
(2008) 02 AHC CK 0224
In the Allahabad High Court

U.P. State Sugar Corporation Limited and Another	APPELLANT
Vs	
Allahabad Bank and Another	RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (2008) 2 AWC 1615

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioners have preferred this writ petition against the judgment and order dated 4.1.2008 passed in T.A. No. 48 of 2002, whereby the Debt Recovery Tribunal has held that the opposite party No. 1 is entitled for recovery of Rs. 1,61,42,527.35/- with interest.

2. Sri Vinay Shanker, Advocate appearing for the Bank raised a preliminary objection regarding maintainability of the writ petition and stated that against the impugned order the petitioners have equally efficacious remedy of filing appeal u/s 20 of the Act. He, therefore, urged that the petitioners should have preferred statutory appeal instead of approaching this Court under writ jurisdiction. To strengthen his arguments, learned Counsel has placed reliance on Supreme Court decision in A.P. Foods Vs. S. Samuel and Others, Silways Travels Pvt. Ltd. and Ors. v. State and Anr. 1(2006) BC 343 and a decision of this Court in writ petition No. 17[MS] of 2008.

3. In A.P. Foods" case the Supreme Court held in paragraph 6 and 7 as under:

6. In a catena of decision it has been held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

7. In U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karamchari it

was held that when the dispute relates to enforcement of a right or obligation under the Statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in *Premier Automobiles Ltd. v. Kamlekar Shyantaram Wadke*, *Rajasthan SRTC v. Krishna Kant, Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad* and *Scooters India v. Vijai E.V. Eldred*.

4. Refuting the preliminary objection raised by the Counsel for the Bank, learned Counsel for the petitioners, Sri P.K. Sinha submitted that the alternative remedy is no bar as the objection which has been raised before the Tribunal is with regard to jurisdiction of the Tribunal itself and as such the alternative remedy is no bar. He further submits that the Tribunal has not appreciated the arguments or the case laws advanced by the petitioner's Counsel and the impugned order has been passed without dealing the objections. In support of his contention reliance has been placed by him on (1998)¹ *Omar Usman Chamadia Vs. Abdul and Another*,

5. I have gone through the judgments relied upon by the learned Counsel for the petitioners. Both the decisions are of no help to the petitioners in view of the proposition of law laid down in *Punjab National Bank Vs. O.C. Krishnan and Others*, *Punjab National Bank v. O.C. Krishnan and Ors.* wherein the Hon'ble Apex Court has held in unequivocal terms that court should refrain from exercising its jurisdiction under Article 226 or 227 of the Constitution where the statutory remedy is available. The relevant paragraph reads as under:

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

6. It would be necessary to add that in the case of *Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others*, the appellants challenged the orders of the Deputy Director of Education and District Inspector of Schools by way of a civil suit and interim injunction as prayed for the appellants was granted by the Civil Court.

Respondent No. 2 in the appeal filed an application before the Additional Civil Judge for being impleaded as a party in the suit. The learned Judge dismissed this application. Aggrieved by that order, respondents 1 and 2 challenged the orders of the Civil Judge by which he granted interim relief to the appellants, the order rejecting the application for impleadment and also for quashing of the plaint, before the High Court by way of a writ petition. The High Court allowed the writ petition and quashed the order granting interim injunction and also the order rejecting the application for impleadment. Against this order, the appellant and the Manger of the College approached the Apex Court. The Hon''ble Supreme Court set aside the order of this Court and held that this Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution. It was also observed by the Apex Court that though under Article 226 of the Constitution the jurisdiction of the High Court is not confined to issuing prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a Civil court under the ordinary law. When a suit is pending between the two taking the stand that order does not reflect actual position is to move the High Court in line with what has been said in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, . In recent decisions i.e. *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.* 2002 AIR SC 4939 and *Roop Kumar Vs. Mohan Thedani*, the view in the said case was reiterated. Statements of fact as to what transpired at the hearing recorded in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent on the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record correct. If no such step is taken, the matter necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into any enquiry as to what transpired in the High Court. It is simply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in Court.

7. In view of the aforesaid principle laid down by the Hon''ble Supreme Court in the case of *Vrajlal Kapurchand Gandhi* [supra], the contention of the learned Counsel for the appellant that the arguments/cases referred by him were not considered and referred by the court below has no force and it will be open to him to make necessary application inviting attention of the learned Judge concerned.

8. In view of the above, I am in agreement with the arguments advanced by the learned Counsel for the Bank that the petitioners have efficacious remedy of filing statutory appeal before the Appellate Tribunal u/s 20 of the RDDB & FI Act, 1993.

9. For the reasons stated hereinabove, the writ petition is dismissed on the ground of alternative remedy. It is clarified that I have not entered into the merits of case. The petitioner would be at liberty to challenge the order in any appropriate forum under the law untrammelled by the observations, if any, made hereinabove in the judgment.