

S/L 62
17.02.2023
Court No.652
SD

CO 481 of 2021

Prodip Kumar Dutta & Anr.
Vs.
The Authorised Officer & Anr.

Mr. Sounak Bhattacharya
Mr. Emon Bhattacharya
Ms. Pooja Sah

...for the Petitioners.

Ms. Soni Ojha

...for the Opposite Parties.

Being aggrieved and dissatisfied with the order dated 25.02.2020 passed by the learned Presiding Officer, Kolkata Debts Recovery Tribunal-III in S.A. No.65 of 2018, present revisional application has been preferred.

By the order impugned, the learned Presiding Officer was pleased to dismiss the case for non-compliance of Tribunal's order and non-service of petition/notices to the respondent during last two years.

Mr. Sounak Bhattacharya, learned counsel appearing on behalf of the petitioners, referring the order dated 11.3.2021 passed by this Court contended that this Court was pleased to observe that the petition was served upon the learned advocate for the respondents in the court room and it also reveals that the service was not completed despite various opportunities having been given to the petitioners. Therefore, a prima facie case has been made out by the petitioners that the court below ought to have given one last

chance for effecting the service instead of passing the dismissal order.

In this context, he further contended that Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 High Court has its jurisdiction under Article 226 and 227 of the Constitution of India and the revisional jurisdiction of the High Court has not been curtailed by the said enactment.

He also referred the judgment passed by a Coordinate Bench of this Court in CO 592 of 2021 wherein it was observed that the High Court has limited scope to interfere under Article 227 in appropriate cases. He also referred another judgment passed by a Coordinate Bench of this Court in WPA 13081 of 2022 wherein this Court was pleased to pass restraining order wherein it was observed that pending final order in the matter the respondent/bank could not have issued the impugned notice of sale.

Learned counsel appearing on behalf of the opposite parties raised strong objection contending that an amount of more than Rs.3 crores is lying outstanding. Furthermore, in order to avoid the statutory deposit under the provision as laid down in Section 18 of the securitization and Reconstruction of Financial Assets and enforcement of security Interest Act, 2002 , (called as SARFAESI Act, 2002) present application has been filed, with mala fide intention to drag the proceeding.

She further submits that though it has been stated that at the relevant point of time Debts Recovery Appellate

Tribunal was not functioning but in fact, one Judge of the Debts Recovery Appellate Tribunal, Allahabad was in charge of that court. Even if the petitioner has any cause to be aggrieved by the order impugned, he could have preferred appeal before Appellate Tribunal who is in seisin by making statutory deposit and as such, the revisional application is not maintainable and is liable to be rejected.

Considered submissions made by the parties.

At the outset, Section 18 of the Act of 2002 is reproduced hereinbelow:-

“18. Appeal to Appellate Tribunal. – (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less;

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

In view of aforesaid specific provision of the Act of 2002, it is clear that any person aggrieved by any order may prefer an appeal before the appellate tribunal within 30 days. Here instead of preferring appeal, the petitioners have

preferred this present revisional application. The authorities of judgment has clearly laid down that although there is limited scope for interference under Article 227 but in case of gross miscarriage of justice, patent illegality or procedural irregularity having been committed by a subordinate court or tribunal and the like, the High Court can interfere by exercising its jurisdiction under Article 227 of the Constitution of India.

On perusal of the order impugned, it appears that the Presiding Officer was of clear view that the petitioners were not appearing in the said case for last five occasions and it was taken on 28.02.2018 for recovery of claim of Rs.3,26,23,508/- and the matter is pending since 2018 for service of summon only and the applicant failed to serve the same since last two years. According to respondents, the copy of SARFAESI Act application only served in the court room on that day. But before that he had taken so many dates, i.e., 07.5.2018, 10.7.2018, 19.9.2018, 11.01.2019, 27.3.2019, 15.5.2019 and 06.8.2019 and accordingly, the Presiding Officer was pleased to dismiss the application for non-compliance of the order and non-service of the petition/notice.

In my considered view, the said order neither involves gross-miscarriage of justice nor relates to patent illegality or procedural irregularity, so that the limited scope of interference by this Court under Article 227, can attract in the present circumstance. The observation of this court

dated 11.3.2021 is interlocutory in nature and was passed for limited purpose.

Accordingly, I am of the view that when the petitioners have efficacious relief and when statute makes specific provision under Section 18 of the Act, then the petitioners even if any cause to be aggrieved by any such order they could have preferred appeal before the appellate tribunal.

In view of the above, CO 481 of 2021 is dismissed.

However, such dismissal order will not preclude the petitioners to prefer appeal before the appellate tribunal against the order impugned in compliance of Section 18 of the Act of 2002 and also subject to relevant provisions including Section 5 read with Section 14 of the Limitation Act, before the appellate forum.

Petitioners will be at liberty to take back the certified copy of the order impugned, as prayed for, on production of an authenticated copy of the same.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)