

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.08.2009

+ W.P.(C) 7205/2007

SHRI BAL KISHAN BANSAL Petitioner

versus

THE JAMMU & KASHMIR BANK LTD. & ORS. Respondent

Advocates who appeared in this case:-

For the Petitioner	: Mr. Pankaj Gupta, Advocate.
For the Respondent	: Mr. Rajinder Handoo, Advocate for respondent nos. 1 and 2. Mr. Rajeeve Mehra, Sr. Advocate with Ms. Divya Chaturvedi, Advocate for respondent no. 6.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

BADAR DURREZ AHMED, J (oral)

1. When this writ petition came up for hearing on the first date, that is, on 01.10.2007, the predecessor Bench recorded that the petitioner challenged the order dated 21.09.2007 passed by the Recovery Officer attached to the Debts Recovery Tribunal, III, Delhi. The said order also records that a statutory appeal under Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the DRT Act) is provided

against the said order dated 21.09.2007. The appeal is to be filed before the Debts Recovery Tribunal. The order further records that instead of filing the appeal, the petitioner had rushed to this court. One of the submissions of the learned counsel for the petitioner was that the Debts Recovery Tribunal was not entertaining the appeal unless the court fees was paid. The petitioner was aggrieved by the fact that court fees was being sought to be claimed from the petitioner although the impugned order related to the sale of property whereby objections preferred by the petitioner to the said sale had been dismissed. According to the petitioner, the filing of an appeal against such an order would not require the payment of any court fee as it is neither in the nature of a final order nor a decree against which the appeal is preferred. The Division Bench hearing the matter on 01.10.2007 was prima facie of the opinion that no such court fees would be payable on an appeal against an order such as the one which is impugned herein and it is for this limited purpose that notice was issued to the respondents.

2. Subsequently, by an order dated 26.11.2007, this court directed the Debts Recovery Tribunal to decide the appeal preferred by the petitioner on merits. However, it was made clear that in case this court ultimately decides that the court fees is to be paid, the same shall be paid by the petitioner and Mr Singla, learned Senior Advocate appearing for the petitioner, gave an undertaking to that effect on behalf of the petitioner. We are told that the appeal is now listed for hearing on 26.08.2009. Thus, in this writ petition the limited question that requires resolution is whether the petitioner is liable to pay

court fees on the appeal preferred by it under Section 30 of the DRT Act.

3. We have heard counsel for the parties. Section 30 of the DRT Act reads as under:-

“30. Appeal against the order of Recovery Officer.-(1)

Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive). ”

4. A plain reading of the aforesaid provision makes it clear that there is no mention of any court fees being payable on the appeal against the order passed by the Recovery Officer. As compared to this provision, the provision of appeal provided in Section 20 of the DRT Act would demonstrate that in that provision there is a clear mention of a fee being paid on the appeal. Section 20(1) of the DRT Act provides that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the said Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter. Section 20(3) of the said Act reads as under:-

“20. Appeal to the Appellate Tribunal.-(1)

(2)

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (4)
- (5).....
- (6)”

5. It is clear that Section 20(3) requires that the appeal shall be filed within 45 days from the date on which a copy of the impugned order is received by the appellant and that the appeal shall be in such form “accompanied by such fee” as may be prescribed. In this provision, there is a clear reference to the payment of a fee which may be prescribed. The provision to charge a fee has been made in Section 20(3) and the fee prescribed is provided for in Rule 8 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994. The fees prescribed are ad valorem fees as per Rule 8(2) of the said Debts Recovery Appellate Tribunal (Procedure) Rules, 1994.

6. Even in respect of an application to the Debts Recovery Tribunal under Section 19, by virtue of sub-rule (3), it is provided that such an application shall be in such form and be accompanied by such documents or other evidence and by “such fees” as may be prescribed. Thus, it is clear that wherever the DRT Act required the payment of fees on an application or an appeal, it has been provided for the same in the substantive provisions contained in the Act itself.

7. We may now refer to Section 36 which provides for the power to make rules. The said provision is as under:-

“36. **Power to make rules.**-(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may, provide for all or any of the following matters, namely:-

(a) the salaries and allowances and other terms and conditions of service of [the Chairpersons, the Presiding Officers], Recovery Officers and other officers and employees of the Tribunal and the Appellate Tribunal under sections 7, 12 and 13;

(b) the procedure for the investigation of misbehaviour or incapacity of [the Chairpersons of Appellate Tribunals and the Presiding Officers of the Tribunals] under sub-section (3) of section 15;

(c) the form in which an application may be made under section 19, the documents and other evidence by which such application shall be accompanied and the fees payable in respect of the filing of such application;

(d) 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;

(e) any other matter which is required to be, or may be, prescribed.

[(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8 and every rule made by the Central Government under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.]”

Sub-section (1) of Section 36 empowers the Central Government to make rules “to carry out the provisions of the Act”. Sub-section (2) of Section 36 provides for certain specific matters, of course, without prejudice to the generality of the powers as mentioned in Section 36(1). The specific instances on which rules could be made pertain to salaries and allowances, procedure of investigation and, particularly, clause (c) of sub-section (2) provides for rules to be framed with regard to the form in which an application should be made under Section 19, the documents and other evidence by which such application shall be accompanied and the fees payable in respect of the filing of such application. Clause (d) of sub-section (2) provides for rules in respect of 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. Clause (e) of sub-section 2 of Section 36 provides for rules in respect of any other matter which is required to be, or may be prescribed. It is, therefore, obvious that wherever the legislation thought it fit to impose a fee for an application or an appeal, it has been specifically provided in the Act itself. The extent of the fees and the manner in which the fees is to be paid has been relegated to the rule making power of the Central Government. It has been specifically provided for under Section 36(2)(c) and (d) of the said Act insofar as applications under Section 19 and appeals under Section 20, respectively, are concerned. There is no provision for payment of fees on an appeal under Section 30 of the said Act. However, Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as the ‘DRT Rules’) prescribes a fee for inter alia, ‘an

application’ under section 30(1) of the said Act. Rule 7, to the extent relevant, reads as under:-

“7. Application Fee.-(1) Every Application under section 19(1), or section 19(2), or section 19(8), or section 30(1) of the Act, or interlocutory application or application for review of decision of the Tribunal shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed Bank Demand Draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place where the Tribunal is situated.

(2) The amount of fee payable shall be as follows:-

S. No.	NATURE OF APPLICATION	AMOUNT OF FEE PAYABLE
1.	XXXX XXXX XXXX	XXXX XXXX XXXX
2.	XXXX XXXX XXXX	XXXX XXXX XXXX
3.	XXXX XXXX XXXX	XXXX XXXX XXXX
4.	XXXX XXXX XXXX	XXXX XXXX XXXX
5.	Appeals against orders of the Recovery Officer If the amount appealed against is (i) less than Rs.10 lakhs (ii) Rs.10 lakh or more but less than Rs.30 lakhs (iii) Rs.30 lakhs or more	Rs. 12,000 Rs. 20,000 Rs. 30,000
6.	XXXX XXXX XXXX	XXXX XXXX XXXX

Rule 7 refers to an ‘application’ under Section 30(1) of the said Act, when, section 30(1) speaks of an ‘appeal’ to the Tribunal from an order passed by the Recovery Officer. Apart from this anomaly, there are other problems with Rule 7 insofar as ‘fees’ for appeals under section 30(1) of the said Act are concerned. Even if we read ‘application’ to read as ‘appeal’ in Rule 7(1), the ad valorem fees on slab basis that is sought to be charged under serial No.5 of

the table of fees under Rule 7(2), is beyond the power of the Central Government. Rule 7 of the DRT Rules, insofar as it prescribes a fee for appeals under section 30(1) of the said Act, must be supported by a power for prescribing such a fee under the parent Act, i.e., the said Act. If no such fee is prescribed under the said Act and no power has been given to the Central Government, by the said Act, to frame a rule prescribing such a fee, then, Rule 7, to the extent that it prescribes such a fee, would be ultra vires the said Act.

8. In **General Officer Commanding-in-Chief v. Dr Subhash Chandra Yadav**: (1988) 2 SCC 351, the Supreme Court held:-

“14. Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

9. In **Supreme Court Employees’ Welfare Association v. Union of India**: [(1989) 4 SCC 187], the Supreme Court held:-

“62. A. delegated legislation or a subordinate legislation must conform exactly to the power granted.”

“98. Rules, whether made under the Constitution or a statute, must be intra vires the parent law under which power has been delegated”.

10. With regard to usual general delegation of rule making power expressed in the words – ‘to carry out the provisions of this Act’, - as contained in section 36(1) of the said Act, the Supreme Court, in **Kunj Behari Lal Butail v State of H.P.** : (2000) 3 SCC 40 observed as under:-

“14. We are also of the opinion that a delegated power to legislate by making rules ‘for carrying out the purposes of the Act’ is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.”

11. Recently, a similar issue was examined by a Division Bench of this Court in **K.K. Nangia & Others v. Government of NCT of Delhi & Anr.** (2009) 158 DLT 690. The change of a licence fee under Rule 46(4) of the Delhi Entertainments and Betting Tax Rules, 1997 (hereinafter referred to as the ‘Betting Rules’) was under challenge as being ultra vires the Delhi Entertainments and Betting Tax Act, 1996 (hereinafter referred to as the ‘Betting Act’). Section 20 of the Betting Act provided that no person shall act as a book-maker unless he obtains a licence from the Commissioners ‘in the form and manner’ prescribed. Section 45 of the Betting Act pertained to the power to make rules. As in the case of section 36(1) of the said Act, section 45(1) of the Betting Act stipulated that the Government may make rules ‘for carrying out the purposes’ of the Act. Section 45(2)(i) provided that rules may be made by the Government for – ‘prescription of form and the manner for obtaining book-makers licence’. As against these provisions, Rule 46(4) of the Betting Rules prescribed the ‘fee’ payable for the grant or renewal of licence for book-maker. In this backdrop, the Division Bench held:-

“Upon a plain reading of the provisions, it is more than clear that Section 20 of the said Act does not contemplate the charge of a fee. It merely prescribes that no person shall act as a book maker unless he obtains a licence from the Commissioners. The licence is to be in the form and manner prescribed. In our opinion, the

expression “form” and “manner” cannot be read to include a prescription for levying a fee. The statute must specifically entail levy of a tax or a fee. Even if it is to be left to the rule making power of the Government, the statute must say so. Section 45(2)(1) merely empowers the Government to make rules with regard to the prescription of the form and manner for obtaining a book maker’s licence. Section 45(1), which speaks of general rule making power of the Government, also relates to the carrying out of the purposes of the Act. Nowhere in the Act has it been prescribed that for the purposes of obtaining a licence, a book maker has to pay a fee.”

12. That being the position in law, Rule 7 of the DRT Rules, to the extent that it prescribes a fee for appeals from orders of the Recovery Officer, is beyond the rule making power of the Central Government. No such rules could have been made by the Central Government prescribing any fees or rate of fees, for such appeals, inasmuch as the Central Government was not empowered by the DRT Act to do so.

13. We hold that in respect of an appeal under Section 30 against an order passed by the Recovery Officer, no fees has been stipulated in the DRT Act. Consequently, the rules prescribing the application of such a fee are ultra vires the provisions of the DRT Act and, in particular, Section 30 thereof. Thus, no fees are payable in respect of such appeals.

14. We make it clear that we have decided only the question of court fees. All other points taken on merits may be agitated by the parties in the appeal pending before the Debts Recovery Tribunal under Section 30 of the DRT Act. The petitioner would also be entitled to pray for further directions/interim orders during the pendency of the said appeal before the DRT, which shall be

considered in accordance with law. We are told that the appeal is fixed for hearing tomorrow, that is, 26.08.2009. Till tomorrow, the respondents shall not take any steps with regard to the subject matter of this writ petition/appeal pending before the DRT.

The writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

AUGUST 25, 2009

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