

(2014) 03 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 2468 of 2014 and M.P. No. 1 of 2014

Zubaida Begaum

APPELLANT

Vs

The Manager, Indian Bank

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21, 36, 36(2)

Citation : (2014) 4 BC 672 : (2014) 4 CTC 647

Hon'ble Judges : S. Vaidyanathan, J; S. Rajendran, J

Bench : Division Bench

Judgement

S. Rajeswaran, J.—The above Writ Petition has been filed by the Petitioners to quash the Order passed by the 5th Respondent/Debts Recovery Appellate Tribunal, in AIR No. 823/2013 dated 16.12.2013 and to direct the 5th Respondent to dispose of the Appeal without insisting upon the Waiver Application. The case of the Petitioners is that they are the borrowers from Indian Bank during 1989. Due to the failure to pay the dues, Bank filed a Civil Suit for recovery of Rs. 2,37,50,050.46p. before this Court. The Suit was numbered and taken on file. In the meantime, the Debts Recovery Tribunal was constituted at Chennai on 4.11.1996. Therefore, the Suit papers were returned by the Registry of this Court to file the same before the Debts Recovery Tribunal, Chennai within a month's time. The Bank, accordingly represented the same with a delay of 18 days in representation. The delay was considered with instructions to represent in the proper format. Thereafter, the Plaint was represented in the proper format with a Petition to condone the delay of 347 days. That delay was condoned by the Assistant Registrar of the Debts Recovery Tribunal and OA was numbered as O.A. No. 1719/1998 and transferred to the Debts Recovery Tribunal-II and renumbered as O.A. No. 327/2001. The Debts Recovery Tribunal-II, by its Order dated 11.4.2007 allowed O.A. No. 327/2001. Against that, Appeal in R.A. No. 35/2007 was filed before the Debts Recovery

Appellate Tribunal. The Debts Recovery Appellate Tribunal by order dated 9.8.2011 in R.A. No. 35/2007, set aside the Order of the Debts Recovery Tribunal-II and directed the Debts Recovery Tribunal-II to deal with the Interim Application filed for condoning same. That order reached finality as the challenge made against that Order failed upto Hon"ble Supreme Court. Thereafter, the matter was taken up by the DRAT and posted the case for maintainability on 16.12.2013 on the ground that an Application under Section 21 of RDDBFI Act, 1993, for waiver has to be filed and a copy of the Affidavit in M.A. No. 56/2013 filed by the Bank has to be produced. Since, on the issue of maintainability, question of filing Waiver Application does not arise, as the Appeal is preferred against the Order allowing the Petition to condone the delay by the Bank, this Writ Petition has been filed for the aforesaid prayer.

2. The learned Counsel for the Petitioners would primarily contend that the impugned Order passed by the Debts Recovery Appellate Tribunal directing the Petitioners to file an Application for waiver under Section 21 of RDDBFI Act, 1993 [hereinafter referred to as "the Act"], is absolutely illegal for the reason that there was no amount of debt determined by the Debts Recovery Tribunal under Section 19 of the Act. He has also referred to Section 21 of the Act to reiterate his contention that unless and otherwise the amount of debt is determined by the Tribunal under Section 19 of the Act, there is no question of either the Petitioners filing an Application for waiver nor the authority directing them to file an Application for waiver. In support of his contention, he placed reliance on the judgment of the Calcutta High Court reported in *Sutapa Chatterjee and Another Vs. UCO Bank and Others*, .

3. Per contra, Mr. Jayesh B. Dolia, learned Counsel for the 1st Respondent/Bank, while reiterating their averments made in their Counter Affidavit would submit that when the Debts Recovery Appellate Tribunal, by invoking Section 21, has directed the Petitioners to file an Application for waiver, no prejudice would be caused to them in filing the same. He further adds that by filing an Application for waiver before the Debts Recovery Appellate Tribunal and seeking waiver, they have filed the Writ Petition invoking the jurisdiction under Article 226 of the Constitution of India. He submits that the Writ Petition is too premature and liable to be set aside on this ground alone. Hence, he prayed for the dismissal of the Writ Petition.

4. We have heard the rival contentions put forth by the learned Counsel for the Petitioners and the learned Counsel for the 1st Respondent/Bank. We have also gone through the documents available on record including the Counter Affidavit filed by the 1st Respondent/Bank.

5. Before appreciating the contention put forward by the learned Counsel for the Petitioners, we would like to extract the provision under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which reads as under:

"21. Deposit of amount of debt due, on filing Appeal.--Where an Appeal is preferred by any person from whom the amount of debt is due to a Bank or a financial institution or a consortium of banks or financial institutions, such Appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five percent of the amount of debt so due from him as determined by the Tribunal under Section 19:

Provided that the Appellate Tribunal, may for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section."

A reading of the above Section would make it very clear that unless and until the amount of debt so due from the Petitioners is determined by the Tribunal under Section 19 of the Act, there is no question of either filing of Waiver Petition before the Debts Recovery Appellate Tribunal at the time of filing of the Appeal nor the Appellate Tribunal calling upon the Petitioners to file an Application for waiver. In the instant case, admittedly, no determination of the amount due has taken place and the Original Application in O.A. No. 327/2001, is still pending on the file of the Debts Recovery Tribunal. The Calcutta High Court in Sutapa Chatterjee and Another Vs. UCO Bank and Others, has held thus:

"... ..

20. If there is a practice in vogue in the Appellate Tribunal of requiring pre-deposits to be made in terms of Section 21 of the Act in case of Appeals filed by persons who have not been adjudged to be indebted to a Bank or the life, it may owe its birth to an erroneous description in the first column of the chart that forms a part of Rule 8(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994. Sub-rule (2) of Rule 8 quantifies the amounts of fee payable in respect of Appeals under Section 20 of the Act. The chart in the sub-rule has two columns entitled "Amount of debt due" and "Amount of fees payable". The more appropriate description of the first column would have been "Amount of debt claimed to be due or amount of debt due" rather than what appears now. It is elementary, however, that the Rules prescribed by a subordinate legislation cannot be in excess or in derogation of the statute under which it is made. For one, if the power to make the Rules is delegated by the legislature to the executive, the Rules need to conform to the statute. More fundamentally, neither the Rules made under a statute nor the authority to make the Rules can impinge on any right conferred by the relevant statute. Section 36 of the said Act of 1993 empowered the Central Government to make Rules "to carry out the provisions of this Act". The specific areas enumerated in Section 36(2) include "the form in which an Appeal may be filed before the Appellate Tribunal under Section 20 and the fees payable in respect of such Appeal" under clause (d) of the sub-section. In specifying the fees payable for filing Appeals under Section 20 of the Act, the Central Government could not have implied in Rule 8(2) of the said Rules that only an Appeal from a final order (or a partial final order in the sense of the order finally dealing with a part of the claim) may be maintained as the erroneous heading of the first column of the chart forming a part thereof now

suggests.

21. In the present case, the Appeal sought to be preferred by the Petitioners was against an Order of the relevant Debts Recovery Tribunal disallowing the Petitioners' plea for cross-examining the Bank's witness. As at the time of preferring the Appeal, no amount of debt was adjudged to be due from the Petitioners or either of them to the Bank under Section 19 of the Act. In neither Petitioner being a person from whom any amount of debt was determined by the relevant Debts Recovery Tribunal to be due under Section 19 of the Act, the Appellate Tribunal could not have imposed the onerous condition of the Appellants or either of them being required to make a pre-deposit for the proposed Appeal to be entertained.

(emphasis supplied)

22. The Orders dated September 7, 2012 and October 16, 2012 passed by the Appellate Tribunal are set aside and the proposed Appeal restored to the file of the Appellate Tribunal for the Appellate Tribunal to consider the same in accordance with law. The Application made by the Petitioners herein for waiver of the pre-deposit for the purpose of the proposed Appeal to be entertained was misconceived and is not required to be considered."

6. The proposition laid down by the Calcutta High Court in the judgment cited supra is squarely applicable to the facts of the instant case, as in this case also no amount was admittedly adjudged to be due from the Petitioners herein to the Bank under Section 19 of the Act and therefore, the condition imposed on the Petitioners herein by the Debts Recovery Appellate Tribunal to file an Application for waiver is an onerous one. We also find from the above judgment that a Petition for waiver of pre-deposit was filed for the purpose of entertaining the Appeal, which itself was found to be bad in law by the above judgment. The Calcutta High Court, therefore, finally set aside the Orders passed by the Appellate Tribunal and gave a direction to proceed with the Appeal. In this case, the Petitioners herein stand in a better footing as they did not file a Waiver Application for the purpose of entertaining the proposed Appeal, which in our considered opinion is wholly unsustainable. Hence, the impugned Order dated 16.12.2013 in AIR No. 823/2013 passed by the Debts Recovery Appellate Tribunal is illegal and unsustainable both in law and on fact and the same is liable to be set aside.

7. Accordingly, the impugned Order passed by the Debts Recovery Appellate Tribunal dated 16.12.2013 in AIR No. 823/2013 is hereby set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed. Consequent upon allowing of this Writ Petition by this Court, the Debts Recovery Appellate Tribunal, Chennai is hereby directed to number the Appeal filed by the Petitioners herein in AIR No. 823/2013 and take up the same for hearing without insisting upon an Application for waiver and for pass Orders on merits and in accordance with law after hearing the parties concerned within a

period of one month from the date of receipt of a copy of this Order.