to exercise on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for

recovery of debts due to such banks and financial institutions. The ancillary power of the Tribunal to appoint a Commissioner for preparation of an inventory of the properties is in aid of the power of the Tribunal u/s 17."

16. Thus the power conferred upon the Tribunal u/s 19(18)(e) of the Act being an ancillary power in aid of main power u/s 17 of the Act this Court has no hesitation to hold that such a power can be extended for directing sale of the property of the borrower even before issuance of the recovery certificate in case where the Tribunal finds it just and necessary. Such a power has been expressly conferred in order to safeguard the interest of the Banks and Financial Institutions inasmuch as there may be cases where the entire property of the borrower may be wasted/destroyed: or transferred/encumbered during pendency of proceedings which may result, in no money in fact being recovered from the borrower under the final determination of the amount due to the Bank/Financial Institutions after adjudication of application by the Tribunal. It is for safeguarding such a situation and; in order to ensure that the power of Tribunal u/s 17 is not rendered a mere paper transaction, the legislature has stepped in by providing for the ancillary power u/s 19(18)(e). The aforesaid conclusion is further supported by the reasoning that in cases where the property belonging to the borrower (i) is perishable or (ii) where there is likelihood of the value of the property being : diminish drastically, e.g. fixed plants and machineries which are lying idle for a considerable time, or (iii) where the value of the property available is such that the computation of mounting interest during, pendency of the proceeding can never be recovered after final adjudication. (Note--there are only few examples and not exhaust) the Tribunal can direct sale of the property through Commissioner in exercise of powers Hinder Section 19(18)(e) of the Act even during the pendency of the proceedings where a final recovery certificate has not been issued. The money so derived can always be adjusted under orders of the Tribunal and made subject to the ultimate success: of the. application. The contention raised on behalf of the petitioner that there is absolute bar on sale of property of the borrower u/s 19(18)(e) of the Act unless a recovery certificate has been issued, is as such repelled. Reference may also be had to the fact that Section 19(18) of the Act is verbatim copy of the provision of Order 41 Rules 1 and 3 of the CPC except that Sub-section (e) of Section 19(18) of the Act has been specifically added by the legislature to the Recovery of Debts Due to Banks and Financial Institutions Act, 1995. The purpose for conferring such a power upon the Tribunal is obvious. As already noticed hereinabove the power is ancillary and in aid of the power of the Tribunal u/s 17 of the Act i.e. to ensure speedy recovery of the dues to the banks and other financial institutions.

17. A word of caution may be added at this stage that power to direct sale of the property of the borrower u/s 19(18)(e) of the Act has to be exercised by the Tribunal only where it appears just and necessary. The power being drastic must be exercised with utmost caution.

18. So far as the power under Rule 12(5) of the Rules is concerned suffice it to

point out that the aforesaid provision takes care of the situation where the borrower admits the liability and therefore it is altogether a different situation which does not in any way affect or control the power of the Tribunal in proceedings u/s 19(18)(e) of the Act where the, borrower may not admit the liability and contest the proceedings.

19. Even otherwise in the facts of the present case it is admitted on the record that the petitioner in terms of the compromise entered into between the parties earlier had agreed to. pay a sum of Rs. 5.65 crores and as a matter of fact the Tribunal disposed of the application in terms of the compromise. Subsequently the petitioner as well as the Bank moved two separate applications seeking permission to sell the pledged properties. The petitioner prayed for permission to sell the properties situate at Chennai while the Bank prayed for sale of the properties situate at Mumbai. The Tribunal vide order dated 17.08.2004 permitted the petitioner as well as the Bank to sell the properties in respect whereof the applications had been filed. In view of the aforesaid it is established that the petitioner himself had agreed for sale of the properties earlier and now for some reasons has raised objection to the order permitting sale of the property by the Tribunal.

20. The appellate tribunal in such circumstances rightly dismissed the appeal filed by the petitioner after recording a finding that in the facts and circumstances of the case the Tribunal had jurisdiction to pass order u/s 19(18) (e) of the Act for sale of the property of the petitioner situate at Mumbai even when no recovery certificate has been issued.

21. So far as illegalities and infirmities pointed out by the petitioner with regard to procedure adopted in respect of auction sale as well as against the order of confirmation of sale dated 30.03.2005 are concerned suffice it to point out that the petitioner has efficacious alternative remedy by way of appeal under the Act of 1993 before the appellate tribunal. This Court in view of the judgment of the Hon"ble Supreme Court in Punjab National Bank v. O.C. Krishnan and Ors. reported in [2001 (3) CLR 1 (SC)] is not inclined to consider the prayer made in that regard.

22. In view of the aforesaid the writ petition is dismissed. Interim order, if any, stands discharged.