

Arvind Kumar Sinha Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Apr-04-2006

Judge : S.K. Katriar, J.

Acts : [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) - Sections 19, 20, 21, 22, 29 and 30; Income Tax Act; Income Tax Rules - Rules 60, 60(1) and 61; Bihar and Orissa Public Demands Recovery Act; Motor Vehicles Act; [Constitution of India](#) - Article 227; Code of Civil Procedure (CPC)

Appeal No. : C.W.J.C. No. 1304 of 2006

Appellant : Arvind Kumar Sinha

Respondent : Union of India (Uoi) and ors.

Judgement :

S.K. Katriar, J.

1. Heard Mr. K.D. Chatterjee for the petitioner, Mr. Shashi Anugrah Narain for respondent No. 2 (Punjab National Bank), Mr. Kamal Nayan Choubey for respondent No. 3 (Sri Ram Chandra Khan), and Mr. Roy Shivaji Nath for respondent Nos. 6 and 7. This writ petition arises out of recovery proceedings under the provisions of the [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) (hereinafter referred to as the 'Act'), and is directed against the order dated 18.1.2006 (Annexure-5), passed by the Debts Recovery Tribunal,

Patna, in Appeal No. 9 of 2005 (Arvind Kumar Sinha v. Punjab National Bank and Ors.), passed in purported exercise of powers conferred by Section 30 of the Act, which upheld the order dated 18.10.2005 (Part-I) (Annexure-4), passed by the learned Recovery Officer, Patna, in R.P. No. 30 of 2001 (Punjab National Bank, Exhibition Road Branch, Patna v. Thriller and Ors.).

2. Respondent n.7 (Rajiv Kumar Sinha) had obtained a loan of Rs. three lacs on 26.8.1985 from the respondent Bank to set up a proprietorship business impleaded herein as respondent No. 6 (M/S. .. Thriller, a Proprietorship concern, through its Proprietor Sri Rajiv Kumar Sinha, At-Fraser Road, P.S. Kotwali, District Patna). The petitioner is the father of respondent No. 7, and had stood guarantee of the loan. The latter fell in arrears leading to Title Mortgage Suit No. 80 of 1991, filed in the Court of learned Subordinate Judge, Patna. The suit was decreed ex-parte by judgment and decree dated 15.10.1996. Respondent Nos. 6 and 7 filed Misc. Case No. 5 of 1997 in the court o1 learned Subordinate Judge-X, Patna, for setting aside the ex-parte decree. The respondent bank simultaneously levied Execution Case No. 9 of 1997 in the Court of Subordinate Judge-), Patna, for realisation of the decretal amount which was transferred to the Tribunal. In the meantime, the aforesaid Misc. Case No. 5 of 997 was dismissed by the learned Subordinate Judge, Patna, on the ground of its maintainability The judgment and decree of the learned Subordinate Judge thus became final. During the pendency of the recovery . proceedings, steps wore taken before the Lok Adalat to settle the dispute. The Bank compromised the entire matter for a sum of rupees twelve lacs and odd which had to be deposited within the time-frame indicated in the order of the Lok Adalat. A copy of the proceedings before the Lok Adalat dated 30.1.2002 is marked Annexure-1 to the writ petition. The petitioner and/or respondent No. 7 failed to deposit the amount as a result of which the compromise lost its force and, therefore, the proceedings before the learned Recovery Officer revived.

2.1) After protracted hearing before the learned Recovery Officer, the petitioner's house was put on auction sale and respondent No. 3 has made his highest offer of Rs. 20,01,999/- initially, but later on raised it to Rs. 40,25,000/-, apart from incidental expenses. The admitted position is that respondent No. 3 has deposited the entire amount as per the order dated 13.10.2005 (part-II) within the time

granted by the order resulting in confirmation of the sale. The petitioner thereafter preferred the aforesaid Appeal No. 9 of 2005, which has been disposed of by the impugned order dated 18.1.2006, whereby the appeal has been dismissed. Hence this writ petition.

3. At the commencement of the present proceedings this Court thought it fit to provide a senior counsel to the petitioner in the interest of justice. Mr. K.D. Chatterjee appeared as Amicus Curiae with consent of the petitioner and his counsel.

4. Learned Counsel for the parties have made elaborate submissions in support of their respective stand. I do not feel the necessity of discussing the same in view of the nature of the order that I am going to pass, lest the further remedies of the petitioner get prejudiced. This writ petition does not appear to me to be maintainable in view of the remedy of appeal available to the petitioner under Section 20 of the Act. The following reported judgments support this position::

(i) : AIR 2001 SC3208 (Punjab National Bank v. O.C. Krishnan and Ors.);

(ii) : AIR2002 Kant259 (Bharat Beedi Works Ltd. v. Kunhambu K. and Ors.);

(iii) : AIR 2003 MP8 (State Bank of India v. Shri Shyamji Sales and Ors.).

It is a well established principle of law and reiterated in the aforesaid judgments that the writ court should refrain from exercising its jurisdiction where statutory remedy has not been exhausted unless exceptional circumstances are shown which are equally well-known. For example, if the proceedings have been taken in violation of the fundamental rights, non-observance of the principles of natural justice, or violation of the provisions of the legislation in question. No such case has been made out by the petitioner. The liberty to move the High Court directly in writ jurisdiction is further restricted in view of the scheme of the Act and discussed hereinafter.

5. The procedure irregularities sought to be established by learned Counsel for the petitioner can appropriately be adjudicated by the appellate Tribunal. Supreme Court has cautioned on various occasions that - the jurisdiction under Article 227

of the Constitution should not be excersised 'as the cloak of an appeal in disguise.' The Supreme Court has observed as follows in the judgment reported in : (2003)6SCC641 (State through Special Cell, New Delhi v. Navjot Sandhu alias Afshan Guru and Ors.), paragraph 28 of which is set out hereinbelow for the facility of quick reference:

28. Thus the law is that Article 227 of the [Constitution of India](#) gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, wren the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the [Constitution of India](#) since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised 'as the cloak of an appeal in disguise.

6. The present writ petition is all the more not maintainable in view of the scheme of the Act. Section 29 of the Act read with Part-I, Rule 60(1) of the Income Tax Act provides that the defaulter, or any person whose interests are affected by the sale may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, after satisfying the conditions stipulated therein, inter alia, deposit the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered with interest. Section 20 of the Act provides the forum of appeal before the Appellate Tribunal. Section 21 of the Act is headed 'Deposit of amount of debt due, on filing appeal' which is reproduced

hereinbelow for the facility of quick reference:

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 per cent 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.

It is thus manifest that it is open to the petitioner to prefer an appeal in terms of Section 21 provided he deposits with the Appellate Tribunal seventh-five percent of the amount of debt so due to him as determined by the Tribunal under Section 19. The proviso to Section 21 vests the Tribunal with adequate powers, for reasons to be recorded in writing, to waive or reduce the amount to be deposited under this section.

7. Learned Counsel for respondent No. 2 has rightly brought to my notice the averment made in paragraph 22 of the writ petition which is reproduced hereinbelow for the facility of quick reference:

22. That so far as concern about filing petition before the Learned Recovery Officer under Rule 60 & 61 of Income Tax Rules for setting aside of sale of immovable properties, the petitioner is not in position to deposit about Rs. 50.00 lacs before the learned Recovery Officer. It will also be unjust and improper for the Bank to realize such a huge amount against the loan of Rs. 3.00 lacs only. Under this condition, the petitioner/ Guarantor is unable to take shelter of Rule 60 or 61 of Income Tax Rules as mentioned in the impugned order.

It is thus manifest that the present writ petition is an attempt to circumvent the statutory provisions of the Act read with the relevant provisions of the Income Tax Act. The statement made in paragraph No. 22 of the writ petition in justification of the present writ petition has to be rejected outright. It is an absolutely untenable

submission that the provision to deposit the amount before the appeal is entertained renders the forum of appeal onerous and/or inefficacious. Similar provisions are to be Found in the Bihar and Orissa Public Demands Recovery Act and the Motor Vehicles Act. Identical contentions were advanced before the Supreme Court and in this Court on innumerable occasions with respect to the two Acts, and it has uniformly been rejected, inter alia, stating that the Court cannot help the situation because the statute is so structured. The Parliament in its wisdom has so structured, the Act that steps for cancellation of auction sale, or the right of appeal, can be availed only after the stipulated amount has been deposited. This Court is duty bound to ensure implementation of the laws of the land and it is, therefore, not open to us to take steps which may wittingly or unwittingly result in defeating the statutory provisions.

8. The statement of objects and reasons for the Act, inter alia, states that the Tiwari Committee had suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. More than fifteen lakhs of cases filed by the public sector banks, and about 304 cases filed by the financial institutions, were pending in various courts at the time of consideration of the Bill, recovery of debts involved more than Rs. 5622 crores as dues of Public Sector Banks, and about Rs. 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country. The Act, therefore, seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. It is in furtherance of these aims and objects that the Parliament in its legislative wisdom has provided for adjudication of the claims by following a summary procedure. Section 22 of the Act, inter alia, provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice and shall have powers to regulate their own procedure.

9. In the result, I have no hesitation in concluding that this writ petition is not maintainable and the petitioner is relegated to the statutory remedies available to him. It goes without saying that dismissal of this writ petition is entirely confined to

the question of its maintainability and, therefore, no part of the observations made hereinabove may be construed to be an observation on the merits of the cases of the parties lest it prejudices their remedies available under the statute. The same, if preferred, shall be disposed of in accordance with law am unmindful of the observations made hereinatove.

10. Before I part with the records, I must observe that Mr. K.D. Chatterjee rendered valuable assistance to this Court as Amicus Curiae. The Secretary, Patna High Court Council of Legal Aid and Advice, shall pay a sum of Rs. 20.000/- (twenty thousand) to him.

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