

(2002) 04 GAU CK 0038

In the Gauhati High Court

Case No : Writ Appeal No's. 148 to 156 of 2002

Vikash Kumar Kothari and Another

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 22

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 36

Citation : AIR 2003 Guw 20

Hon'ble Judges : R.S. Mongia, C.J.;Aftab H. Saikia, J

Bench : Division Bench

**Advocate : O.P. Bhatt, A. Biswas, D. Agarwal and A. Tiwari, for the Appellant;
P.C. Deka and P.N. Choudhury, for the Respondent**

Final Decision : Allowed

Judgement

R.S. Mongia, C.J.—This judgment and order of ours will dispose of Writ Appeals Nos. 148/2002, 149/2002, 150/2002, 151/2002, 152/2002, 153/2002, 154/2002, 155/2002 and 156/2002, as identical questions of law and facts are involved in all these appeals. For ready reference facts are being taken from Writ Appeal No. 155/ 2002.

2. The respondent No. 1 herein, i.e., the State Bank of India, had filed O.A. No. 36/ 1999 before the Debts Recovery Tribunal. Gauhati, against M/s. M. M. Agencies and 18 others. It has been alleged in the OA by the State Bank of India that defendants Nos, 18 and 19, i.e., Vikash Kumar Kothari and Anupam Kothari (the present appellants) were the guarantors for the loan given by the State Bank of India. Other defendants are the loanees. After service on the defendants/respondents in the OA, they appeared before the Registrar of the Debts Recovery Tribunal on 9-4-2001. On that date, a petition was filed by defendants Nos. 18 and 19 in the OA No. 36/1999 (Vikash Kumar Kothari and Anupam Kothari) that they were not guarantors and had nothing to do with the advancement of the loan to the other defendants/respondents and therefore it was prayed in the

application that--

"the Hon"ble Tribunal may be pleased to strike off the names of the answering respondents from the instant case."

3. The Registrar of the Debts Recovery Tribunal passed the following order on 9-4-2001:--

"Applicant is present, Defdts. Nos. 18 and 19 filed WS. Other defdts. filed a petition praying for time for filing of WS. Prayer is allowed.

Fix 9-5-2001."

4. Thereafter there have been certain proceedings before the Registrar of the Debts Recovery Tribunal, Gauhati but those proceedings are not very effective proceedings. Be that as it may, the aforesaid two guarantors, i.e., Vikash Kumar Kothari and Anupam Kothari, filed writ petition in this Court (WPC No. 291/2002) challenging the aforesaid order of the Registrar, dated 9-4-2001. The primary attack was that the writ petitioners (now appellants) had never filed any written statement and in fact they had only moved an application for striking off their names from the array of the defendants/respondents in the OA No. 36/1999 and the Registrar of the Debts Recovery Tribunal had wrongly treated that application to be the written statement on behalf of the appellants (defendants Nos. 18 and 19 in OA No. 36/1999). It may be observed here that the vires of certain provisions of the Rules framed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act) were also challenged in the writ petition. The learned Single Judge, vide the impugned judgment dated 26-3-2002 dismissed the writ petition on the ground that the validity of the Act had been upheld by the Apex Court and it was held that the Civil Court will have no jurisdiction regarding the matters like those involved in OA No. 36/1999. Hence the present appeal.

5. For the view we are taking in the matter, it is not necessary to go into the point regarding the vires of the Rules. Rule 22 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (for short, the Rules) is in the following terms:--

"22. Powers and functions of the Registrar.

(1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these Rules or by the Presiding Officer by a separate order in writing.

(2) The official seal shall be kept in the custody of the Registrar.

(3) Subject to any general or special directions by the Presiding Officer, the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.

(4) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

6. It seems that the order dated 9-4-2001 was passed by the Registrar exercising the powers under the aforesaid Rule.

7. Learned counsel for the appellants argued that the Registrar had no jurisdiction to decide the application for striking off the names of the appellants (defendants Nos. 18 and 19 in OA No. 36/1999) and further, the Registrar could not have treated that application as a written statement on behalf of defendants Nos. 18 and 19. If such an application, which was addressed to the Debts Recovery Tribunal, had been placed before the Registrar, he should have placed the same before the Tribunal for decision in accordance with law, but could not have treated that application as a written statement.

8. On the other hand, learned counsel for the respondents argued that the application for striking off the names of defendants Nos. 18 and 19 was placed before the Registrar by defendants Nos. 18 and 19 and the pleas taken therein could be treated as written statement by the Registrar under Rule 22 of the Rules. It was further argued that the writ petition itself was highly belated inasmuch as the impugned order is dated 9-4-2001 whereas the writ petition was filed on 11-1-2002.

9. After hearing the learned counsel for the parties we are of the view that this writ appeal as well as the writ petition is liable to succeed. No doubt, the appellants as writ petitioners took their own time to challenge the impugned order dated 9-4-2001, but as observed above, till the filing of the writ petition no effective proceedings took place before the Tribunal. Now, the question which arises is can the application for striking off the names of any persons/party be decided by the Registrar and whether the same can be treated as a written statement? Surely, an application for deleting the names from the array of parties is quite different from a written statement to the main suit or a petition. If any written statement is filed, perhaps there cannot be any controversy that the Registrar may take the same on record as written statement. Here, we find that in fact there was an application by defendants Nos. 18 and 19 for striking off their names from the array of the defendants. To our mind, this application could not have been treated as written statement by the Registrar and even if such application was placed before him, he should have placed the same before the Tribunal for the decision of the Tribunal in accordance with law. It is for the Tribunal to decide such an application. We are assuming, though not deciding that the Tribunal has the power to dispose of such an application.

10. Consequently, we allow the appeals as well as the writ petitions and set aside the order of the Registrar dated 9-4-2001 qua defendants Nos. 18 and 19 in OA No. 36/1999. We direct the Registrar to place the applications in question of the defendants Nos. 18 and 19 before the Tribunal. The Tribunal will decide that application in accordance with law after affording an opportunity to the applicants in the OA No. 36/1996 as well as the defendants Nos. 18 and 19. This be done expeditiously, but no later than two months of the receipt of the order from this Court or a certified copy thereof from any of the parties, whichever is

earlier. It would be appreciated if the Tribunal passes a speaking order.

11. The matter is pending before the Tribunal since 1999. It would be appreciated if the entire matter is disposed of expeditiously, preferably within a period of one year. The parties present before us through their counsel are directed to appear before the Registrar, Debts Recovery Tribunal, Guwahati, on 7-5-2002 to get further directions. All the aforesaid directions will apply *mutatis mutandis* in all the appeals.

12. All the abovementioned writ appeals and the writ petitions are disposed of in the above terms.

13. The office is directed to issue certified copies of the order to the parties within ten days of their making the application.