
(2010) 12 CAL CK 0043
In the Calcutta High Court
Case No : C.O. No. 3608 of 2009

UCO Bank and Others

APPELLANT

Vs

Narayan Chandra Ghosh

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 189(6)
Constitution of India, 1950 — Article 14, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(4), 17, 17(2), 18

Citation : (2011) 1 CHN 65

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Saptansu Basu, Ananya Das and Amalendu Mitra, for the Appellant;
Pinaki Ranjan Mitra and Joydeep Basu, for the Respondent

Judgement

Soumitra Pal, J.—In this application under Article 227 of the Constitution of India the UCO Bank, its authorised officer and its Chief Manager at Buxarah Branch, - the Petitioners - have challenged the judgment and order dated 28th July, 2009 whereby the learned Debts Recovery Appellate Tribunal, Kolkata (for short the 2 "Appellate Tribunal") while allowing the application u/s 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Act" for short) had exempted the opposite party, that is the borrower, from making any further deposit for the purpose of entertaining the appeal for disposal on merits on the ground that it is beyond the statutory limit prescribed under the Act. Submission was as in Section 18(1) of the Act the legislature has consciously incorporated a condition of predeposit for preferring an appeal which has nothing to do with exercising the power u/s 13 of the Act, the Appellate Tribunal failed to appreciate that the deposit of an amount is a condition precedent for preferring an appeal and such deposit is to be made with the Appellate Tribunal and not with the Bank. Predeposit of preferring an appeal cannot be equated with the satisfaction of the debt as the predeposit will be lying

with the Appellate Tribunal subject to the pendency of the appeal which cannot be appreciated by the borrower in satisfaction of its debt. Since the language of Section 18(1) is clear and unambiguous, order impugned is not sustainable in the eye of law. Learned senior advocate had relied on the following judgments in support of his submission, which are as under:

- 1) Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others,
- 2) Kanai Lal Sur Vs. Paramnidhi Sadhukhan,
- 3) State of Rajasthan Vs. Leela Jain,
- 4) Calcutta Municipal Corporation v. Sitaram Charity Trust 1998 (2) CLJ 246.

2. Mr. Pinakiranjan Mitra, learned Advocate for the opposite party referring to Sections 13(4), 17 and 18 submitted that a conjoint reading shows that the Act postulates determination of the amount due. However, in the instant case since the amount is yet to be determined, appeal without deposit as contemplated under second proviso to Section 18 of the Act can be made. Reliance was placed on the following judgments, which are as under:

- 1) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,
- 2) Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others,
- 3) Jatindra Nath Nandi and Others Vs. Krishnadhan Nandi and Another,
- 4) Star Textiles and Industries Ltd. v. Union of India, 2008 (3) WBLR (Cal) 385;
- 5) Indrani Sen v. Subrata Mitra 2009 (1) Cal LT 512 (HC);
- 6) Kousar Begam v. Indian Bank, (Unreported)

3. The question to be considered is whether the Appellate Tribunal was justified in passing the impugned order exempting the opposite party, that is the borrower, from making any predeposit on an application u/s 18(1) of the Act for the purpose of entertaining the appeal.

4. In order to appreciate the issue it is necessary to refer to the relevant provisions in Section 18 of the Act, which are as under:

18. Appeal to Appellate Tribunal.--(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under Section 17, may prefer an appeal alongwith such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

(Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:)

(Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts

Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.)

(2)....

(Emphasis supplied)

5. As seen, Section 18(1) gives a statutory right to "any person" aggrieved by "any order" passed by the Debts Recovery Tribunal u/s 17 to prefer an appeal to the Appellate Tribunal. However, the right conferred u/s 18(1) is subject to the condition laid down in the second proviso. The second proviso postulates that "no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less," which under the third proviso may be reduced by the Appellate Tribunal to not less than twenty five per cent of the debt after recording the reasons in writing, meaning thereby there is an absolute bar to entertain an appeal unless the condition precedent, as stipulated, is fulfilled. Therefore, unless the borrower deposits with the Appellate Tribunal fifty per cent of the debt due from him or determined, second proviso bars filing of an appeal. Thus, under the second proviso to Section 18(1), unless condition precedent for preferring an appeal is fulfilled, an appeal cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and unambiguous. The meaning is plain and simple. There is no scope for any debate. Hence, regard has to be for the strict letter of law. It is to be noted that words in the statute are to be considered as being their natural meaning. In this context it is appropriate to refer to the judgment of the Apex Court in *Shamrao* (supra) wherein it has been held that "... Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used. We hold that there is no difficulty of construction." (paragraph 12)

6. The Supreme Court in *Kanai Lal* (supra) held that " ... The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise." (paragraph 6)

7. The same principle was reiterated by the Apex Court in *State of Rajasthan v. Leela Jain*, wherein it has been laid down "Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court",

(paragraph 11) The judgment in the Calcutta Municipal Corporation and Ors. v. Sitaram Charity Trust (supra), though dealing with Section 189(6) of the Kolkata Municipal Corporation Act 1980, lays down that an appeal can be entertained only on the fulfillment of the condition precedent. Therefore, in view of the second proviso to Section 18(1) of the Act, the Appellate Tribunal erred in exempting the opposite party from making any further deposit for the purpose of entertaining the appeal.

8. The other part of the argument of the opposite party, that as the amount of debt due is yet to be determined, appeal without deposit can be entertained, is not tenable if one peruses the second proviso to Section 18. The second proviso clearly stipulates that the borrower preferring appeal has to deposit fifty per cent of the debt due from him "as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less". Therefore, where the due has not been determined, the borrower while preferring appeal has to deposit fifty per cent of the debt due- from him as claimed by the secured creditor. That complete waiver, as directed in the impugned order passed by the Appellate Tribunal, is beyond the provisions of the statute is evident from the third proviso of the said section which empowers the Appellate Tribunal, after recording the reasons, to reduce the amount to not less than twenty five per cent of the debt referred to in second proviso. Hence, as the third proviso in the statute empowers the Appellate Tribunal to reduce the predeposit to not less than twenty-five per cent of the debt, complete waiver as directed in the impugned order is not permissible. The language of the second proviso is so lucid that it hardly requires any interpretation. The law laid down in paragraph 64 in *Mardia Chemicals (supra)*, relied on by the opposite party, is not applicable as therein the Apex Court had spelt out the reasons for declaring Section 17(2) of the Act as unreasonable and arbitrary and violative of Article 14 of the Constitution of India, whereas the instant case deals with Section 18 of the Act. The unreported judgment of the Madras High Court in C.R.P(PD) No. 2876 of 2008, *Kausar Begum and Ors. v. Indian Bank and Ors.*, relied on by the opposite party, is not applicable as therein Court was dealing with Section 21A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which empowers the Appellate Tribunal to waive or reduce the amount to be deposited. Besides the said judgment does not deliberate on the point under consideration in the instant revisional application. The judgment in *Star Textiles (supra)* does not come to the aid of the opposite party as, while upholding the vires of the second proviso to Section 18(1), it held that "the condition is not so onerous or oppressive or arbitrary or unreasonable...." In view of the unambiguous language of the second proviso to Section 18, the principles of law in the judgments in *Karnataka State Financial Corporation (supra)*, *Jatindra Nath Nandi (supra)* and *Indrani Sen (supra)* are not applicable since therein Courts had no occasion to deal with a similar issue.

9. Therefore, for the reasons as enumerated, the order dated 28th July, 2009 passed by the learned Debts Recovery Appellate Tribunal, Kolkata in Appeal No.

35 of 2009 is set aside and quashed. Hence, the revisional application is allowed.

No order as to costs.

Later:

10. After the judgment is delivered, Mr. Mitra, learned Advocate for the opposite party prays for stay of its operation till 4th January, 2010 which is opposed by Mrs. Das, learned Advocate for the Petitioners.

11. Prayer is considered and is refused.

12. Urgent photostat certified copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis.