

Mrs.Subbulakshmi .. Vs. Punjab and Sind Bank Represented by Its Manager, and ors.

Mrs.Subbulakshmi .. Vs. Punjab and Sind Bank Represented by Its Manager, and ors.

SooperKanoon Citation : sooperkanoon.com/905600

Court : Chennai

Decided On : Jun-30-2010

Judge : D.Murugesan; T.Mathivanan, Jj.

Acts : Constitution Of India - Article 227

Appeal No. : C.R.P.(NPD) No.1819 of 2010 and W.P.No.10828 of 2010

Appellant : Mrs.Subbulakshmi ..

Respondent : Punjab and Sind Bank Represented by Its Manager, and ors.

Advocate for Def. : Mr.A.P.S.Kasturi Rangan, Adv.

Advocate for Pet/Ap. : Mr.R.Shanmugam, Adv.

Judgement :

1. Both the civil revision petition and the writ petition relate to the common cause between the same parties. Hence they are taken up together and disposed of by this common order. C.R.P.(NPD) No.1819 of 2010:

The civil revision petition arises under the following circumstances. A company by name M/s Gremach Tea & Estates Limited, Chennai availed a sum of Rs.7,65,00,000 as Bridge Loan from the first respondent-Punjab & Sind Bank during the year 1995. The loan amount carried interest at the rate of 16% per

annum compounded at quarterly rest or any other rate that may be fixed by Reserve Bank of India from time to time. 25 lakhs of equity shares were pledged as security for the said loan. The petitioner and her husband by name K.S.Shriram stood as guarantors in their individual capacity for the liability of the company, as both were the Directors of the company. Several loan documents were executed. As the debt was not settled in full, the first respondent-bank filed O.A.No.1312 of 1998 before the Debts Recovery Tribunal, Chennai for a judgment and decree against the company, the petitioner herein and her husband, who were arrayed as defendants 2 & 3 to jointly and severally pay a sum of Rs.90,61,877/- with interest at 19.50% per annum and for sale of the shares referred to in Schedule A to the application. The said original application having been re-numbered on the file of Debts Recovery Tribunal II, Chennai in O.A.No.1131 of 2001, was ordered on 13.5.2004. Thereafter, the bank filed D.R.C.No.107 of 2004 before the Debts Recovery Tribunal II, Chennai for issue of Recovery Certificate. That was granted by order dated 27.7.2004. Thereafter, the petitioner herein filed an application in I.A.SR.No.3365 of 2010 before the Recovery Officer purportedly under Section 19(7) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to recall the proceedings in D.R.C.No.107 of 2004. That application was dismissed on the ground of maintainability giving rise to the present civil revision petition.

2. We have heard Mr.R.Shanmugam, learned senior counsel for the petitioner and Mr.A.P.S.Kasturi Rangan, learned counsel for the first respondent-bank.

3. The only question to be decided in the revision case is as to whether the application filed by the petitioner before the Recovery Officer to recall the earlier proceedings whereby the Recovery Certificate was issued is maintainable or not.

4. Section 2(o) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the Act") defines "Tribunal" as meaning one established under sub-section (1) of Section 3. By virtue of Section 3, the Central Government shall by notification establish one or more Tribunals to be known as the Debt Recovery Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal or under the Act. The composition of the Tribunal is as per Section 4 of the Act, which shall consist of one person only to be known as the Presiding

Officer who shall be appointed by a notification by the Central Government. The jurisdiction, powers and authority of the Tribunal are contemplated under Section 17 of the Act, whereby the Tribunal is empowered to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. A set of procedures to be followed by the Tribunal is contemplated under Section 19 of the Act. Sub-section (7) of Section 19 empowers such Tribunal to issue a certificate to the Recovery Officer for recovery of the amount of debt specified in the certificate. The above scheme of the Act shows that whenever the bank or financial institution approaches the Tribunal constituted under Section 3 of the Act, such Tribunal alone can exercise the power including the issuance of certificate to the Recovery Officer for recovery of the amount.

5. The expression "Recovery Officer" as defined under clause (k) of Section 2 states that a Recovery Officer to be appointed by the Central Government for each Tribunal under sub-section (1) of Section 7. The said Section contemplates that the Central Government shall provide the Tribunal with a Recovery Officer and such other officers and employees as the Government may think fit. In terms of sub-section (2) of Section 7, Recovery Officers are the employees of the Tribunal and they shall discharge their functions under the general superintendence of the Presiding Officer, namely, the Tribunal constituted under Section 3 with the composition under Section 4. As compared to the power of the Presiding Officer, the power of the Recovery Officer is very limited in the sense to execute the certificates issued by the Tribunal and not more than that. Section 26 contemplates that it shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate. Sub-section (2) of Section 26 makes it clear that notwithstanding the issue of certificate to the Recovery Officer, the Presiding Officer alone shall have the power to withdraw the certificate or correct any clerical or arithmetical mistake by sending an intimation to the Recovery Officer. A reading of the provisions of the definition of Recovery Officer, the appointment of the Recovery Officer under Section 7 of the Act and the specific provision conferring the power on the Presiding Officer either to withdraw the certificate or even to correct any clerical or arithmetical mistake in the certificate makes it clear that the said power is vested in the

Presiding Officer only. The Recovery Officer cannot go behind the certificate to recall the proceedings pending before the Tribunal, the Presiding Officer. As a corollary, the Recovery Officer cannot either go beyond or behind the decree.

6. In the given facts, after the Recovery Certificate was issued by the Presiding Officer of the Debts Recovery Tribunal, the petition to recall such an order is certainly not maintainable before the Recovery Officer, as the Recovery Officer is not vested with any such power to recall the certificate issued by the Presiding Officer of the Tribunal. In that view of the matter, the application filed by the petitioner to recall the proceedings in D.R.C.No.107 of 2004 on the file of the Debts Recovery Tribunal II, Chennai is certainly not maintainable and the same has been rightly rejected as not maintainable. That apart, once the certificate has been issued under Section 19(7) of the Act, no proceeding could have been pending for the petitioner to seek for recall of such proceedings. Hence we find no error or infirmity in the order of the Recovery Officer of the Debts Recovery Tribunal II, Chennai in dismissing the petition of the petitioner as not maintainable. Accordingly, the civil revision petition fails and the same is dismissed. Consequently, M.P.No.1 of 2010 is also dismissed. No costs. W.P.No.10828 of 2010:

The writ petitioner is the wife of Mr.K.S.Shriram. She is also one of the Directors of M/s Gremach Tea & Estates Limited. A decree was passed against the said company on an application filed by the first respondent-bank in O.A.No.1131 of 2001 before the Debts Recovery Tribunal II, Chennai. To set aside the said decree, the petitioner filed M.A.No.157 of 2009 seeking to condone the delay of 1923 days in filing such an application. That application was dismissed on 22.1.2010. Questioning the said order, the petitioner filed M.A.No.147 of 2010 before the Debts Recovery Appellate Tribunal, Chennai, which was also dismissed by the order dated 6.5.2010. The said order is under challenge in this writ petition.

2. The grievance of the petitioner is that the company went into liquidation and finally it was wound up on 3.4.98. Knowing fully well the fact of winding up, the bank had filed the original application on 30.7.98 for recovery of the amount. Notices on the application were not served on the petitioner, as they were served

only on the company, which resulted in the defendants having been set ex parte and the application was allowed. Inasmuch as there was no notice on the application, the ex parte order is liable to be set aside. The petitioner came to know of the entire proceedings only when the possession of the property was sought to be taken.

3. Mr.R.Shanmugam, learned senior counsel for the petitioner would submit that the bank was aware of the address where the petitioner is residing, namely, No.11, Lambeth Avenue, Madras, as could be seen from their application itself. Having known the address, they purposely sent the notices to the company's address at Mount Road, Chennai. Further, the petitioner is a diabetic patient right from the year 1984, went into coma in the year 1997-98 and was advised to take rest and periodical medical reports were also filed. In the absence of service of notice and for the reasons regarding the illness, the Debts Recovery Tribunal ought to have condoned the delay.

4. On the other hand, Mr.A.P.S.Kasturi Rangan, learned counsel for the first respondent bank has submitted that the petitioner had the knowledge of the proceedings pending before the Debts Recovery Tribunal II, Chennai. The delay is not explained with supporting materials. He would submit that the petitioner, who is the wife of K.S.Shriram, another Director of the company, had authorised one Mr.M.Jayaraman, the General Manager of the company to appear for and on behalf of herself and accordingly, the said Jayaraman appeared before the Tribunal on 27.11.98 and thereafter, there was no representation which resulted in an ex parte final order having been passed on 13.5.2004. Hence the contention that there was no notice served on the petitioner is totally incorrect.

5. We have carefully considered the rival submissions. Mr.R.Shanmugam, learned senior counsel for the petitioner relied upon the following judgments of the Supreme Court: (i) G.Ramegowda, Major and others v. Special Land Acquisition Officer, (1988) 2 SCC 142.

(ii) N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123.

(iii) Sushil Kumar Sabharwal v. Gurpreet Singh and others, (2002) 5 SCC 377.

(iv) State of Nagaland v. Lipok AO and others, (2005) 3 SCC 752.

The learned senior counsel contended that the expression "sufficient cause" should receive a liberal construction and the true guide for a Court to exercise the discretion under Section 5 is as to whether the party acted with reasonable diligence in prosecuting the case. The learned senior counsel would submit that inasmuch as the petitioner has diligently prosecuted her case and only due to want of service of notice she could not represent and defend her case before the Debts Recovery Tribunal.

6. While considering the petition for condonation of delay, the Court would certainly keep in mind that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred and the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. A catena of decisions would ultimately show that if there is any negligence, deliberate or gross inaction or lack of bona fides on a party, condonation of delay cannot be pleaded on the ground that in order to do substantial justice, such delay should be condoned. The question of condonation of delay would depend upon the facts of each case. Though the expression "sufficient cause" should receive a liberal construction, the Court must also see as to whether the party approaching the Court seeking for such condonation of delay had acted with reasonable diligence. It is not the only test to find out the diligence on the service of notice, as the real test would be only the knowledge of the proceedings pending before the Court or Tribunal. The petitioner is the wife of one K.S.Shriram. Both the petitioner and her husband were the Directors of the company in liquidation. Admittedly, K.S.Shriram had received the notice on the original application as early as in the year 1998, as could be seen from her own affidavit dated 18.9.2009 made in M.A.No.157 of 2009 seeking to set aside the ex parte final order dated 13.5.2004. That apart, from the proceedings of the Debts Recovery Tribunal, it is clear that both the petitioner and her husband had authorised one Mr.Jayaraman, General Manager to represent the company before the Tribunal. He also represented the company on 27.11.98. Thereafter, the proceedings were posted to 8.4.99 and at the request of the respondents, it was adjourned to 2.7.99, on which date the memo of the Official Liquidator was also

filed. Therefore, the petitioner was very well aware of the proceedings pending before the Tribunal as well as the appearance of the Official Liquidator in the proceedings. Thereafter, there were no representation on number of occasions.

7. After the final order was passed on 13.5.2004, both the petitioner and her husband filed M.A.No.44 of 2009 before the Tribunal seeking for condonation of delay of 1580 days in filing the application to set aside the ex parte final order. That application was opposed by the respondent-bank by filing a counter affidavit. By a subsequent order dated 17.9.2009, the Tribunal directed the matter to be called on 14.5.2009 for production of records and for arguments. Thereafter, the application was rejected by order dated 1.6.2009. This order has become final and the petitioner and her husband had not only made an attempt earlier to seek for an order setting aside the ex parte final order, but also they had the knowledge of the entire proceedings. Thereafter, they set up their son and daughter Mr.K.S.Ramprasad and K.S.Rampriya and filed M.A.No.2 of 2009 before the Recovery Officer seeking an injunction restraining the bank from in any manner alienating the schedule mentioned property which was attached. That application was opposed by the bank and ultimately the same was dismissed by order dated 30.1.2009. By the time the property was also sold in the public auction on 19.1.2009. Thereafter, the son and daughter of the petitioner filed an appeal against the order of the Recovery Officer dated 30.1.2009 and the same was also rejected. It is also to be noted that the husband of the petitioner also filed W.P.No.3834 of 2009 before this Court questioning the Recovery Certificate of the Recovery Officer dated 27.7.2004 issued pursuant to the final order dated 13.5.2004. That writ petition was also opposed by the respondent bank and ultimately it was disposed of by holding that there was a provision of filing appeal. Thereafter, the husband of the petitioner did not prosecute further and allowed the proceedings to become final. The subsequent sale proceedings were also questioned by both the son and daughter of the petitioner in M.A.No.24 of 2009 before the Debts Recovery Tribunal II, Chennai and the same was also dismissed by order dated 29.4.2009. A further appeal in A.P.No.15 of 2009 filed by the children was also dismissed on 26.2.2010. Only after all the above proceedings, the petitioner had filed M.A.No.157 of 2009 on 18.9.2009 questioning the final order.

8. From the above sequence of events, it is clear that though the petitioner claims that she was not issued with the notice of the proceedings pending before the Debts Recovery Tribunal II, Chennai in O.A.N0.1131 of 2001, she had the knowledge of the proceedings and in fact had not only nominated the General Manager of the company to defend the case, but also had questioned the various proceedings by filing applications not only by herself but also by her husband, son and daughter. In such circumstance, having had the knowledge, the petitioner had not put forth any sufficient cause for condoning the inordinate delay of 1923 days. The application lacks bona fides. For all the above reasons, we are not inclined to accept any of the submissions made by the learned senior counsel for the petitioner. The petitioner though had filed an application along with her husband seeking to condone the delay in filing application to set aside the ex parte final order and the said application was dismissed, she had again filed the present application as if she had no knowledge of the proceedings. In such circumstances, the application seeking for condonation of delay has been rightly rejected by both the Debts Recovery Tribunal II, Chennai and the Debts Recovery Appellate Tribunal, Chennai. In our considered opinion, those orders need not be interfered with. Accordingly, the writ petition also fails and the same is dismissed. Consequently, M.P.Nos.1 & 2 of 2010 are also dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com