

GAHC010252652023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WA/387/2023

CANARA BANK
A BODY CORPORATE
CONSTITUTED UNDER THE BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKING) ACT
1970 AND HAVING ITS HEAD OFFICE AT BANGALORE AND DOING THE
BUSINESS OF BANKING AT VARIOUS PLACES THROUGHOUT THE
COUNTRY AND HAVING ONE OF ITS BRANCHES AT GARALI
NAMED AS CANARA BANK
JORHAT BRANCH
SITUATED AT GARALI
DIST. JORHAT
ASSAM
PIN-785001- REP. BY ITS SR. MANAGER LAW
GUWAHATI CIRCLE OFFICE
NAMELY LAKSHMI GOGOI
D/O HITESH GOGOI
RESIDENT OF BRAHMAPUTRA APARTMENT
FLAT NO. 2
NEAR LAKHI MANDIR BELTOLA
GUWAHATI
PS DISPUR
DIST KAMRUP M ASSAM

VERSUS

M/S NEW MALAMATI TEA ESTATE AND 3 ORS.
MELAMATI TINIALI
PO MELAMATI TITABOR
DIST JORHAT
ASSAM
785632

REPRESENTED BY ITS SOLE PROPRIETOR MR. MUKHTAR AHMED

S/O LATE MUZIBUR AHMED

2:MR. MUKHTAR AHMED
S/O LATE MUZIBUR AHMED
MELAMATI TINIALI
PO MELAMATI TITABOR
DIST JORHAT
ASSAM 785632

3:THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY TO THE MINISTRY OF
FINANCE

3RD FLOOR
JEEVAN DEEP BUILDING
SANSAD MARG
NEW DELHI 110001

4:TH UNDER SECRETARY TO THE GOVERNMENT OF INDIA
THE MINISTRY OF FINANCE
3RD FLOOR
JEEVAN DEEP BUILDING
PARLIAMENT STREET
NEW DELHI 110001

For petitioner/appellant(s) : Mr. S. Borthakur, Advocate

For respondent(s) : Mrs. R. Devi, Advocate for respondents
No. 3 and 4.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

19.07.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellant being aggrieved with the order dated 31st August, 2023 passed by the learned Single Judge in WP(C) 1842/2021.

The respondents No.1 and 2 herein have approached the Writ Court

challenging the communication dated 01.08.2019 issued by the respondent No.3 in the writ petition, i.e. Under Secretary to the Govt. of India, Ministry of Finance.

The brief facts of the case are that the Central Government issued a notification dated 06.09.2018 while exercising power under Sub-Section (4) of Section 1 of Recovery of Debts and Bankruptcy Act, 1993, whereby it is specified that the provision of the above Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of Banks or financial institution is less than Rs.20,00,000/-.

The notification dated 06.09.2018 was put to challenge before the Rajasthan High Court in a writ petition and the effect and operation of the said notification was stayed by the Rajasthan High Court vide order dated 26.09.2018. The said writ petition was dismissed by the Rajasthan High Court vide order dated 01.07.2019 and consequently, the stay granted by the Rajasthan High Court was vacated on dismissal of the writ petition.

Therefore, a question arose as to what would happen to those cases which were filed during the period of 26.09.2018 to 30.06.2019, wherein, the amount involved is less than Rs.20,00,000/- (Rupees Twenty Lakh).

However, facing with the said situation, the Deputy Secretary to the Govt. of India, Ministry of Finance has issued a communication dated 01.08.2019 stipulating that the cases having suit value between Rs.10 lakh to Rs.20 lakh, which have been filed before the Debt Recovery Tribunal during the currency of stay may continue in DRTs so that no prejudice is caused to the parties who have filed the suit in good faith.

In the writ proceeding, the petitioners had challenged the said communication dated 01.08.2019 on the ground that the cases filed before the Debts Recovery Tribunal during the currency of stay cannot be tried by the Debt Recovery Tribunal as the said communication has no force of law.

The learned Single Judge after taking into consideration the arguments advanced on behalf of the respective parties has disposed of the writ petition with the following observations:-

- “(i)The impugned communication dated 01.08.2019 stands set aside and quashed and consequently, the Debt Recovery Tribunal, Guwahati cannot adjudicate OA No.97/2019.*
- (ii) The Respondent Nos. 1 and 3 would be at liberty to issue appropriate notification(s) thereby further amending the notification dated 06.09.2018 or issue fresh notification for taking care of those cases filed during the period from 28.09.2018 to 30.06.2019 whose suit value was below Rs.20,00,000/- before the Debt Recovery Tribunals.*
- (iii) The Debt Recovery Tribunal, Guwahati is directed to return the Original Application No. 97/2019 to the Respondent No.2 upon a certified copy of the instant judgment being produced before the Registrar, Debt Recovery Tribunal, Guwahati.*
- (iv) The Respondent No.2 is further given the liberty to file appropriate recovery proceedings before the competent Court of jurisdiction and the period of limitation from the date of filing of the OA No.97/2019 till the date the application is returned shall be excluded while computing the period of limitation”*

It is also to be noticed that though the appellants have filed this writ appeal in the month of October, 2023, but subsequently the Ministry of Finance has issued a notification dated 25th April, 2024 in exercise of the powers conferred by Sub-Section (4) of Section 1 of the Recovery of Debts and Bankruptcy Act, 1993, whereby, the notification dated 06.09.2018 is amended. The notification dated 25th April, 2024 is reproduced below:-

“MINISTRY OF FINANCE

(Department of Financial Services)

Notification

New Delhi, The 25th April, 2024

S.O. 1796(E). In exercise of the powers conferred by sub-section (4) of Section 1 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Financial Services, S.O.4312(E) dated 6th September, 2018, published in the Gazette of India, extra ordinary part-II, section 3, sub-section (ii), dated 6th September, 2018, namely, :-

In the said notification, after the words "but shall continue to apply to debts in respect of which an application for recovery has been filed before the Debts Recovery Tribunal prior to the date of publication of this notification, that is to say, the 6th day of September, 2018", occurring at the end the words, figures and letters "and to debts in respect of which an application for recovery has been filed before the Debts Recovery Tribunal between the period, that is to say, 26th September, 2018 to 30th June, 2019" shall be inserted.

[F. No.3/4/2018-DRT]

SUDHIR SHYAM, Economic Advisor"

From the above, it is clear that pursuant to the liberty granted by the learned Single Judge in the impugned judgment dated 31st August, 2023, the respondent No.3 has issued a notification under Section 1(4) of the Recovery of Debts and Bankruptcy Act, 1993 saving those cases filed before the Debts Recovery Tribunal, the suit value of which was between Rs. 10 lakhs to Rs.20 lakhs, during the period from 26.09.2018 to 30.06.2019, when the stay order passed by the Rajasthan High Court was in currency.

In view of the above, we are of the view that the Original Application No.97/2019 preferred on behalf of the appellants is liable to be tried by the Debts Recovery Tribunal concerned.

Hence, the direction No.(iii) and (iv) passed by the learned Single Judge are

not required to be given effect to.

With the above observation, this writ appeal is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant