(2000) 07 DEL CK 0168

In the Delhi High Court

Case No : C.W.P. 3635 of 1999

Surinder Mohan Nayyar APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Banks and Financial Institutions Act, 1993 — Section 17, 18, 19(22), 25, 31A
Constitution of India, 1950 — Article 226

Citation : (2000) 07 DEL CK 0168

Hon'ble Judges : Dr. Arijit Pasayat, C.J;Manmohan Sarin, J

Bench : Division Bench

Advocate : Mr. K.C.Mittal, for the Appellant; Mr. S.K. Kaul and Mr. Rakesh Batra, for the Respondent

Judgement

Arijit Pasayat, CJ.

1. The only question that is mooted in the writ petition is whether the Debt Recovery Tribunal (in short the "Tribunal") has jurisdiction to entertain execution proceedings in respect of decrees passed prior to coming into force of the Recovery of debts due to Banks and Financial Institutions Act 1993 (in short the "Act").

2. Learned counsel for the petitioner submitted that it is impermissible. Learned counsel for the respondents with reference to Sections 17, 18 and 25 of the Act submitted that it is permissible. With reference to Sections 17 and 18 of the Act, the Apex Court in Allahabad Bank Vs. Canara Bank and Another, observed as follows:-

It is clear from Section 17 of the Act that the Tribunal is to decide the applications of the Banks and Financial Institutions for recovery of debts due to them We have already referred to the definition of ''debt'' in Section 2(g) as amended by Ordinance 1/2000. It includes "claims" by Banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise. In this context Section 31 of the Act is also relevant. That Section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the word ''proceedings'' in Section 31 includes an ''exaction proceedings'' pending before a Civil Court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of "in the same manner" as applications u/s 19."

3. It was held that jurisdiction of the Tribunal in regard to adjudication is exclusive. The Tribunal alone is to decide matters relating to recovery of debts due to banks or financial institutions. Once Tribunal passes an order that the debt is due, the Tribunal has to issue certificate u/s 19(22) (formerly u/s 19(7) to the Recovery Officer for recovery of the debt specified in the certificate. It was Therefore held that provisions of Sections 17 and 18 of the Act are exclusive, so far as the question of adjudication of the liability of the defendant is concerned. In any event, Section 31-A has been introduced in the Act by Section 14 of the Amendment Act 2000 with effect from 17-1-2000. The said provision reads as follows:-

31A- Power of Tribunal to issue certificate of recovery in case of decree or order not executed:-

(1) Where a decree or order has been passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate of recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act."

Above being the position the inevitable conclusion is that the Tribunal has jurisdiction to deal with execution, proceedings initiated prior to introduction of the Act.

4. It is stated by learned counsel for the petitioner that he wants to move an application under Order 9 Rule 13 of the CPC 1908 (in short the CPC). We do not express any opinion regarding the maintainability of the petition, as the forum where it filed shall consider that aspect.

5. Petition stands disposed of accordingly.

