(2006) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15 of 2006

Shyama Devi Chourasia APPELLANT

Vs

State Bank of India and Another RESPONDENT

Date of Decision : 13-03-2006

Acts Referred:

Income Tax Rules, 1962 — Rule 61, 61B

Citation : (2006) 03 MP CK 0019

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Kishore Shrivastava, Satish Agrawal, Manish Chourasia and Ankur Shrivastava, for the Appellant; Rajesh Mehdiratta and Neeraj Begad, for the Respondent

Judgement

Arun Mishra, J.—Petitioner Judgment debtor in this writ petition has assailed the correctness of the orders (P.1, P.2 and P.3) passed by the Debt Recovery Appellate Tribunal, Recovery Officer and Debt Recovery Tribunal respectively.

2. It is not in dispute that State Bank of India had filed the original application before DRT which was allowed in which the recovery certificate was ordered to be issued on 21.11.2000. The said order passed by the DRT adjudicating the original application has attained finality is not in dispute. Subsequently, the auction of property was started.

3. Recovery certificate was issued for a sum of Rs. 19,48,290.70 along with interest pendente lite and future rate was specified in the contract as per Bank as 16.5%. In the execution first sale of the property took place on 28.7.2001, as the full amount was not recovered second time auction was made on 22.10.01 and third auction was held on 31.10.03. Correctness of the Ist land IInd auction has not been assailed in this writ petition. Petitioner in this writ petition has assailed the third auction and the non settlement as per RBI guidelines (P.22) dated 29.1.2003.

4. It appears that acting upon the aforesaid guidelines Bank had offered to the judgment debtor that in case Rs. 15,84,934.72 was deposited, the acceptance of which , offer was to be communicated by 30th April, 2003, Acceptance of the said offer was communicated, however, with condition petitioner has prayed that Rs. 14 lacs which was already realized by the Bank by that time should be treated in the share of the petitioner. Amount of Rs. 15,84,934.72 was not agreed to be deposited as demanded by the Bank. Consequently the offer was rejected vide communication (R.3) dated 21.4.2003; thereafter the auction of the property was held on 22.10.03 and 31.10.03.

5. The objection was raised by the petitioner that amount ought to have been settled including the amount which was in deposit as per the RBI guidelines which was to be taken into consideration towards 25% of the amount, as such insistence of the Bank that further amount of Rs. 15,84,934.72 to be deposited was not as per the RBI guidelines, thus, the petitioner was entitled for settlement as per offer of the Bank by inclusion of the amount which was already in deposit with the Bank on the date on which account was declared as NPA, consequently the third auction which was held was illegal and the Bank be directed to settle the account in terms of the offer and RBI guidelines.

6. The stand of the Bank was that 25% of the outstanding amount was required to be deposited as per offer made which was not deposited, hence, there was non acceptance of the offer by the judgment debtor, It is also submitted that RBI has clarified the aforesaid circular (P.22) dated 29.1.03 on 7.10.03 which forms part of letter (P.7) dated 11.11.03 filed by the Bank with the reply same is as Annexure (A.1/ 1) to the reply at page 64 of the petition in which it was mentioned. that guidelines issued by RBI are not applicable to the cases where decree/ order has been passed by the Court/Tribunal, it is submitted that the final order was already passed by the DRT in 2000, thus, the circular (P.22) dated 29.1.2003 was not applicable in the case of the petitioner, as such no settlement could have been made as per the aforesaid guidelines, even otherwise the offer which was made was not accepted by the judgment: debtor, as such the auction which was held was proper, hence, no case for interference was made out. There were several other objections made such as to the non deposit under Rule 61 of the second schedule of the Income Tax Rules which amount was necessary to be deposited, thus, the challenge to the auction is misconceived, hence, no case for interference is made out.

7. The Recovery officer, DRT and DRAT have rejected the prayer made by the petitioner as per orders (P.1, P.2 and P.3). Consequently, this writ petition has been preferred.

8. Shri Kishore Shrivastava, learned. Sr. counsel with Shri Satish Agrawal, Shri Manish Chourasia and Shri Ankur Shrivastava, Adv. for petitioner, has submitted that the offer was made by the Bank in April, 2003. Once the offer was made acting upon the guidelines (P.22) and the Bank has proposed the settlement on 28.2.2003, it was binding. He has submitted that clarification was issued by the

RBI subsequently on 7.8.03 but before that proposal was already made in February, 2003 which was accepted by the petitioner, hence, there was concluded contract to settle the dues which ought to have been acted upon. He has further submitted that the recovery proceedings are bad in law as rate of interest was not specified in the final order which was passed by the DRT or in the recovery certificate, thus, it was not clear how much amount was due for which the recovery was pending, it ought to have been ascertained before the auction was held so as to find out whether auction was necessary. He has further submitted that if Bank was ready to settle the matter as per guidelines the petitioner is willing to make payment. He has further submitted that certain objections which were raised have not been considered by the Recovery Officer, DRT in the first appeal and by DRAT in the second appeal.

9. Shri Rajesh Mehdiratta and Shri Neeraj Begad, learned Counsel appearing on! behalf of respondents, have submitted that the order passed by the DRT has attained finality. RBI guidelines which are relied upon are not applicable in the case where the order has already attained finality as apparent from circular 7.10,03 issued by the RBI referred to the circular dated 11.11.03 issued by the Bank. There was non acceptance of the offer by the petitioner if it is treated to be an independent offer by the Bank, thus, the orders passed are proper. In addition the petitioner has failed to deposit the mandatory amount under Rule 61(B) of second schedule of the Income Tax Rules, hence, objection raised with respect to the third sails was not maintainable.

10. I have heard the learned Counsel for the parties, It is not in dispute at bar that order passed on 21.11.2000 by the DRT in O.A. has attained finality much before the RBI guidelines (P.22) were issued on 29.1.2003. The aforesaid guidelines have to be read in the context of the clarification issued on 7.10.2003 by the RBI. Circular dated 11.11.03 containing clarification filed by the Bank is quoted below:

All Segments: NPA Management Scheme for One Time Settlement of NPAs (RBI OTS - 2003)

We refer to our Circular letter No. CirCo/ADV/291/02-03 dated 10.02.2003. In this connection, we now reproduce relevant portion of fax message No. DBOD. BP.587/21.01.040/2003/04 dated 07.10.2003 received from RBI for your information and compliance:

a) Reserve Bank''s guidelines on compromise settlement of chronic NPAs issued in respect of public sector banks on 28th January 2003 states that the guidelines cover the cases pending before Courts/DRTs/BIFR. Subject to consent decree being obtained.

b) The Reserve Bank has taken a stand that the guidelines are not applicable to the cases, where already a decree/order has been passed by the Court/Tribunal.

c) The Reserve Bank has also taken a stand that the guidelines do not cover the decreed accounts as the order/decree already available in favour of the bank which could be executed by the banks straight away and they need not resort to the compromise settlement as contemplated in guidelines.

2. Please taring the contents of this Circular letter to the notice of all the staff concerned working at your branch/office.

11. It is apparent from the bare reading of Clause (b) of the aforesaid circular that guidelines (P.22) are not applicable to the cases where already decree/order has been passed by the Court/Tribunal, hence, no settlement could have been prayed or made as per the aforesaid RBI guidelines (P.22) nor it could be ordered after the clarification dated 7.10.03 was issued.

12. Coming to the submission of Shri Kishore Shrivastava, learned Sr. counsel for the petitioner that offer on being accepted constituted concluded contract, hence it was bound to be acted upon by the Bank. Admittedly the offer which was made by the Bank was to deposit further amount of Rs. 15,84,934.72 out of outstanding amount which amount was not deposited. Petitioner had prayed for adjustment of Rs. 14 lacs which was deposited in his account out of sale proceeding auction held earlier. In case petitioner wanted to treat the offer as an independent offer, petitioner ought to have deposited amount of Rs. 15,84,934.72, however, offer made by the Bank was not accepted, there was no consensus ad idem reached between the parties with respect to the, amount to be settled and paid. Parties were under the wrong impression that RBI guidelines were applicable which were not applicable as apparent from the aforesaid clarification.

13. With respect to the submission raised by Shri Kishore Shrivastava, Sr. counsel for petitioner that amount of interest was not quantified in the recovery certificate, this question has not been dealt with in the orders, thus, it cannot be raised in this writ petition for the first time. Petitioner''s counsel has also prayed for liberty to raise objection as the calculation of the interest. As agreed by Shri Rajesh Mehdiratta, learned Counsel for respondent No. 1 Bank, in case petitioner is dissatisfied by circular can always raise the objection as to the correctness of the calculation of the interest, petitioner is at liberty in case this objection has not been dealt with already by the Recovery Officer/ DRT or DRAT. I find no ground to make interference in this writ petition. Same is hereby dismissed. Interim order passed by this Court stands vacated. Parties to bear their own costs as incurred.

