

(2011) 08 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 7970 of 2011

Vision Organics Ltd. and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 1(2), 5, 5A, 5A(1), 5A(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19,
19(1), 19(2), 19(6), 19(8)

Citation : (2012) 2 BC 527

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : S.P. Majmudar and Mr. P.P. Majmudar, for the Appellant; P.S. Champaneri, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, C.J.—In this writ petition, the petitioner has challenged the validity of Rule 5A(2) and provisions made at Sr. No. 3(b) of the Appendix enclosed with Rule 7(2) of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as "the DRT Rules, 1993"). Further prayer has been made to direct the 2nd respondent Registrar, Debts Recovery Tribunal, Ahmedabad, to refund the fee of Rs. 60,000/- paid at the time of filing of the review applications. The brief facts of the case are that the petitioner obtained loan from I.D.B.I. Bank, ICICI Bank and Bank of Baroda. Having failed to recover the amount, aforesaid Banks filed Original Applications, viz. O.A. No. 274/01, O.A. No. 326/01, O.A. No. 192/01 and O.A. No. 300/01 u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the R.D.D.B. Act, 1993") before the Debts Recovery Tribunal No. 2, Ahmedabad. All the aforesaid applications have been finally decided by the D.R.T. II, Ahmedabad, by a common judgment dated 27th September, 2010 decreeing the applications in favour of the Banks and against the petitioners.

2. Referring to the decision of the Supreme Court in Mohd. Akram Ansari v. Chief Election Officer, I (2008) SLT 25=AIR 2008 SC (Supp) 1247, the petitioner preferred review applications u/s 22(2)(e) of the R.D.D.B. Act, 1993, before the Debts Recovery Tribunal. The review applications have been dismissed by the Debts Recovery Tribunal II, Ahmedabad, by a common order dated 31st May, 2011, being time-barred under Rule 5A(2) of the DRT Rules, 1993.

3. For each of the review applications, the petitioner deposited Court fee of Rs. 15,000/- as stipulated under Sr. No. 3(b) of Rule 7(2) of the DRT Rules, 1993. The review applications having been rejected on the ground of limitation, the petitioner has challenged the validity of Rule 5A(2) and the fee as prescribed under Sr. No. 3(b) of Rule 7(2), with consequential relief for refund of Rs. 60,000/-, i.e. Rs. 15,000/- for each case as were deposited with four review applications.

4. Learned Counsel for the petitioner would contend that Rule 5A(2) and provision at Sr. No. 3(b) of the Appendix with Rule 7(2) of the DRT Rules, 1993, are arbitrary, violative of Articles 14 and 19(1)(g) of the Constitution of India. The Central Government has no jurisdiction to frame such Rule u/s 36 of the R.D.D.B. Act, 1993, such power having not delegated under the said provision.

5. He would further contend that the fee as prescribed under Sr. No. 3(b) of Rule 7(2) of the DRT Rules, 1993, for entertaining an application for review, being without jurisdiction, is illegal and fit to be set aside. Reliance was also placed on Delhi High Court decision in Shri Bal Kishan Bansal v. The Jammu & Kashmir Bank Ltd., W.P.(C) 7205/2007 decided on 25th August, 2009.

6. While assailing Rule 5A(2), learned Counsel for the petitioner would contend that in absence of any guideline laid down u/s 36(e) of the R.D.D.B. Act, 1993, the Central Government has no jurisdiction to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the R.D.D.B. Act, 1993 itself. He placed reliance on Supreme Court decision in Kunj Behari Lal Butail and Others Vs. State of H.P. and Others, .

7. Mr. P.S. Champaneri, learned Asst. Solicitor General appearing on behalf of the Central Government while opposing the prayer submitted that the petitioner having availed the opportunity of review under Rule 5A(2) of the DRT Rules, 1993 and having already deposited the requisite fee in terms with the prescription made under Sr. No. 3(b) of Rule 7(2), it cannot challenge the orders indirectly by challenging the substantive provisions of the Rules. He would further contend that the power of review having been vested with the Debts Recovery Tribunal under the Act, it cannot be alleged that any substantive right or obligation or disability has been created under the Rules in question.

8. We have heard learned Counsel for the parties and perused the record. We have also noticed the relevant provisions of law and the decisions cited by learned Counsel for the parties.

9. Section 22 of the R.D.D.B. Act, 1993 lays down procedural power of the Tribunal and Appellate Tribunal under the caption "Procedure and Powers of the Tribunal and the Appellate Tribunal". u/s 22(2)(e) the Tribunal and the Appellate Tribunal for the purpose of discharging their functions under the Act has been vested with the same power as is vested in the Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of reviewing its decisions. u/s 22(2)(e), the Tribunal and the Appellate Tribunal are vested with the power to prescribe procedure or any other matter, as evident from relevant Section 22(2)(e) and (h), which reads as follows:

22. Procedure and Powers of the Tribunal and the Appellate Tribunal--

(1) xxx xxx

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely--

(a) to (d) xx xx

(e) reviewing its decisions;

(f) to (g) xx xx

(h) any other matter which may be prescribed.

10. u/s 36, the Central Government has been vested with power to make Rules by notification to carry out the provisions of the R.D.D.B. Act, 1993. Apart from salaries and allowances and other terms and conditions of service of Chairpersons, Presiding Officers, Recovery Officers, other officers and employees of the Tribunal, and the Appellate Tribunal; the procedure for the investigation of misbehaviour or incapacitating of the Chairpersons of Appellate Tribunals and the Presiding Officers of the Tribunals; the form in which an application may be made; and the form in which an appeal may be filed before the Appellate Tribunal; under Clause (e) of Section 36(2), the Central Government has been vested with the power relating to any other matter, which is required to be, or may be prescribed, as quoted hereunder:

36. Power to make rules--

(1) xxx xxx

(2) Without prejudice to the generality of the foregoing powers, such rules may, provide for all or any of the following matters, namely:-

(a) to (d) xx xx

(e) any other matter which is required to be, or may be, prescribed".

11. The DRT Rules, 1993, have been made by the Central Government in

exercise of powers conferred under Sub-sections (1) and (2) of Section 36 of the R.D.D.B. Act, 1993.

12. Under Rule 5A(1) while provisions have been made for an aggrieved party to file petition for review against an order made by the Tribunal on account of some mistake or error apparent on the face of the record, under Sub-rule (2) of Rule 5A, limitation of period of 60 days from the date of such order has been prescribed to enable the party to take advantage of filing of such review application, which reads as follows:

5A. Review--(1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

(2) No application for review shall be made after the expiry of a period of sixty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application but where the Tribunal is of opinion that the application for review shall be granted, it shall grant the same:

Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for.

13. For preferring an application u/s 19 and other provisions, in chiding application for review of its own order, application fee has been prescribed under Rule 7, as quoted hereunder:

7. Application Fee.--(1) Every application u/s 19(1), or Section 19(2), or Section 19(8), or Section 30(1) of the Act, or interlocutory application or application for review of decision of the Tribunal shall be accompanied by a fee provided in the Sub-rule (2) and such fee may be remitted through a crossed Bank Demand Draft drawn on a Bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place where the Tribunal is situated.

(2) The amount of fee payable shall be as follows:

Sr. No.

Name of Application

Amount of Fee Payable

1&2

XXX

3.

Application for Review including review application in respect of the counter-claim
(a) against an interim order

Rs. 125

(b) against a final order excluding review for correction of clerical or arithmetical mistakes

50% of fee payable at rates as applicable on the applications u/s 9(1) or 19(8) of the Act, subject to a maximum of Rs. 15,000."

14. From the R.D.D.B. Act, 1993, it will be evident that while a Bank or a Financial Institution has been allowed to prefer an application u/s 19, the borrower has not been given any right to file any application u/s 19 to claim any amount in absence of such application filed by a Bank or a Financial Institution. Only if a borrower or any person is impleaded as a party defendant in the application filed by the Bank or the Financial Institution u/s 19, the borrower or the defendant can make counter claim and may pray for set off under Sub-sections (6) and (8) of Section 19, the relevant provisions of which are quoted hereunder:

19. Application to the Tribunal.--(1) Where a Bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

xxx xxx xxx

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set off.

(7) xxx xxx xxx

(8) A defendant in an application may, in addition to his right of pleading a set-off under Sub-section (6), set up, by way of counter claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for

delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not."

15. The Tribunal and the Appellate Tribunal for the discharge of power has been while vested with the power of a Civil Court under Code of Civil Procedure, 1908, under Sub-section (2) of Section 22 of the R.D.D.B. Act, it has been vested with the power to review its decision by following the aforesaid provisions of Code of Civil Procedure, as evident from Section 22(2)(e) and quoted above.

16. In view of such power delegated with the Tribunal and Appellate Tribunal u/s 22(2)(e) to review its own decision, the Central Government while framing Rule in exercise of power conferred under Sub-sections (1) and (2) of Section 36 of the R.D.D.B. Act, 1993, allowed the aggrieved party to file a review application u/s 5A, if there is a mistake on account of error apparent on the face of the record and for preferring such application, application fee has been prescribed at Sr. No. 3 of the Chart appended with Rule 7(2) of the DRT Rules, 1993.

17. The case of Shri Bal Kishan Bansal (supra) decided by the Delhi High Court related to prescription of fee as made under Rule 7 of the D.R.T. Rules, 1993 for preferring an appeal u/s 30 of the R.D.D.B. Act, 1993. The Division Bench having noticed that no fee has been prescribed u/s 30 or any of the provisions of the R.D.D.B. Act, 1993, held that prescription of such fee under Rule 7 for preferring appeal infringes the right of an applicant to prefer an appeal u/s 30.

18. In the case of Kunj Behari Lal Butial (supra), the question relating to the validity of the provisions of Sub-rule (1) of Rule 2 of the Himachal Pradesh Ceiling and Land Holding Rules, 1973, issued by Notification dated 4th April, 1986 and the consequential circular dated 21st August, 1990 fell for consideration before the Supreme Court. Having noticed the prescription imposed by the amendment in the Rule, the Supreme Court held the Rule invalid and ultra vires the powers of Himachal Pradesh Ceiling and Land Holdings Act, 1972, and observed as follows:

14. We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

19. From the aforesaid decision of the Supreme Court in Kunj Behari Lal Butail (supra), it is clear that power is vested with a delegate to frame rules for carrying out the purposes of the Act, and in absence of any guideline, no substantive right or obligation or disability can be created, if specifically not contemplated by the provisions of the Act. Thus, if a substantive right or obligation or disability is contemplated under the Act, in such case, the Legislature can vest the delegate power to make rules for carrying out the purposes of the Act.

20. In the case of Shri Bal Kishan Bonsai (supra), Section 30 of the R.D.D.B. Act fell for consideration before the Delhi High Court. Under the said provision, substantive right was created in favour of an aggrieved person to prefer an appeal against an order passed by the Recovery Officer.

21. That is not the question in the case of filing of review petition, as no right has been created under the R.D.D.B. Act, 1993 in favour of one or the other aggrieved person to prefer a review application under any of the provisions, though suo motu power of revision is vested with the Tribunal and the Appellate Tribunal u/s 22(2)(e) of the R.D.D.B. Act, 1993.

22. An aggrieved person, in fact, is vested with a substantive right to prefer a review application under Rule 5 A of the DRT Rules, 1993, only if there is a mistake apparent on the face of the record. The right flows from Rule 5A. Therefore, the rule making authority, which creates the right, can also prescribe a period of limitation, as prescribed under Sub-rule (2) of Rule 5A of the DRT Rules, 1993. If the power of the rule making authority is challenged on the ground that it has no jurisdiction to create a substantive right or obligation, then in such case, the aggrieved person, including the petitioner, will be deprived of filing a review application under Rule 5A of the DRT Rules, 1993. Therefore, writ petition should not be entertained at the instance of an aggrieved person challenging the Rule 5A where under right is created in favour of such person to prefer an application for review and such person after availing the opportunity and losing the case on merit cannot challenge such basic provision of which he derived advantage.

23. From the discussions as made in the preceding paragraph, it is clear that the judgment rendered by the Delhi High Court in Shri Bal Kishan Bansal (supra) and the decision of the Supreme Court in Kunj Behari Lal Butail (supra) are not applicable in the present case.

24. There being a right created u/s 30 to prefer an appeal against the order passed by the Recovery Officer, in absence of any fee prescribed under the R.D.D.B. Act, 1993, the Delhi High Court held that the substantive right cannot be curtailed by prescribing a fee.

25. We have held that the said judgment of Delhi High Court in Shri Bal Kishan Bansal (supra) is not applicable in the present case, as no substantive right of review has been created in favour of one or the other individual, except the Tribunal and the Appellate Tribunal under the R.D.D.B. Act, 1993. This is the reason no fee has been prescribed under the R.D.D.B. Act, 1993 for preferring an application of review.

26. As substantive right to prefer an application for review has been created in favour of an aggrieved person under Rule 5A of the DRT Rules, 1993, we hold that the rule making authority has jurisdiction to prescribe a period of limitation for acceptance of review application, which, in no manner is in conflict with the R.D.D.B. Act, 1993. Thus, the period of limitation prescribed under Sub-rule (2)

of Rule 5A, and the fee prescribed for entertaining an application for review under Sr. No. 3 of Rule 7(2) of the DRT Rules, 1993 cannot be held to be ultra vires.

27. Admittedly, the petitioner has availed the opportunity under Rule 5 A and preferred the review application, and for that deposited the fee as prescribed under Rule 1(2) for entertaining such review application. The same having been entertained, and dismissal being barred by limitation, the petitioner cannot ask for refund of such fee. In view of the discussion as made above, and as the provision will not affect the right of any aggrieved person, we uphold Sub-rule (2) of Rule 5A and Rule 7(2) of the Debts Recovery Tribunal (Procedural) Rules, 1993. In absence of any merit the writ petition is dismissed, but there shall be no order as to costs.