

(2003) 05 AHC CK 0202
In the Allahabad High Court
Case No : C.M.W.P. No. 21664 of 2003

Williard India Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Debts Recovery Rules, 2003 — Rule 6(1)
Financial Institutions Act, 1993 — Section 19

Citation : (2003) 6 AWC 5367

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

M. Katju and R.S. Tripathi, JJ.—Heard Shri R.N. Singh, learned Counsel for the Petitioner, Shri A.K. Singh for the Union of India and Shri Tarun Verma, counsel for the Unit Trust of India.

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 proceedings filed by the Respondent No. 2. Unit Trust of India, Mumbai as without jurisdiction.

3. The Petitioner is a Company registered under the Indian Companies Act. The Respondent, Unit Trust of India filed an application before Debt Recovery Tribunal, Mumbai u/s 19 of the aforesaid Act, claiming a sum of Rs. 15,56,15,241.00 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, Mumbai, dated 7th July, 2000 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 that this Court has no jurisdiction in the matter at all and it is the Bombay High Court which has jurisdiction. The proceedings are pending before Debt Recovery Tribunal, Mumbai and the Petitioner really wants a writ of prohibition against those proceedings, although that prayer has not been specifically mentioned in the prayer in the writ petition. The difference 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 of 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, Mumbai from proceeding with the case before it. In our opinion, such a writ petition should be filed before Bombay 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."

5. 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 *Maqbulunissa and Others Vs. Union of India (UOI) and Another*, , has held that the powers of issuing writs, orders or directions under Article 226 of the Constitution should not be utilized for giving what is in essence a declaratory relief. Similar view has been taken in two other Full Bench decisions of this Court in *Sri Durga Gita Vidyalaya Association Vs. State of U.P. and Others*, and *Sheo Kumar Vs. State of U.P. and Others*, . Similar view has been taken by a Division Bench decision of this Court in *Greenfield Corporation Ltd. and Another Vs. U.P. Financial Corporation*,

6. 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 cannot 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 couched as a declaration. As already observed by us above, such relief can be claimed before the Bombay High Court and not before this Court.

7. For the reasons given above this petition stands dismissed but with a liberty to the Petitioner to approach the Bombay High Court for appropriate relief.

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