

(1996) 02 CAL CK 0025
In the Calcutta High Court
Case No : C.O. No. 1985 of 1995

Sushil Kumar Jaiswal and another

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 20, 21

Citation : AIR 1996 Cal 323 : 100 CWN 627

Hon'ble Judges : N.K. Bhattacharyya, J

Bench : Single Bench

Advocate : Abhijit Chatterjee and Supriya Ranjan Saha, for the Appellant; Utpal Bose and Bidyut Kumar Banerjee, for the Respondent

Judgement

1. The main revisional application is taken up for hearing along with the application for interim order in view of the Court's order dated 6-2-1996. Both the matters are disposed of by the following order.

2. Heard the submissions of the learned Advocate for the petitioners, Mr. Abhijit Chatterjee appearing with the learned Advocate Mr. Supriya Ranjan Saha and the learned Advocate for the opposite party No. 1, Bank of India, Mr. Utpal Bose appearing with the learned Advocate Mr. Bidyut Kumar Banerjee. Mr. Banerjee undertakes to file his Vakalatnama on behalf of the Bank of India in course of this day. Let that undertaking be recorded. Considered the materials on record. The Power filed in Court just now be kept on record.

By the instant application under Art. 227 of the Constitution of India, the petitioners have challenged the judgment and/or final order passed by the Debts Recovery Tribunal on 3rd August, 1995, in Original Application No. 86 of 1994, by which the Tribunal adjudged the petitioners as debtors and further held that the applicant-Bank is entitled to realise a sum of Rs. 10,08,889.73 from the petitioners. This judgment and/or final order has been challenged in the instant

revision under Art. 227 of the Constitution of India.

3. In this background Mr. Chatterjee contended that the Court can interfere and set aside the order passed by the Tribunal in exercise of its power under Art. 227 of the Constitution of India. For the purpose of showing that the Court has the power to interfere under Art. 227 of the Constitution of India, Mr. Chatterjee referred to Section 18 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (which term will be referred to herein as "the Act") and also certain decisions, namely, the State of U.P. Vs. District Judge, Unnao and Others, , Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, and Raghu Nandan v. W.B. Board of Secondary Education, reported in 1992 (1) CLJ 52. Mr. Chatterjee submitted that those decisions have been referred to for the purpose of showing in principle that in the appropriate cases the High Court can interfere with the order passed by the Tribunal under Art. 227 of the Constitution of India.

4. Mr. Bose on the other hand contended that there is no dispute that the Court has the power under Art. 227 of the Constitution of India to interfere with the order passed by the Tribunal in an appropriate case but the same power or application under Art. 227 of the Constitution of India cannot be converted to a power in appeal. In other words, Art. 227 of the Constitution cannot be converted as an appellate power. For that Mr. Bose relied on a decision of the Apex Court in the case of Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, . Mr. Bose further contended that Art. 227 of the Constitution of India should not be exercised ordinarily and it must be exercised very sparingly in an appropriate case. Mr. Bose further submitted that the Act provides in Section 20 the provision for appeal and by-passing that Art. 227 cannot be resorted to as an alternative remedy.

5. Heard the submissions of the learned Advocate for the parties and considering the materials on record, it -appears that admittedly this is a revision under Art. 227 of the Constitution of India challenging the judgment and/or final order passed by the Tribunal. Admittedly, there is a provision in the Act, being Section 20 providing appeal against such judgment and/or order. Admittedly, Section 18 of the Act operates as a bar of jurisdiction regarding the Courts or other alternative forum for exercising any jurisdiction, powers or authority (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17. Admittedly, the order impugned could be appealed against u/s 20 of the Act. Itw is also the admitted position that the petitioners did not prefer any appeal. There is no dispute that it is the settled law that the High Court or for that the Apex Court in exercise of its power under Article 226 or 227 of the Constitution can interfere with such an order. But such interference shall not amount to exercise of the appellate power. Section 20 of the Act contemplates an appeal and the scope of the appeal is much more wider than the scope under Art. 227 of the Constitution of India. That apart, Section 21 provides that where the appeal is

preferred by any person from whom the amount is due to the 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: provided that the Appellate Tribunal may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this section.

6. The petitioners did not approach the Appellate Tribunal. It clearly shows that in order to by-pass Section 21 the petitioners did not approach the Tribunal in time. No doubt, Section 18 of the Act provides the power of the High Court or for that the Apex Court regarding exercise of jurisdiction under Art. 227 of the Constitution of India. But that provision has not been made for the purpose of avoiding another provision which affords wider relief to the petitioners. The scope of Section 20 of the Act, that is, the appeal is much more wider than the scope and ambit of Art. 227 of the Constitution of India. What can be done directly that cannot be done indirectly. In order to avoid the rigor of Section 21 of the Act, the petitioners have resorted to an exercise of the revisional jurisdiction under Art. 227 of the Constitution of India. That cannot be permitted.

7. Mr. Bose has rightly pointed out by referring to the case of Miss Maneck Custodji Surjarji (*supra*) that the power and exercise of the Art. 227 of the Constitution should" be used very sparingly and that should not be allowed to be used as an appellate power.

8. The petitioners in this case have attempted to convert the power under Art. 227 of the Constitution of India for the exercise of the power u/s 20 of the Act. The petitioners could come before this Court against an order passed u/s 20 of the Act, that is, against an appellate order. As because nothing is provided in the Act specifying any higher forum against the appellate order and in such circumstances, it was open for the petitioners to approach this Court either under Art. 226 or Article 227 of the Constitution of India and to convince this Court that they had no other alternative: remedy. But in the instant case there is alternative remedy. It is true that the alternative remedy shall not operate as a bar always but in certain cases alternative remedy shall operate as a bar. It is a case like this where alternative remedy will operate as a bar.

9. In such view of the matter, I am of the opinion that this revisional application should not be allowed and this revisional power under Article 227 of the Constitution of India should not be exercised in order to interfere with an order or judgment of the Appellate Court, rather the Tribunal there.

10. For the aforesaid reasons, I dismiss this revisional application and vacate all interim orders, if there be any. There will be no order as to costs.

11. Petition dismissed.