

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION NO. 84 OF 2018

Jacob Panikulangura Joseph & Ors. .. Petitioners
Vs.
Bank of Baroda & Anr. .. Respondents

Mr. Mayank Bagla a/w. Alok Bagla i/b Bagla & Associates for the
Petitioners.

Mr. A. R. Bamne for Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 5th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Against the order dated September 17, 2014 the Petitioners preferred an Appeal and along therewith filed a Misc. Application No. 238 of 2014 praying to the Appellate Tribunal to exercise its powers under the proviso to Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.
3. The right to challenge an order passed by the Debt Recovery Tribunal by way of an Appeal is conferred by Section 20 of the Act. As per Section 21, 75% of the sum determined by the Tribunal under Section 19 has to be deposited. The proviso as existed when the Appeal was filed vested a right in the Appellate Tribunal to waive or reduce the amount to be deposited for the reasons to be recorded. On 01.09.2016

the proviso was amended and the discretion of the Appellate Tribunal of complete waiver was removed. The discretion of reduction was restricted to not less than 25% of the sum awarded by the Tribunal.

4. Petitioners' application seeking waiver was considered by the Tribunal on 12.04.2017 and an issue of law has been decided. The issue of law decided is whether the power should be exercised as per the proviso prior to it being amended on 01.09.2016 or as amended post 01.09.2016. The Tribunal has held that a discretionary power cannot be construed as a vested right and thus has concluded that the Tribunal would consider the application as per the amended proviso post 01.09.2016.

5. It is settled law that the right of appeal is a vested right. It accrues to a party when a lis commences; to be exercise at a point of time where the lis is decided.

6. To this extent, learned Counsel for the Respondents concedes the legal position but urges that right to appeal is under Section 20 of the Act and Section 21 deals with the procedure to be followed when the Appeal is filed. Learned Counsel urges that a matter of procedure is never a vested right. Learned Counsel relies upon a decision of the Division Bench of the Karnataka High Court in Writ Petition No. 13681 of 2017 Capt. G. R. Gopinath Vs. Syndicate Bank decided by the Bench of the Karnataka High Court on 05.10.2018.

7. The said decision shows that the Appeal was filed before the Appellate Tribunal post 01.09.2016. Thus, the observations and reasons of the said decision would be of no use to us.

8. Whilst it may be true that Section 20 of the Act confers the right

of appeal and Section 21 deals with the obligation of the Appellate Tribunal to entertain the Appeal, but law has to be read meaningfully and in a manner that it makes sense.

9. Where would be a right of appeal ? if the forum of appeal has no right to entertain the appeal. Thus an obligation to entertain an appeal is a concomitant of right to file an appeal. Thus, on the facts of the instant case we hold that the right of the Petitioners for a determination of the Misc. Application has to be considered with reference to the power of the Appellate Tribunal as per the proviso to Section 21 as it existed prior to 01.09.2016.

10. The Petition is disposed of setting aside the impugned order and calling upon the Appellate Tribunal to decide the Petitioners' application as per the proviso to Section 21 as it existed when the Appeal and the Application were filed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
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