

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.6748 OF 2018

ORDER

(Per Sri Justice Sanjay Kumar)

By way of this writ petition, a challenge is laid to the order dated 01.02.2018 passed by the Debts Recovery Appellate Tribunal, Kolkata (*for brevity*, 'the Appellate Tribunal'), in Application No.14 of 2018 in Appeal No.7 of 2018/30. The petitioner is the appellant in the said appeal which was preferred against the Docket Order dated 01.01.2018 passed by the Debts Recovery Tribunal-I, Hyderabad (*for brevity*, 'the Tribunal'), in I.A.No.1145 of 2017 in O.A.No.416 of 2012. The said O.A. was filed by M/s.Phoenix ARC Private Limited, an Asset Reconstruction Company, the respondent herein, for recovery of dues to the tune of Rs.14,77,581/- as on 02.02.2012 along with interest thereon from the petitioner. I.A.No.1145 of 2017 was filed by him in the said O.A. seeking permission to cross-examine A.W.1, the witness examined by the Asset Reconstruction Company. By the Docket Order dated 01.01.2018, the Tribunal observed that cross-examination of the said witness would be of no help to the petitioner to bring on record the aspects which he wanted to establish. Opining that the petitioner had full liberty to prove his contentions by leading his own evidence, the Tribunal concluded that no reason was made out necessitating or requiring cross-examination of the said witness. On the strength of this reasoning, the Tribunal dismissed the I.A. Aggrieved thereby, the petitioner preferred the appeal before the Appellate Tribunal.

Perusal of the order dated 01.02.2018 passed by the Appellate Tribunal demonstrates that it concurred with the view taken by the Tribunal

that sufficient reason was not made out to allow cross-examination of the witness. As regards the contention of the petitioner that he denied the taking of the loan itself, the Appellate Tribunal observed that the said aspect could be considered by the Tribunal while deciding the O.A. In consequence, the appeal also stood dismissed.

Sri O.Manohar Reddy, learned counsel for the petitioner, would contend that the subject O.A. was filed by the Asset Reconstruction Company on the strength of its acquisition of a debt from M/s.Barclays Bank. The said loan was allegedly taken by the petitioner from the bank but in his written statement filed in the O.A., he denied receipt of the loan amount altogether. He claimed that an agent of the bank, namely M/s.Pinnacle Marketing (P) Limited, approached him offering a loan and upon such request, he agreed to avail the loan facility so as to develop his business. He claimed that his signatures were obtained on various documents and papers, including a promissory note and cheques, but the loan amount was never disbursed to him. Learned counsel would state that it is in this context that the petitioner wishes to cross-examine the witness who deposed on behalf of the Asset Reconstruction Company.

Perusal of the evidence affidavit of the said witness reflects that he deposed to the said affidavit on behalf of the company basing on records. Adverting to the written statement filed by the petitioner in the O.A., the witness stated that the documents i.e., the loan application, registered terms and conditions, acknowledgment form, demand promissory note and ledger extract along with statement of account filed by the Asset Reconstruction Company in the O.A. clearly established that the claim of the petitioner as set out in the written statement was false.

The aforestated evidence affidavit demonstrates that the witness spoke only on the strength of the record available with the Asset Reconstruction Company which were already filed in the O.A. As the petitioner admits to the fact that he signed various documents, including the promissory note and cheques, the said records are not in dispute. As to whether the bank actually disbursed the loan amount and as to who dealt with the petitioner in that regard are issues which would obviously not be within the knowledge of the witness. Therefore, as rightly pointed out by the Tribunal and the Appellate Tribunal, no useful purpose would be served by permitting cross-examination of this witness.

Reference in this regard may also be made to the Debts Recovery Tribunal (Procedure) Rules, 1993 (*for brevity*, 'the Rules of 1993'), framed in exercise of power under Section 36 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 presently known as the Recovery of Debts and Bankruptcy Act, 1993 (*for brevity*, 'the Act of 1993').

Rule 12(9) of the Rules of 1993 reads as under:

'(9) The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted.

The aforestated provision makes it clear that it is only when the Tribunal feels that it is necessary to do so that cross-examination of a witness is permitted and that too, after recording sufficient reasons therefor.

Thus, cross-examination of a witness is not a matter of course in terms of the aforestated Rule.

In the case on hand, as already stated *supra*, the factual aspects that the petitioner wants to elicit from the witness by cross-examination would not even be within his knowledge going by his sworn statement that he deposed to the evidence affidavit only on the strength of the records. When the records themselves are not in dispute, this Court fails to understand as to what the petitioner would gain by cross-examining the witness. As pointed out by the Tribunal, it is for the petitioner to lead his own evidence to prove his contentions.

It may be noticed that Section 22(2)(a) of the Act of 1993 empowers the Tribunal to summon and enforce the attendance of any person and examine him on oath, as it is vested with the power of a civil Court in this regard. It is therefore for the petitioner to take suitable steps while leading his own evidence. In effect, this Court finds no error having been committed by the Tribunal or the Appellate Tribunal in refusing his request to permit cross-examination of the witness who deposed on behalf of the Asset Reconstruction Company.

The writ petition is therefore devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

10th AUGUST, 2018

PGS