

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 16 of 2021

Date of Decision: 12.09.2023

Abhi Coke Private Limited & Ors. Vs. Industrial Development
Bank of India Ltd.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. K. Paul, Sr. Adv. with
Mr. S. Thapa, Adv.
Mr. S. Chanda, Adv.

For the Respondent(s) : Mr. B.K. Das, Adv.
Mr. H. Yadav, Adv.
Mr. S.D. Upadhaya, Adv.

i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. This revision petition under Article 227 of the Constitution of India, has been filed assailing the impugned orders dated 05.12.2017 allowing O.A. No. 25 of 2017 and order dated

30.08.2021, rejecting a review application being RA. No. 1/2018 in O.A. No. 25 of 2017, by the learned Debts Recovery Tribunal, Guwahati.

2. The petitioners have alleged that in the proceedings before the Debts Recovery Tribunal, there has been a flagrant abuse of the principles of natural justice and that there is error of law patent on the face of the record, which has resulted in the miscarriage of justice. The allegation of the petitioners, is founded on the fact that the proceedings and judgment rendered was done ex parte and the petitioners, were unjustly deprived of an opportunity to participate in the proceedings.

3. The background facts in brief, are that on the default by the Petitioner Company on the re-payment of loan along with interest, the respondent Bank had filed an application before the Debts Recovery Tribunal at Guwahati for recovery of Rs. 30,79,24,469/- (Rupees Thirty Crores Seventy-Nine Lakhs Twenty-Four Thousand Four Hundred Sixty-Nine only), and the said application was registered as O.A. No. 25/2017. On receipt of notice, the petitioners appeared on 10.03.2017 and the next date was fixed on 11.04.2017 for filing of vakalatnama on behalf of the other

petitioners, and for written statement, which however while filing the vakalat, the petitioners, prayed for further time to file written statement. The matter was then fixed on 12.05.2017, and on that date the matter was then adjourned to 29.05.2017. On 29.05.2017, further time was again prayed by the petitioners for filing written statement, which was allowed by the Tribunal and the next date was fixed on 29.06.2017. On 29.06.2017 because of summer vacations, the case was again fixed on 31.07.2017. On this date on the failure of the petitioners to file the written statement which was duly recorded by the learned Tribunal, the right of the petitioners to file their written statement-cum-evidence on affidavit stood closed, and the matter was then fixed for final hearing on 04.09.2017. The petitioners then by way of I.A. 375/2017, filed for vacating the order dated 31.07.2017, along with a prayer for accepting their written statement and evidence on affidavit. On this application, the learned Tribunal allowed the respondent Bank to file its objections and the matter was then fixed for 26.10.2017. On 26.10.2017, the learned Tribunal finding that no cogent reasons had been given as to why the written statement could not be filed from 10.03.2017 to 31.10.2017, then rejected the I.A. 375/2017 and fixed the matter for final hearing on 23.11.2017. The matter was then subsequently heard, and the

judgment was pronounced and recovery certificate issued on 05.12.2017.

4. The petitioners thereafter preferred a review application being RA 1 of 2018 under Section 22(2)(e) and Section 19(25) of the Recovery of Debts due to Banks and Financial Act, 1993 for review of the judgment dated 05.12.2017 passed by the learned Tribunal, to which the respondent Bank filed objections thereto. The learned Tribunal after hearing the parties then by the second impugned order dated 30.08.2021, dismissed the said review application.

5. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Thapa, learned counsel for the petitioners submits that the learned Tribunal itself, had accorded time to the petitioners to file its written statement-cum-evidence on affidavit beyond 10.03.2017, on being satisfied with the causes assigned, and as such had erred in rejecting the application for vacating the order dated 31.07.2017. It is submitted that the rejection by the learned Tribunal, of the application for recall of the order dated 31.07.2017, was only on the reason given in the order that the written statement was to be filed on 10.03.2017, which was not done, and the matter was adjourned

on several dates that is 11.04.2017, 12.05.2017, 29.05.2017, 29.06.2017 and 31.07.2017 but petitioners still did not file the same. He submits that the learned Tribunal failed to appreciate the matter or the causes of the failure in filing the written statement by the petitioners, in its proper perspective, and such the impugned orders are liable to be interfered with. It has been further contended that even assuming the order dated 31.07.2017 is correct, the petitioners' right to participate could not have been denied and he submits that a perusal of orders dated 23.11.2017 and 05.12.2017, would clearly testify that the petitioners' right to participate in the hearing had been declined by the learned Tribunal and the matter proceeded ex parte. He therefore asserts that the learned Tribunal in not permitting the petitioners to participate in the hearing, tantamount to the violation of the principles of natural justice, and even though this has been categorically pleaded in the Review Application, the same was not given any consideration which is an error apparent on the face of the record.

6. The learned Senior counsel to justify the invocation of Article 227 of the Constitution, despite the availability of alternate remedy under *The Recovery of Debts and Bankruptcy Act, 1993*,

has submitted that the same is warranted to correct errors of jurisdiction which has been committed by the learned Tribunal in the instant case. He submits that the powers of superintendence of the High Court is to be exercised in the instant case, as there has been an abuse of the elementary of principles of justice which has resulted in the miscarriage of justice, and the orders of the learned Tribunal therefore are surely amenable to judicial review under Article 227. In support of his arguments with regard to the invocation of Article 227, and also the power of judicial review, the learned counsel has placed reliance on the following judgments: -

- i) ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. (1998) 8 SCC 1***
- ii) ***L. Chandra Kumar vs. Union of India & Ors. (1997) 3 SCC 261***

7. Mr. B.K. Das, learned counsel for the respondent Bank in his submissions has referred to Rule 12 of ***The Debts Recovery Tribunal (Procedure) Rule, 1993*** and submits that the time limit and period for which written statement and other documents to be filed before the Tribunal is clearly prescribed therein, and that the learned Tribunal had even extended the time for filing written statement, which the petitioners had repeatedly failed

to do so. Ample opportunity he contends, has been accorded to the petitioners and it is not a case wherein the petitioners have been denied any such opportunity to file their written statement, as sought to be made out. He further submits that the availability of alternate remedy for appeal, against any order of the learned Tribunal under the ***Recovery of Debts and Bankruptcy Act, 1993***, which is a special statute would surely prevent this Court from exercising its powers under Article 227 of the Constitution of India. He submits that in the impugned orders there is no presence of any manifest error as alleged, or that the learned Tribunal had acted in excess of its jurisdiction vested in by law. The learned counsel has then cited a decision rendered by the Supreme Court, in the case of ***Punjab National Bank vs. O.C. Krishnan & Ors.*** reported in ***(2001) 6 SCC 569*** in support of his submissions on the availability of alternate remedy and the non-maintainability of the instant revision application under Article 227 of the Constitution.

7. Heard the learned counsels for the parties and examined the materials on record. As noted in the judgment of ***Whirlpool Corporation (supra)***, if an effective an efficacious remedy is available, the High Court would not normally exercise its

jurisdiction, though presence of alternate remedy as has been held by the Hon'ble Supreme Court, will not operate as a bar in certain contingencies, one of which is the violation of the principles of natural justice. In the instant case, the only issue to be looked into, is whether there was any violation of the principles of natural justice as contended by the petitioners. To answer this question, this Court has examined the orders passed by the learned Tribunal and the sequence of events. As noted initially by this Court, in the brief narration of facts, and on a further perusal of the orders, it is clearly seen that this is not a case where there has been any denial of opportunity to the petitioners for filing of their written statements and other documents. In fact, an unduly long period spanning from 10.03.2017 to 31.07.2017 which is over 4(four) months, was allowed by the learned Tribunal for filing of written statements which, however the petitioners failed to comply with. Even I.A. No. 375/2017 for recall of the order dated 31.07.2017 closing the opportunity for filing of written statement was given due consideration and was rejected by a reasoned order.

8. Further, on the pronouncement of the judgment on 05.12.2017, the review application being RA 1/18, was also

considered and came to be dismissed only on 30.08.2021. Without further discussing in detail the orders passed by the learned Tribunal, it can be seen that there exists no element of deprivation of adequate opportunity to the petitioners or any blatant violation of the principles of natural justice as alleged, and as such no case had been made out to warrant any interference, or for any exercise of powers under Article 227 of the Constitution, by this Court.

9. The presence of alternate remedy as held in the case of ***Punjab National Bank vs. O.C. Krishnan*** (*supra*) cited by the counsel of the respondent Bank, in the absence of any contingency or situation to warrant interference under Article 227, the instant case is squarely covered by this judgment, wherein at Para-6, which is relevant, the Hon'ble Supreme Court held as follows:-

“6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said

Constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

10. The petitioner therefore having recourse to alternative efficacious remedy under the ***Recovery of Debts and Bankruptcy Act, 1993***, in the facts and circumstances of the case, this matter in the considered view of this Court, does not deserve any further consideration and accordingly stands dismissed.

11. However, there shall be no order as to costs.



JUDGE

Meghalaya
12.09.2023
"V. Lyndem PS"