
(2019) 09 CAL CK 0382

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO) No. 2351 Of 2019

Vishal Tekriwala

APPELLANT

Vs

ICICI Bank Ltd And Ors

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 20, 22(1)(G)
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 5, 5(3)
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 CAL CK 0382

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Siddhartha Banerjee, Sourabh Prasad, Ashis Kr. Mukherjee, Soni Ojha

Final Decision : Allowed

Judgement

Hiranmay Bhattacharyya, J

The defendant No. 3 in a recovery application filed at the instance of ICICI Bank before the Kolkata Debts Recovery Tribunal-1 has filed the instant application under Article 227 of the Constitution of India challenging the orders dated 20th June, 2016 and 18th February 2019 both passed by the learned Presiding Officer, Debts Recovery Tribunal-1, Kolkata in IA No. 1527 of 2018 filed in connection with OA No. 161 of 2010.

ICICI Bank Ltd. filed the recovery application being OA No. 161 of 2010 for recovery of amount lying outstanding together with interest. The learned Presiding Officer by a judgment dated June 20, 2016 allowed the said recovery application being OA No. 161 of 2010 holding that the defendants are jointly and severally liable to pay Rs. 39,21,951/-together with further interest at the rate of 11.86% per annum from March 15,2013 till payment or realisation. By the said order a direction for issuance of certificate was also passed.

Thereafter a recovery proceeding being RC Case No. 44 of 2016 was initiated which is still pending.

It is the case of the petitioners that on the basis of publication made in the newspapers upon initiation of the proceedings being RC No. 44 of 2016, the petitioners became aware of the ex parte order dated June 20, 2016 passed by the learned Presiding Officer in O.A. No. 161 of 2010 and thereafter filed an application under Section 22(1)(G) of the Recovery of Debts due to Banks and Financial Institution Act, 1993 praying for setting aside the ex parte judgment and order dated June 20, 2016. The said application was registered as I.A. No. 1527 of 2018. Since there was a delay in filing the recalling application, an application for condonation of delay was also filed. An application for stay of the proceedings being RC case No. 44 of 2016 was also filed in connection therewith.

The Recovery Officer passed an order dated August 13, 2018 in O.A. 161 of 2010 which reads as follows:

"The judgment was passed in the matter on 20.6.2016 by the learned Tribunal. Recovery proceedings have been going on in the matter being RC no. 44 of 2016 against the Certificate Debtors which include Certificate Debtor No.3, namely, Mr. Vishal Tekriwala, residing at JC-4, Sector-III, 4th Floor near AMRI Hospital, Salt Lake City, Kolkata, who was the Defendant No.3 in the OA matter.

The Interim Application filed in the name of the Defendant no.3 is hence defective and thus, cannot be placed in its present form before the learned Tribunal."

The petitioner claims that he was not aware of the order dated August 13, 2018. Petitioner filed a petition praying for a direction upon the department to put up and place the records of the case before the learned Presiding Officer.

The Presiding Officer by an order dated February 18, 2019 dismissed the said application and directed that the recovery proceedings be continued before the Recovery officer. The order dated February 18, 2019 passed by the Presiding Officer reads as follows:

"Learned Counsel appears on behalf of the Defendant No. 3/applicant and filed IA No. 1527 of 2018 along with petition for condonation of delay whereby praying for condonation of delay of 365 days. As per learned Registrar's order dated 13.8.2018 the interim application filed in the name of the Defendant no. 3 is defective one and can not be considered.

The recalling petition has been filed on 13th August, 2018 by the Defendant No. 3 for recalling the judgment and/or order passed on 20th June, 2016 and subsequently the recovery proceeding going on vide, R.C.No. 44 of 2016 arising out of OA 161 of 2010 pending disposal before the Recovery Officer. As such at this stage, it is not just and proper to interfere in the recovery proceedings going on before Recovery Officer and to recall the judgment and/or order dated 20.6.2016 without any valid reason provided by the petitioner. This petition is

filed with a clear intention to linger the matter and to stall for recovery of huge public money, as such the petition filed by the Defendant No. 3 is dismissed without cost and the recover proceedings to continue before Recovery officer."

Mr. Banerjee, learned Advocate appearing on behalf of the petitioner submits that the order dated February 18, 2019 passed by the Presiding Officer is palpably without jurisdiction. He submits that Rule 5 of the Debts Recovery Tribunal (Procedure) Rules, 1993 provides that the Registrar shall scrutinize every application presented before him and if the application is found to be in order shall duly register the same and give a serial number. If, on scrutiny, the application is found to be defective and the defect noticed is formal in nature, may allow the party to rectify the same in his presence and if the defect is not formal in nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit. If the applicant fails to rectify the defect within the specified time limit allowed in sub-Rule (3) of Rule 5, the Registrar may by order and for reasons to be recorded in writing, declined to register the application. Thus, by relying on Rule 5 of the said Rules, Mr. Banerjee, submits that it was the duty of the Registrar to point out the defect to the applicant and allow time to the applicant to rectify the same. He further submits that no defects were pointed out to the applicant/ petitioner herein. He also submits that the application for recalling was filed on August 13, 2018 and the Registrar by an order dated August 13, 2018 held that the same is defective and as such cannot be placed before the learned Tribunal. Mr. Banerjee further submits that when the Registrar was of the opinion that the application being defective could not be placed before the Tribunal, the Tribunal could not have take up the same for hearing and reject the same on merits. He further submits that since the recalling application was accompanied with an application for condonation of delay, the recalling application could not also be taken up for hearing on merits before condoning such delay. Mr. Banerjee further submits that there has been a violation of the principles of natural justice as the learned Presiding Officer rejected the recalling application by a totally non-speaking order.

Ms. Ojha, learned Advocate appearing on behalf of the Opposite Parties submits that an appeal lies before the Appellate Tribunal against the order dated February 18, 2019 passed the learned Presiding Officer of Debts Recovery Tribunal-1, Kolkata under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993. She, thus, submits that the instant application under Article 227 of the constitution is not maintainable in view of the availability of efficacious alternative remedy by way of an appeal. She further submits that Section 21 of the said Act provides for deposit of the 50% of the amount of debt due as a precondition for entertaining the appeal by the Appellate Tribunal. She submits that the petitioner has preferred the instant Civil Order only to bypass the condition for deposit in terms of Section 21 of the said Act. She submits that the petitioner has failed to make out any exceptional circumstances warranting interferences under Article 227 of the constitution of India. She also submits that the principles of natural justice cannot be said to have been violated in the

instant case. Ms. Ojha further submits that the petitioner has accepted the order dated August 13, 2018 as the same has not been challenged.

Ms. Ojha, relies on a judgment of a co-ordinate bench of this court delivered on June 26, 2019 in C.O. No. 1984 of 2019 (the Authorised Officer, Kotak Mahindra Bank -vs.- Debraj Sadhukhan) wherein it was held that it would be improper and would violate judicial propriety if this court interferes with every kind of jurisdictional error of the Tribunal despite availability of an alternative forum.

In another judgment delivered by a co-ordinate Bench on March 12, 2019 in C.O. No. 723 of 2019 (Simplex Project Ltd. -vs.- Yes bank Ltd. And Ors.) it was held that the High court sitting in judicial review cannot shut its eyes to a palpable jurisdictional error committed by a Tribunal despite the availability of an alternative forum. It was further held therein that if there are exceptional cases and gross abuse of the basic tenets of natural justice, there is no bar in the High Court exercising its powers of judicial review despite the availability of an alternative remedy.

In Debraj Sadhukhan(supra) it was also observed that the allegation made in the said case do not amount to a palpable jurisdictional error going to the root of the matter or of such a magnitude that the alternative forum could be by passed. Thus the said judgment is not an authority for a proposition that even in case of palpable jurisdictional error or gross abuse of the principles of natural justice, the High Court under Article 227 of the Constitution of India should shut its eyes and relegate the petitioner to the appellate forum.

In the instant case, the Registrar, on the date of filing of the recalling application i.e, August 13, 2018 observed that the interim application is defective without indicating the defects and it does not appear there from that any opportunity was afforded to the applicant/ petitioner herein to rectify the defect.

Furthermore, the Presiding Officer of the Debts Recovery Tribunal even after taking into consideration the fact that the Registrar by an order dated August 13, 2018 held the interim application to be a defective one and cannot be considered took up the hearing of the recalling application and proceeded to decide the same on its merit. Thus, it is evident that the Presiding Officer was also not satisfied with the observation of the Registrar that the recalling application is a defective one and as such decided to take up the hearing of the application on its merit. It cannot be contended now that the Registrar's order dated August 13, 2018 still stares at the face of the petitioner. The order of the Registrar dated August 13, 2018 has lost its force once the recalling application was taken up for consideration by the learned Presiding Officer after noticing the said order.

Since the recalling application was filed beyond the statutory period of limitation and was also accompanied with an application for condonation of delay, it was incumbent upon the Presiding Officer to decide the application for condonation of delay first, before entering into the merits of the said application.

In the instant case it appears from the order dated February 18, 2019 that the Presiding officer did not return any finding as to whether the delay in filing the recalling application was condoned or not. Thus the Presiding Officer committed a jurisdictional error by taking up the hearing of the recalling application on its merit before returning any finding on the application for condonation delay.

Furthermore the recalling application was rejected by a totally non speaking order as it does not appear from the order dated February 18, 2019 that the grounds on which the application for recalling was filed was taken into consideration.

It is a well settled legal proposition that an order passed by a Tribunal must record the reasons in writing in support of its conclusions. The giving of reasons for a decision is the only indication to know about the manner and quality of exercise undertaken as also the fact that the Tribunal had applied its mind. Reason is the heart and soul of every order. Absence of reasons renders the order unsustainable when it is subject to further challenge before a higher form. Recording of reasons is a principle of natural justice. It also ensures transparency and fairness in decision making. It also helps the party adversely affected by an order to know as to why his application has been rejected.

Thus, there has been a gross abuse of the basic principles of natural justice. The procedure adopted by the Tribunal while deciding the recalling application cannot be supported as the same was against the established principles of law. The order dated February 18, 2018 suffers from palpable jurisdictional error committed by the Tribunal. In the case of the present nature it is very much difficult to accept that judicial restraint should be exercised and the petitioner should be relegated to the appellate forum available under the Act.

For the reasons as aforesaid C. O. No. 2351 of 2019 is allowed thereby setting aside the order dated February 18, 2019 passed by the Presiding Officer Debts Recovery Tribunal-1, Kolkata and by directing the Presiding Officer Debts Recovery Tribunal-1, Kolkata, to decide the application being I.A. No. 1527 of 2018 along with the petition for condonation of delay and the stay application afresh as expeditiously as possible and preferably by the end of November, 2019.

There shall be however no order as to costs.

The certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.