

(2003) 05 AHC CK 0127

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21661 of 2003

Willard India Limited

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Debts Recovery Tribunal (Procedure) (Amendment) Rules, 2003 — Rule 6, 6(1)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19
Constitution of India, 1950 — Article 226
Debts Recovery Tribunal (Procedure) (Amendment) Rules, 2003 — Rule 6, 6(1)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19
Constitution of India, 1950 — Article 226
Debts Recovery Tribunal (Procedure) (Amendment) Rules, 2003 — Rule 6, 6(1)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2003) 3 BC 497 : (2003) 2 UPLBEC 1760

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Yashwant Verma and R.N. Singh, for the Appellant; A.K. Singh and Tarun Verma and B.N. Singh, S.S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard Mr. R.N. Singh, learned Counsel for the petitioner, Mr. A.K. Singh for the Union of India and Mr. Tarun Verma, Counsel for the Allahabad Bank.

2. The petitioner has prayed for an appropriate writ, order or direction declaring the provisions of Rule 6(1) of the Debts Recovery Tribunal (Procedure) Amendment Rules, 2003 as being ultra vires Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The petitioner has also prayed for an appropriate writ order or direction declaring proceeding filed by the respondent No. 2 Allahabad Bank before the Debt Recovery Tribunal Kolkata as without jurisdiction.

3. The petitioner is a Company registered under the Indian Companies Act, The respondent, Allahabad Bank filed an application before Debt Recovery Tribunal, West Bengal at Kolkata u/s 19 of the aforesaid Act, claiming a sum of Rs. 5,09,76,803/-as principal amount and payable with interest in the alleged capacity of debenture holders and debenture trustee. True copy of the application u/s 19 filed before the Debt Recovery Tribunal, West Bengal at Kolkata dated 17.12.1999 has been filed as Annexure-1 to the writ petition.

4. In our opinion, this petition is liable to be dismissed on the preliminary point as this Court has no jurisdiction in the matter at all and it is the Calcutta High Court which has the jurisdiction. The proceedings are pending before Debt Recovery Tribunal, West Bengal at Kolkata and the petitioner really wants a writ of prohibition against there proceedings, although that prayer has not been specifically mentioned in the prayer of the writ petition. The different between a writ of certiorari and a writ of prohibition is that a writ of certiorari is filed after the impugned order is passed whereas a writ of prohibition is filed before an order is passed. Thus, a writ or prohibition is filed when a proceeding before an inferior Court or Tribunal is pending and it is alleged that they are without jurisdiction. Thus, the relief really claimed by the petitioner in this writ petition is the relief of prohibition to prohibit the Debt Recovery Tribunal, West Bengal at Kolkata from proceeding with the case before it. In our opinion, such a writ petition should be filed before the Calcutta High Court, which, in our opinion, alone has the jurisdiction to grant such relief. Learned Counsel for the petitioner then submitted that we may ignore the prayer for writ of prohibition and we should consider the petitioner's prayer for declaring Rule 6(1) of the Debts Recovery Tribunal (Procedure) Amendment Rules, 2003 as being ultra vires Section 19 of the Act, 1993. In our opinion, this would really be a prayer for a declaration only and it is well settled that a writ petition does not lie only for giving a declaration. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, while considering the scope of a petition under Article 226 of the Constitution of India, the Supreme Court observed :

"A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is apparently inappropriate to an application under Article 32."

In Makhan Singh Vs. State of Punjab (and connected appeals), , it was held that a mere declaration is outside the purview of proceedings under Article 226 of the Constitution. A Full Bench of this Court in Maqbool Unissa and Ors. v. Union of India, AIR 1953 Allahabad 447, has held that the powers of issuing writs, orders or directions under Article 226 of the Constitution should not be utilized for giving that is in essence a declaratory relief. Similar view has been taken in two other Full Bench decision of this Court in Sri P.G. Vidyalaya Association v. State of U.P. and Shiv Kumar v. State of U.P., AIR 1978 Allahabad 386. Similar view has been taken by the Division Bench decision of this Court in Sri Durga Gita

Vidyalaya Association Vs. State of U.P. and Others,

5. The prayer that Rule 6 be declared ultra vires Section 19 of the Act is nothing but a prayer for declaration. Hence without a prayer for a consequential relief, such declaration can not be granted. As regards, the consequential relief, which is contained in relief (ii) of the petition it is really a relief for a prohibition though touched as a declaration, as already observed by us above, such relief can be claimed before the Calcutta High Court and not before this Court.

6. For the reasons given above, the petition stands dismissed but with liberty to the petitioner to approach the Calcutta High Court for appropriate relief.

7. We have not gone into the merits of the case but we have only dismissed this petition on a preliminary point.