T.P. Vishnu Kumar

v.

Canara Bank P.N. Road, Tiruppur & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN HON'BLE MR. JUSTICE DIPAK MISRA

Special Leave to Petition (Civil) No. 1258-1260 Of 2013 | 11-02-2013

K.S. Radhakrishnan, J.

1. Canara Bank, Tiruppur (first respondent herein) filed O.A. No. 152 of 2002 before Debt Recovery Tribunal, Coimbatore for a decree directing the defendants therein to pay a sum of Rs.29,68,161.93 with interest at 17% per annum, being the amount on account of Open Cash Credit facilities; a sum of Rs.30,82,758 being the amount due on account of packing credit facilities and a sum of Rs.99,00,558 being the amount due for Foreign Bills of Exchange facilities and also for a further direction.

2. The petitioner and respondent nos. 2 to 6 herein preferred I.A. No. 873 to 875 of 2007 before the Tribunal seeking a direction to produce the extract of accounts as well as documents relating to banking transactions. Those applications were opposed by the bank contending that none of the documents sought for were germane to the issue to be decided in the applications but only to protract the proceedings. The applications were rejected by the tribunal on the ground that the intention of the petitioner was only to delay the proceedings, against which the petitioner herein filed writ petition nos. 14428-14430 of 2008 before the High Court of judicature at Madras. It was contended before the learned Single Judge of the High Court that the documents and accounts paid for are absolutely necessary for the purpose of filing additional written statement and that the bank cannot withhold those documents. The prayer was opposed by the bank stating that none of the documents sought for were germane to the issue to be decided and attempt was only to protract the proceedings. Further, it was also contended that in view of the matter, the petitioner had an alternative remedy available under the Act.

3. Learned Single Judge passed an elaborate order and allowed the writ petition and held that the petitioner therein had made out a case for production of documents sought for in I.A. Nos. 873 to 875 of 2007 except the promissory notes which were reported to be untraceable. Canara Bank took up the matter in appeal before the Division Bench by filing writ appeal Nos. 559 to 561 of 2009. Writ appeals were allowed holding that the petitioner had not availed of the alternative remedy available under Section 20 of the Recovery of Debs due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). Aggrieved by the same, this appeal has been preferred.

4. We have heard learned counsel for the petitioner. This is a classic case which shows how the parties can protract proceedings in fiscal matters. Parties as well as the system have contributed to the delay. At every stage of the proceedings there was delay. Facts disclosed that Canara Bank had filed the application in the year 2002 vide O.A. No. 152 of 2002 for total amount of Rs. 1,59,51,477.93 with interest and the OA stands at the stage at which it was filed, not-an inch forward.

5. I.A. Nos. 873 to 875 of 2007 were filed by the petitioner as well as respondent Nos. 2 to 6 before the Tribunal after a period of five years of filing the original applications. Applications were dismissed by the Tribunal on 18.02.2008. Writ petitions filed in the year 2008 were allowed by the learned Single Judge on 07.11.2008. Writ appeals were filed before the Division Bench by the Canara Bank in the year 2009, which could be disposed of only after a period of 3 years. Bank's appeals were allowed, since the contesting respondents did not avail of the alternative remedy available under the Act.

6. Debt Recovery Tribunals in the country are established for expeditious adjudication and recovery of debts due to banks and financial institutions. It was noticed that banks and financial institutions have been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and therefore the actual need was felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. It was noticed that on 30.09.1990 more than fifteen lacs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved

more than Rs.5622 crores in dues of public sector banks and about 391 crores of dues of the financial institutions. The locking up of such huge amount of money in litigation, it was noticed, prevents proper utilization and recycling of the funds for the development of the country. It is in the above scenario, Parliament enacted The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993). The Act itself provides the mechanism to an aggrieved party, if he is dissatisfied with an order passed by the tribunal. Section 20 of the Act says that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the Act may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

7. Section 18 of the Act deals with Bar of Jurisdiction which says:

"On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17."

8. Powers, which were conferred on the civil court, now stands conferred on a Tribunal under Section 17 of the Act thereby it can deal with applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. We are of the view when a specific remedy is made available to the aggrieved party under Section 20 of the Act, learned Single Judge of the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, was not justified in interfering with the orders passed by the Debt Recovery Tribunal.

9. Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the tribunal was correct or not. The petitioner and the contesting respondents have

no case that either the bank or the tribunal had violated any statutory provisions by rejecting their applications.

10. Writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness of otherwise of each and every interim order passed by the Tribunal, is going to be tested in a writ court, it will only defeat the object and purpose of establishing such tribunal. We already noticed that due to the intervention of the writ court, the matter got delayed for four years defeating the very purpose and object of the Act. We, therefore, find no merit in these petitions and the same are dismissed.