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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 23.02.2017

Judgment delivered on: 10.03.2017

Writ Appeal No.230 of 2016

1. Mir Kasim Ali, son of Late Shri Mir Mohsin Ali, aged about 67 years, resident of K-5, Anupam Nagar, P.S. Pandari, Raipur, Civil & Revenue District Raipur (CG)
(Petitioner No.1 in the Writ Petition)
2. Mir Arif Ali, son of Late Shri Mir Mohsin Ali, age about 68 years, resident of K-6, Anupam Nagar, P.S. Pandari, Raipur, Civil & Revenue District Raipur (CG)
(Petitioner No.2 in the Writ Petition)

-----Appellants

Versus

1. State Bank of Indore, a subsidiary of State Bank of India, Constituted under the State Bank of India (Subsidiary Banks Act, 1959) having its Head Office at 5, Yashwant Niwas Road, Indore and branches interalia at Green Park, New Delhi, through its Chief Manager
(Respondent No.1 in the Writ Petition)
2. M/s Anmol Granites, A Partnership Firm having its office at 220, Sector-14, Faridabad, Haryana, Through its Partners:
 - (a) Shri Amitabh Choudhry
 - (b) Shri Khalil Ahmed Ansari (wrongly mentioned as Khalia Ahmed Ansari in impugned order)
 - (c) Shri Bhaskar Chawla(Respondent No.2 in the Writ Petition)
3. Shri Khalil Ahmed Ansari, son of Late Shri S.M.I. Ansari, aged about 70 years, resident of A-6, Anupam Nagar, Raipur, Chhattisgarh (Since deceased)

(Respondent No.4 in the Writ Petition)

4. Shri Amitabh Choudhary, son of Late Shri Deb Prasad Choudhary, aged about 65 years, resident of 911, Sector-17, Faridabad (Haryana)

(Respondent No.4 in the Writ Petition)

5. Shri Bhaskar Chawla, son of Shri K.C. Chawla, aged about 60 years, resident of 817, Sector 15A, First Floor, Faridabad (Haryana)

(Respondent No.5 in the Writ Petition)

---- Respondents

And

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---- Respondents

For Appellants : Mr.Kashif Shakeel, Advocate

For Respondent No.1 : Mr.Abhishek Sinha, Advocate

Hon'ble Shri Pritinker Diwaker, Acting Chief Justice

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V Order

Sanjay K. Agrawal, J.

1. The State Bank of Indore filed an application for recovery of loan against the appellants herein under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called as "Act of 1993"). In that proceedings, the appellants herein filed two interlocutory applications. One application seeking

examination of power of attorney by the State Examiner of the questioned documents or by any other independent agency and second application seeking cross-examination of Mr.M.D.Sharma, Manager, State Bank of Indore, Green Park Branch, New Delhi to prove that power of attorney is forged. The said applications were rejected by the Debts Recovery Tribunal (hereinafter called as “DRT”), Jabalpur by order dated 6.3.2013. In the appeals filed by the appellants herein under Section 20 of the Act of 1993 before the Debts Recovery Appellate Tribunal (hereinafter called as “DRAT”), the appeals were dismissed affirming the order of the Debts Recovery Tribunal.

2. Feeling aggrieved and dissatisfied with the order of the DRT duly affirmed by the DRAT, the appellants herein filed the writ petitions being Writ Petition (C) Nos.1802 of 2013 and 902 of 2013 questioning the order of the DRAT dated 1.5.2013 before this Court.
3. The writ Court by its impugned order dated 16.2.2016 dismissed the writ petitions finding that order of the DRT duly affirmed in appeal by the DRAT is an interim order and writ Court recorded its findings in para 11 of the impugned order stating that the order of DRT and DRAT do not warrant interference.
4. Questioning the legality and validity of the order passed by learned Single Judge in the writ petitions, the appellants, who were the petitioners in the writ petitions, have preferred these writ appeals

under sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter called as “Act of 2006”) stating inter-alia that order passed by the DRT as affirmed by the DRAT and order of the writ Court run contrary to the well settled principles of law in this regard and the appellants are entitled for examination of the questioned documents and cross-examination of Mr.M.D.Sharma, Manager, State Bank of Indore before the DRT.

5. Mr.Kashif Shakeel, learned counsel appearing for the appellants, would submit that learned Single Judge has committed grave legal error in affirming the order passed by the DRT/DRAT and further committed grave error in not considering the appellants' case in right prospective, therefore, the appellants be granted full opportunity to get the disputed documents examined by an expert and opportunity to cross-examine the witness as provided under the Act of 1993 and as such, the order passed by learned Single Judge deserves to be set aside.
6. Mr.Abhishek Sinha, learned counsel appearing for respondent No.1, would submit that rejection of two applications by the DRT by an interim order has duly been affirmed by the DRAT and said finding recorded by the DRT and the DRAT is a finding of fact based on material available on record. He would further submit that the writ Court has assigned sufficient and adequate reasons for upholding and re-affirming the order of the DRT and as such,

finding of fact so recorded is not open to be reviewed in the writ appeal jurisdiction of this Court. Alternatively, he submits that learned writ Court has exercised the jurisdiction under Article 227 of the Constitution of India and therefore, proviso to sub-section (1) of Section 2 of the Act of 2006 would apply and as such, the writ appeals against the order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India are not maintainable and deserve to be dismissed.

7. We have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

8. Upon hearing, the following two questions arise for consideration:-

(i) Whether learned Single Judge is justified in dismissing the writ petitions by declining to exercise the jurisdiction in favour of the writ petitioners ?

(ii) Whether the writ appeals as framed and filed are maintainable or they are barred by proviso to sub-section (1) of Section 2 of the Act of 2006 ?

9. In order to decide the first plea raised at the Bar by the appellants, it would be appropriate firstly to consider the scope of writ appeal under sub-section (1) of Section 2 of the Act of 2006. Section 2 (1) of the Act of 2006 provides as under:-

“2. Appeal to the Division Bench of the High Court from a judgment or order of one judge of the High Court made in exercise of original jurisdiction.-(1)

An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

10. A studied perusal of sub-section (1) of Section 2 of the Act of 2006 would show that it provides an *intra court appeal* before the Bench of two or more judges of the High Court against the order of Single Judge and *intra court appeal* is continuation of original proceeding and appellate court sitting in Appeal as court of correction can correct its own order in exercise of same jurisdiction which was vested in learned Single Judge or writ court which is a court of judicial review.

11. The scope of intra-court appeal by a Division Bench against the order of a Single Judge has been considered from time to time by Their Lordships of the Supreme Court in umpteen number of judgments. Few of them may be noticed herein profitably and gainfully:-

11.1) Way back in the year 1974, in the matter of **Smt. Asha Devi Vs. Dukhi Sao and Another**¹, the Supreme Court has held as under:-

“But there is no doubt that in an appropriate case a Letters Patent Bench hearing an appeal from a learned Single Judge of the High Court in a first appeal heard by him is entitled to review even findings of fact.”

¹ (1974) 2 SCC 492

11.2) Similarly in the matter of Baddula Lakshmaiah and others Vs. Sri Anjaneya Swami Temple and others²

the Supreme Court has again defined the nature and scope of power of a Letters Patent Bench hearing an appeal against the decision of learned Single Judge and held as under:-

“2.....Against the orders of the trial court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A Letters Patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood is procedural language.....”

11.3) In the matter of B. Venkatamuni Vs. C.J. Ayodhya Ram

Singh and others³, the Supreme Court has held that entertainment of a Letters Patent Appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. It was observed as under:-

“11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this Court in Umabai & Anr. vs. Nilkanth Dhondiba Chavan (Dead) By Lrs. & Anr. (2005) 6 SCC 243, could not

² (1996) 3 SCC 52

³ (2006) 13 SCC 449

have been ignored by it, whereupon the learned counsel for Respondents relied:

"52. It may be, as has been held in *Asha Devi v. Dukhi Sao* (1974) 2 SCC 492 that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint."

11.4) Recently, the Supreme Court in the matter of **Commissioner of Income Tax and another Vs. Karnataka Planters Coffee Curing Work Private Limited**⁴ has held that jurisdiction of Division Bench in a writ appeal is primarily one of adjudication of questions of law. Therefore, findings of fact recorded concurrently by the authorities and upheld by learned Single Bench are not to be lightly disturbed in intra-court appeal. It was observed succinctly as under:-

"3.....The jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act and also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed."

11.5 In the matter of **Mani w/o Komalchand Jain Vs. Sub-Divisional Forest Officer-cum-Authorised Officer, Mdhwa and another**⁵, a Division Bench of High Court of Madhya

⁴ (2016) 9 SCC 538

⁵ 2000 (2) MPLJ 586

Pradesh has held that in intra-court appeal, the Division Bench should be slow in disturbing the order of writ Court and held as under:-

“5.....Letters Patent Appeal is normally an intra-court appeal whereunder Letters Patent Bench corrects its own orders in exercise of same jurisdiction as vested in Single Judge – It is not an appeal against an order of a subordinate court. In the matters of Ku. Varsha Shrivastava vs. State of M.P. L.P.A.16/2000, (since reported in 2000 (1) MPLJ 615) Madhur Agrawal vs. State of M.P., L.P.A. 17/2000 and Saumi Chatterjee vs. State of M.P., L.P.A. 20/2000, the Division Bench of this court has also taken a view that the attitude of Division Bench while deciding the LPA has to be strict keeping in view the incoming flood of LPAs. The LPA is infra-court appeal. Therefore, the Division Bench should not be scanning out the order passed by the Single Bench from all corners. If the order is good enough to deal with the averments made in the matter of Writ Petition and if it is sound on legal grounds, the Division Bench should be slow in disturbing it. It is not to be dealt with as if it is first appeal.....”

12. After having noticed the scope of interference in the writ appeals as indicated by Their Lordships of the Supreme Court in the aforesaid judgments, reverting back to the facts of the present case, it would appear that learned Single Judge has recorded the following finding in para 11 of its order while dismissing the writ petitions as under:-

(i) The petitioners claimed that they became aware about recovery proceedings for the first time when they received notice of appeal from DRAT, Allahabad, however, they had preferred WP No.310/2001 before this Court seeking time to file written statement. Thus claim

of knowledge about the proceeding only in the year 2006 is absolutely false. It is not proper for the petitioners to make such statement despite obtaining order from this Court in its writ jurisdiction.

(ii) Similarly, the petitioners had allegedly filed written statement earlier wherein also they denied execution of power of attorney in favour of deceased/defendant No.3 who was instrumental in obtaining loan from the Bank. It is not a case that in their earlier written statement the petitioners had admitted documents Ex.-A/11 & A/12. However, to protract the litigation, they would state in the subsequent written statement filed in the year 2006 that they have not filed any written statement earlier. There is no whisper in the pleading about filing of WP No.310/2001.

(iii) The Bank Manager of State Bank of Indore, Green Park Branch, New Delhi is not a witness to the execution of the documents. It is private to the petitioners and deceased defendant No.3. If the Bank Manager was also involved, the petitioners would have initiated criminal proceeding against him also. However, it does not appear from the record that any such proceeding was initiated against the Bank Manager by the petitioners.

(iv) Insofar as examination of the documents by handwriting expert is concerned, such prayer in respect of loan transaction has its own peril inasmuch as if this is allowed in a

routine manner, then every borrower or guarantor would start denying his signatures and seek opinion of expert and there will be no end to the recovery proceedings which are initiated by the Bank for recovery of tax payers' money. The Banking transactions are conducted in accordance with law even though it is commercial in nature. The Bank Officer is ordinarily not presumed to have thrown away public money by giving loan in a fraudulent manner. The petitioners have to prove their own case by adducing evidence.

(v) The matter is pending before the DRT since 1999 i.e. for the last about 17years.”

14. From the finding of fact so recorded by learned Single Judge, it would appear that learned Single Judge has considered the matter threadbare and did not find any infirmity and illegality in the order of the DRT rejecting the applications duly affirmed by the DRAT and also took cognizance of the fact that the matter is pending before the DRT since 1999 i.e. for the last about 17 years.
15. Thus, the finding recorded by the DRT duly affirmed by the DRAT and re-affirmed by learned writ Court, which is a finding of fact, is based on material available on record and further considering the jurisdiction of this Court in writ appeal and keeping in view the principles of law laid down by the Supreme Court in the aforesaid judgments including the judgment of **Karnataka Planters Coffee**

Curing Work Private Limited (supra), findings of fact recorded concurrently by two authorities and the writ petitions against that findings having been dismissed by the learned writ Court, we are not inclined to interfere with the said findings which are finding of fact based on material available on record.

16. In view of the aforesaid finding recorded and conclusion reached hereinabove while answering the first question, we deem it inexpedient and unnecessary to answer the second question about maintainability of the writ appeals. We accordingly dismiss the writ appeals.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

Sd/-
(Sanjay K.Agrawal)
Judge