25th April, 2024
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W.P.A 7961 of 2024

Hooghly District Central Co-operative Bank Limited
Vs.
State of West Bengal and others

Mr. Ashit Kr. Chakraborty
Mr. Sunanda Mohan Ghosh
...for the petitioner.

Mr. K. J. Yusuf
Mr. Sourav Chowdhury
...for the State.

Mr. Srijan Nayak
Mr. Ankit Sureka
Mr. Biplab Das
...for the respondent no.2.

Mr. Debabrata Saha Ray
Mr. Neil Basu
Mr. Sankha Biswas
...for the respondent nos.3 & 4.

1. Learned counsel for the petitioner-Bank contends that the impugned order passed by the Certificate Officer is without jurisdiction on several counts.
2. It is submitted that the petitioner proceeded before the civil court with a money execution case for recovery of a debt within the contemplation of the Bengal Public Demands Recovery Act, 1913.
3. Although there were two options open, to issue a certificate proceeding and to levy execution before the civil court, the petitioner chose the latter.

4. Such execution case was ultimately referred to the Lok Adalat. Before the Lok Adalat, an order was passed.

5. However, subsequently such order was challenged in a writ petition and did not fructify. A coordinate Bench of this court, it is argued, while dealing with the writ petition, came to the finding that it appears from the order dated December 14, 2013 made by the Lok Adalat that the execution case of the respondent no.1 therein, that is, the present petitioner was disposed of and if the present petitioner was to deal with the secured asset, it must do so in accordance with law, which would mean resorting to execution proceedings pursuant to the award passed, the settlement at the Lok Adalat having failed.

6. Having the option to take out an execution case, alternatively a certificate proceedings, the petitioner this time chose the latter.

7. A certificate was accordingly issued under the 1913 Act.

8. When the same was presented before the Certificate Officer, an objection as to maintainability was raised by the respondent/certificate debtor.

9. The plinth of the said objection was that the money execution case was still pending, in support of

which a purported information slip was produced by the certificate debtor.

10. However, subsequently the petitioner also produced a counter information slip to the contrary. Upon adjudicating the said issue on merits, the Certificate Officer came to the clear conclusion that the information slip produced by the certificate debtor was fake.

11. In fact, it was recorded in the said order that it was an admitted position that the said information slip was fake, for which pardon was sought on behalf of the certificate debtor.

12. The Certificate Officer not only rejected the application challenging the maintainability of the certificate proceeding but also initiated a criminal complaint.

13. Subsequently, however, the certificate debtor filed another application raising the same issue of maintainability which has now been allowed, against which the present writ petition has been preferred.

14. It is pointed out by learned counsel for the petitioner/certificate holder that on October 3, 2018, a different coordinate Bench, while dealing with a challenge by one of the Directors of the borrower company, had held, inter-alia, that the Bank may adjust the sum of Rs.5,37,00,000/-

including Rs. 64 lakh and odd in pro tanto satisfaction of their claim against the company and the balance amount of dues may be recovered either by execution against the assets of the said Company and/or upon any negotiation that the Bank may entered into with the writ petitioner and the Company.

15. It is argued that the order of the coordinate Bench dated October 3, 2018 passed in WP 19177(W) of 2018 did not confer jurisdiction on the executing court or take away the jurisdiction of the Certificate Officer.

16. Since the petitioner had the option either to proceed in execution before the civil court or to take out a certificate proceeding, the petitioner was well within its rights to choose one of the options by going for the latter.

17. It is argued that the Certificate Officer acted without jurisdiction in passing the impugned order since no specific objection as envisaged under Sections 9 and 10 of the 1913 Act was taken by the respondent/certificate debtor at any point of time.

18. The certificate debtor repeatedly took the point of maintainability of the certificate proceedings.

19. Under Section 10, it is argued, even if a Certificate Officer is of the opinion that the objection of the

certificate debtor has some merit, the matter has to be referred to the Collector.

20. That apart, it is argued that in view of the Certificate Officer himself having previously rejected an application challenging the maintainability of the certificate proceedings, the Certificate Officer could not again take up the same issue, being barred by the principle of *res judicata.*

21. That apart, it is argued that in the absence of any substantial objection being raised by the certificate debtor, there could not have been any impediment to the Certificate Officer implementing the certificate which had already been issued and could not be reopened by the Certificate Officer.

22. Learned counsel for the petitioner places reliance on an unreported judgment of this court in WPA 21285 of 2023 (Sri Kartik Chandra Das vs. State of West Bengal & ors.) in arguing that the provision of an appeal is not an absolute bar to be a writ petition.

23. It is pointed out that in the said case as well, an appeal under the 1913 act was being considered.

24. Learned counsel appearing for the certificate debtor argues that it was categorically observed by both the coordinate Benches that the remedy of the certificate debtor/Bank lay before the civil court in an execution case.

25. Having previously filed an execution case, the petitioner, thus, was debarred from now initiating a certificate proceeding, which would be contrary to the order of this court.

26. It is argued that the Certificate Officer has full jurisdiction to entertain an application within the contemplation of Section 9 or not and also to decide the question as to whether such application is maintainable at all.

27. Learned counsel for the certificate debtor next argues that the Certificate Officer also considered the fact that the petitioner itself had filed a put up before the executing court which itself shows that the execution case was still pending at the relevant juncture.

28. Learned counsel appearing for the respondent no.2, the Certificate Officer, argues that the respondent no.2 was bound by the order of this court and as such held that the appropriate remedy before the petitioner was an execution case and not the certificate proceedings.

29. Secondly, it is argued that there is a provision of appeal against the impugned order under the 1913 Act and as such, this court ought to desist from interfering in the matter.

30. There are several aspects of the matter which require consideration.

31. First, whether the Certificate Officer had jurisdiction to go beyond Sections 9 and 10 of the 1913 Act and reject the application on the ground of maintainability.

32. It has been argued by the petitioner that the Certificate Officer cannot cancel the certificate or go beyond it and must implement the same.

33. A careful perusal of Sections 9 and 10 of the 1913 Act shows that the certificate debtor may present to the Certificate Officer in whose office the certificate is filed, or to the Certificate Officer who is executing the same, a petition denying his liability in whole or in part.

34. Going back, Section 6 of the 1913 Act contemplates that on receipt of a requisition, the Certificate Officer, if satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate in the prescribed form stating that the demand is due.

35. The next step contemplated in law is a notice under Section 7 which provides that when a certificate has been filed in the office of a Certificate Officer under Section 4 or Section 6, "he shall cause to be served upon the certificate debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate".

36. The effect of service of notice has been discussed in Section 8 which is irrelevant for the present purpose.

37. After filing of a petition and giving an opportunity of denying liability under Section 9, under Section 10 the Certificate Officer is to determine whether the certificate debtor is liable for the whole or any part of the amount for which the certificate was signed and may set aside, modify the certificate accordingly.

38. Thus, Section 10 confers the power on the Certificate Officer to take evidence if necessary and determine whether the certificate debtor is liable for the whole or any part of the amount for which the certificate was signed, provided the certificate debtor files a substantial petition *denying his liability in whole or in part.*

39. In the present case, it is evident that no such objection on merits of the claim of the petitioner was raised by the certificate debtor under Section 9.

40. As such, there was no scope of any adjudication by taking evidence or otherwise to determine whether the certificate debtor was liable for the whole or any part of the amount for which the certificate was signed.

41. Section 10 provides that if the Certificate Officer is not the Collector and considers that the petition involves a *bona fide* claim of right to property, he shall refer the petition to the Collector for orders and the Collector, if he is satisfied that a *bona fide* claim of right to property is involved, shall make an order cancelling the certificate.

42. Thus, a composite reading of the provisions of the 1913 Act show that at the stage of Section 4 of the said Act when the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

43. The authority of the Certificate Officer thereafter is extremely limited, being restricted to implementing the said certificate, unless the liability is denied by the certificate debtor in whole or in part. Here, the certificate debtor did not make out any substantial case resisting its liability on merits, but repeatedly took the objection as to maintainability of the certificate proceeding only.

44. The Certificate Officer cannot reopen the certificate, once issued, or reject the application for implementation of the certificate on any other ground than those contemplated in Sections 9 and 10, only in the event the Certificate Officer on

taking evidence determines that the certificate debtor is not liable for the entire or any part of the amount for which the certificate was signed.

45. Thus, in the present case, the Certificate Officer has traversed beyond his authority in holding that the certificate proceeding is not maintainable.

46. There are more serious grounds on which the Certificate Officer has exceeded his authority in the present case.

47. First, the Certificate Officer previously decided a similar application challenging the maintainability of the certificate proceeding, on the self-same ground that the execution case, which was the appropriate remedy for the certificate holder, was pending.

48. In the said case, although the ground was that the execution case was pending, for which a fake information slip was produced, it was open to the certificate debtor also to argue the point as to the interpretation of the coordinate Bench decisions of this court on the issue.

49. The challenge thrown was to the maintainability of the certificate proceeding itself.

50. Thus, on the dismissal of the same, even if the interpretation of the orders of the coordinate Benches were not decided, the certificate debtor is debarred by the principle of *res judicata* as well as

constructive *res judicata* from raising similar issues again.

51. By completely overlooking such bar, the Certificate Officer passed the impugned order again on the issue of maintainability, thereby contravening the principle of *res judicata* and constructive *res judicata*.

52. Hence, the impugned order is bad in law on such score as well.

53. The third question is whether the Certificate Officer correctly interpreted the orders of the coordinate Benches of this court.

54. The first order in the context was passed on August 30, 2017 in WP 9834(W) of 2017 by Arindam Sinha, J.

55. Justice Sinha, in his order, clearly recorded that in the meantime if a Board of the respondent no.1 (present petitioner) is duly constituted it will have to "seek execution" in accordance with law. It was also observed that the petitioners having had availed of remedy in execution will have efficacious remedy in the execution case "if *initiated*" by the respondent no.1 (present petitioner).

56. Thus, nothing in the said order contemplated that an execution case was already pending but rather it was envisaged that if an execution case is initiated then the observations thereunder would follow.

57. The next order in contention was passed on October 3, 2018 by Rajasekhar Mantha, J. in WP 19177(W) of 2018.

58. Justice Mantha, in his order, observed *inter-alia* that all assets of the said Company and its erstwhile Director shall remain charged to the Bank and shall be adjudicated upon and suitably dealt with before the civil court in execution of the award passed in favour of the Bank against the Company.

59. Again, in a different paragraph of the same order, Justice Mantha held that the balance amount of dues may be recovered either by "execution" or by negotiation.

60. A composite reading of the order of Justice Mantha shows that in the perception of Justice Mantha, execution was a remedy available before the petitioner.

61. However, it is too well-settled to be reiterated that an order of a court can neither confer nor take away any jurisdiction of any authority if such jurisdiction is otherwise conferred in law.

62. Law confers jurisdiction both on the civil court to take up an execution case in connection with execution of a certificate and in execution of a public debt and also on the Certificate Officer to issue a certificate for the self-same relief.

63. In view of availability of both the options on parallel footing before the certificate holder, it cannot be said that the order of Justice Mantha took away one of such remedies from the petitioner or divested the Certificate Officer from the authority of issuing a certificate.

64. As such, the interpretation sought to be lent to the order of Justice Mantha on such count by the certificate debtor as well as by the Certificate Officer is entirely on an erroneous footing of law.

65. Moreover, the term “execution” used by Justice Mantha was wide enough to encompass filing of an execution case before a civil court or issuance of a certificate proceeding.

66. Thus, it is seen that the impugned order is vitiated by a patent jurisdictional error insofar as the Certificate Officer, despite being fully vested with the jurisdiction as contemplated under Sections 9 and 10 of the Bengal Public Demands Recovery Act, 1913 to implement a certificate in a certificate proceeding, shirked his duty and refused to exercise such jurisdiction in accordance with law.

67. In view of such palpable refusal to exercise jurisdiction vested in the Certificate Officer by law and overstepping jurisdiction by rejecting the certificate proceeding on the issue of

maintainability, the impugned order has made itself amenable to the jurisdiction of the writ court.

68. It is also well-settled that alternative remedy is not an absolute bar where there is a palpable jurisdictional error on the part of the authority passing the impugned order.

69. Such being the case here, the writ petition is fully entertainable and is thus decided in the light of the above observations in favour of the writ petitioner.

70. Accordingly, WPA 7961 of 2024 is allowed on contest, thereby setting aside the impugned order dated February 1, 2024 passed by the Certificate Officer & DRCS Hooghly Range, District-Hooghly in Certificate Case no. 01 of 2022-2023. The Certificate Officer is hereby directed to take the certificate proceedings of the petitioner to its logical conclusion and implement the certificate issued in favour of the petitioner immediately in accordance with law.

71. Since no objection has been raised within the contemplation of Sections 9 and 10 of the 1913 Act by the certificate debtor, no such fresh opportunity can now be granted to the certificate debtor.

72. The Certificate Officer shall, accordingly, implement the certificate at the earliest, preferably within an outer limit of one month from the date of

communication of this order to the Certificate Officer.

73. There will be no order as to costs.

74. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)