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**(2008) 07 OHC CK 0009**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 02 of 2008**

Smt. Padmashree Das

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 29-07-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21

**Citation :** (2008) 07 OHC CK 0009

**Hon'ble Judges :** B.S. Chauhan, C.J.;B.N. Mahapatra, J

**Bench :** Division Bench

**Advocate :** R.H. Mohanty and D.P. Mohanty, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

B.S. Chauhan, C.J.—This writ petition has been filed challenging the impugned order dated 18.9.2006 passed by the. Debts Recovery Tribunal, Orissa, Cuttack in O.A. No. 95 of 2001.

2. The facts and circumstances giving rise to this petition are that Respondent No. 2 - M/s. Unique Alluminium (P) Ltd. is a Company. Petitioner and Respondent No. 3 have been its promoter's Directors. Petitioner is the Director of the same. A term loan had been advanced to the Company by the Orissa State Financial Corporation:

Respondent No. 4. As the loan was not repaid, a case was filed against the Company and its Directors. The suit was decreed vide judgment and order dated 18.9.2006 (Annexure-2) for recovery of Rs. 54,44,450.56 with pendente lite and future interest.

3. That being aggrieved the Petitioner preferred an appeal and made an application u/s 21 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for waiving the pre-deposit condition. The application for waiver was considered and Petitioner was asked to deposit a sum of Rs. 5 lakhs.

She did not deposit the said amount, rather filed a writ petition No. 10024 of 2007 before this Court. This Court disposed of the said writ petition asking the Petitioner to deposit the said amount of Rs. 5 lakhs in two equal instalments, without waiving the entire amount. As not even the first instalment was deposited the Appellate Tribunal vide its order dated 6.11. 2007 (Annexure-1) dismissed the appeal. Hence this petition on the ground that statutory provisions providing for depositing the decretal or part thereof amount are arbitrary and onerous.

4. Learned Counsel for the Petitioner submitted that the Petitioner is a handicap widow and therefore, she is not in a position to make the deposit even the reduced amount of Rs. 5 lakhs. In fact, the Tribunal vide its judgment and order dated 18.9.2006 has allowed the application for recovery of Rs. 54,44,450.56 with interest " 12% per annum from the date of application till the date of realization with costs etc. The said amount was to be recovered jointly and severally from three Defendants before the Tribunal. The Petitioner had been one of those Defendants. Considering the huge decretal amount and the fact that the appellate tribunal has reduced the pre deposit amount to the tune of Rs. 5 lakhs only, and Petitioner earlier approached this Court and did not deposit even the first instalment as per the order of this Court, we do not see any justification for interference in writ jurisdiction.

5. Learned Counsel for the Petitioner, however, submitted that on the averments made by the Petitioner and in such eventuality there is no requirement for the Petitioner to deposit any amount, as it was beyond her capacity to make the payment. The issue involved here has already been examined by the Appellate Tribunal and this Court after assessing all the factual situations the amount of pre-deposit had been reduced to Rs. 5 lakhs, and this Court allowed the Petitioner to deposit the said amount in two equal instalments. The amount so reduced has been in fact the substantial relief. Thus, it is not open to the Petitioner to submit that the order passed by the appellate Tribunal directing payment of Rs. 5 lakhs was arbitrary and unreasonable. The order dated 6.11.2007 is not under challenge as it had been the subject matter of the earlier writ petition. Now, in these facts situation we are very much doubtful even about maintainability of this petition also.

6. We do not find any force in the submissions advanced on behalf of the Petitioner that statutory provisions provide for arbitrary and onerous condition of pre-deposit.

7. There can be no dispute to the legal proposition that appeal is a statutory remedy and the same is maintainable, provided the statute enacted by a competent legislature provides for it. Further, there can be no quarrel that right of appeal cannot be absolute and the legislature can put conditions for maintaining the same.

8. In *Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive)*,

Bombay, , the Hon"ble Apex Court held as under:

Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. The purpose of the Section is to act in terrorem to make the people comply with the provisions of law.

9. Similar view has been reiterated by the Hon"ble Apex Court in the *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, .

10. While dealing the case in *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, the Supreme Court placed reliance upon its "earlier judgment in *Seth Nand Lal and Another Vs. State of Haryana and Others*, , wherein it has been held that "right of appeal is a creature of statute and here is no reason why the legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory", the Court cannot interfere.

11. In *The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.*, , the Apex Court held that right of appeal, though statutory, can be conditional/qualified and such a law cannot be held to be violative of Article 14 of the Constitution. A appeal cannot be filed unless so provided under the statute and when a law authorizes filing of an appeal, it can impose conditions as well.

12. There may be a statutory provision, which may cause great hardship or inconvenience to the party concerned or an individual, but the Court has to enforce it in full rigor.

13. It is a well settled principle of interpretation that hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the Statute. (Vide *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, ). If the language is plain and admits of only one meaning, it has to be given effect to even if it leaps to hardship or possible injustice. (Vide *Col. D.D. Joshi and Others Vs. Union of India (UOI) and Others*, ).

14. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, it was observed by the Constitution Bench of the Supreme Court that if there is any hardship, it is for the Legislature to amend the law, but the Court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. As is said, "dura lex sed lex" which means "the law is hard but it is the law." Even if the statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense as that is

the first principle of interpretation.

15. In *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, Constitution Bench of the Apex Court held that "inconvenience is not" a decisive factor in interpreting a statute.

16. In *Martin Burn Ltd. Vs. The Corporation of Calcutta*, , the Hon"ble Supreme Court while dealing with the same issue observed as under:

A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.

17. Similar view has been reiterated by the Hon"ble Supreme Court in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, .

18. Therefore, it is evident that hardship to an individual cannot be ground of not giving the effective and grammatical meaning to every word of the provision, if the language is unequivocal.

19. In the instant case the amount of pre-deposit had substantially been reduced and the Petitioner approached this Court earlier, got relief but did not avail the opportunity to deposit the same even in instalments, we do not consider it to be so arbitrary where our discretion has to be exercised in her favour.

20. In such a fact situation, the Court cannot lose sight of the fact that it is a case of recovery of the public money. Petitioner does not deny the factum of taking loan or about the non-payment thereof. Petitioner has full opportunity to plead her case before the Tribunal. She did not avail the opportunity of raising her grievances before the appellate forum.

21. In such circumstances, we do not consider it to be a fit case warranting interference in extra ordinary writ jurisdiction.

22. Petition is accordingly dismissed.

B.N. Mahapatra, J.

23. I agree.