

(2006) 01 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10097 of 2005

Subhash Chand and Others	Vs	APPELLANT
The Allahabad Bank and Others		RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Companies Act, 1956 — Section 529A
Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 6, 6(5)
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 2, 4, 5(3), 5(4), 5(5)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21, 26(2), 30

Citation : (2007) 3 BC 139 : (2006) 2 RLW 1366 : (2006) 2 WLC 355

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : P.C. Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—This writ petition is directed against the order passed by the Registrar, Debt Recovery Tribunal dated 7.12.2005.

2. Brief facts of the case are that on 30th March, 2001, a certificate was given by the Recovery Officer against which an appeal has been filed by one of the party which is pending before the Debt Recovery Tribunal, New Delhi. In that appeal an application was filed by the petitioners for impleadment since the summons were not served upon the petitioners.

3. The said application was decided by the Debt Recovery Tribunal stating that the final order of impleading the party shall be given at the time of final hearing of the appeal.

4. On 9.11.2005, the recovery officer passed an order ex parte against which an application for re-hearing the matter was filed on 14.11.2005 but the recovery officer refused to hear the application and the same was rejected.

5. Aggrieving against the aforesaid orders, the petitioners filed an appeal before the Debt Recovery Tribunal, Jaipur u/s 20 of the Recovery of Debt Due to Banks And Financial Institutions Act, 1993 on 25.11.2005. The Registrar, Debt Recovery Tribunal refused to register the appeal before the Debt Recovery Tribunal for hearing and point out certain objections regarding the court fees and the certified copy of the annexures.

6. After hearing the arguments, the Registrar passed the order dated 7.12.2005 whereby refused to register the appeal. This refusal is challenged by the petitioners by way of this present writ petition.

7. Learned Counsel for the petitioners submitted that the order of refusal to register the appeal on the ground that appeal preferred against the interlocutory order was not maintainable without affixing adequate court fee.

8. Learned counsel for the petitioners referred a provisions of Rule 72 and submitted that these provisions are not applicable so far the fees payable under head 5 is not attracted because the recovery officer no where found any amount payable under orders in question. Thus, the Registrar has wrongly interpreted the law. The orders dated 9.11.2005 and 14.11.2005 being interlocutory in nature and as such the fees payable is Rs. 250/- only.

9. Learned Counsel for the petitioners also challenged the rules which were amended by Amending The Rules w.e.f. 21.1.2003 and that u/s 20 of the Act, appeals are envisaged to the appellate tribunal having jurisdiction in the matter. A meaningful reading especially Clause 6 of Section 20 and Sub-clause 1 envisages the filing of the appeal before the Tribunal. It did not speak of the filing of the appeal and dealing with the same by the Registrar. In any case, as per the principles of natural justice, when once an appeal is filed, it had to be dealt with as per the provisions of the Act. The Debt Recovery Appellate Tribunal Procedure Rules, 1994 envisages the filing of the appeal before the Registrar of the Tribunal but Rule 6 envisages the scrutiny of the appeal by the Registrar of the Tribunal. Sub-rule 5 of Rule 6 envisages the appeal to be filed against the orders of the Registrar which could be heard in chamber of the Presiding Officer. Thus, a right of hearing has practically been denied and the order passed by the Registrar is in violation of principles of natural justice as the final order can only be made by the Appellate Tribunal itself and not by the Registrar.

10. Learned Counsel for the petitioners further referred Section 36 of the Act and Clause 2h of the 1994 Rules and Section 262.

11. Having considered the submissions made on behalf of the petitioners and upon careful perusal of the order impugned dated 5.12.05, it appears that the petitioners have raised all objections which are raised here in this writ petition and the Registrar has considered the submissions made on behalf of the petitioners as the petitioners have categorically stated in the writ petition that the order impugned dated 9.11.2005 and 14.11.2005 are interlocutory in nature therefore only Rs. 250/- is payable as court fee. The Registrar has considered

this aspect that the petitioner challenged the order passed by the recovery officer and prayed for quashing and setting aside the order dated 9.11.2005 and 14.11.2005 and the appeal is filed by the petitioner u/s 30 of the Recovery of Debts Due to Banks and Financial Act, 1993 and the petitioner himself is a judgment debtor and the amount of debt is also determined as Rs. 69,50,761/- and certificate to this effect was also issued by the Tribunal therefore, in such circumstances, it cannot be said that the orders under challenge are interim in nature and as per Rule 5 for registering the appeal Rs. 33,000/- is to be paid as court fee and the matter was put up on 15.12.2005.

12. The petitioners without complying with the order passed by the Registrar has challenged this order dated 5.12.2005 by way of this present writ petition.

13. I have also perused Sections 20 and 21. Section 20 deals with filing of appeal to the Appellate Tribunal whereas Section 21 speaks about deposit of amount of debt due on filing appeal and 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.

14. Section 1919 provides that "where a certificate of recovery is issued, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of Section 529A of the Companies Act.

15. Here, in the instant case, the certificate of recovery is issued by the Tribunal u/s 19.

16. Under the Debts Recovery Tribunal Procedure Rules, 1993, definition clause is given. The definition of Registrar is given under Rule 2g by which "Registrar" means the Registrar of the Tribunal and includes the Assistant Registrar to whom the powers and duties of the Registrar may be delegated. As per Rule 4, procedure for filing application is given and such application can be presented before the Registrar and the Registrar under Rule 5 have to scrutiny the application and if the application is found in order it shall be duly registered and given serial number. If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit.

17. Here, in the instant case also while exercising power vested under Rule 53, upon scrutiny it is found that the application is not properly stamped and proper court fee has not been paid and therefore, the time was granted to rectify the defect. The petitioner without rectifying the defect pointed out by the Registrar preferred this present writ petition and the Registrar has the power under Sub-

rule 4 of Rule 5 that if the concerned applicant falls to rectify the defect within the time allowed in Sub-rule 3, the Registrar may by order and for the reasons to be recorded in writing, decline to register the application.

18. As the Registrar in the Instant case has given time to rectify the defect and has not passed any order under Sub-rule 4 of Rule 5 even otherwise also if any order is passed by the Registrar under Sub-rule 4 of Rule 5 an appeal under Sub-rule 5 of Rule 5 against the order of the Registrar under Sub-rule 4 shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final and it appears that Just to avoid for making the payment of requisite fee the petitioner preferred this writ petition although the petitioner could have challenged the order passed by the Registrar before the Presiding Officer under Sub-rule 5 of Rule 5.

19. Consequently, in view of the discussions and observations made here in above, I find no force in the writ petition and the same is hereby dismissed being devoid of merit.