

02.09.2024
Item No.32 ML
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2174 of 2024

**M/s. Iqbal Tannery, Proprietor
Shamsul Haque & Anr.**

-Vs-

Punjab National Bank

Mr. Suvankar Nag, (V.C.),
Mr. Soham Kumar Ray,
Ms. Aruna Ghosh.

.....for the petitioners.

This is an application under Article 227 of the Constitution of India.

The order dated May 17, 2024 passed by the Debts Recovery Appellate Tribunal-I at Kolkata in *Diary No.359 of 2024* is under challenge.

The opposite party, the Punjab National Bank (erstwhile Oriental Bank of Commerce) had filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993(hereinafter referred to as 'the said Act of 1993') being O.A. 67 of 2004 before the Debts Recovery Tribunal-I at Kolkata ('DRT-I' in short) for recovery of ₹32,72,217/- from the petitioners.

The DRT-I, by the order dated May 18, 2022 had set the said application at the *ex-parte* Board and by the order dated August 02, 2022 had allowed the same *ex-parte* directing recovery of the said sum along with interest.

The petitioners took out a miscellaneous application before the DRT-I being M.A. 24 of 2023

for setting aside the said orders, which the Tribunal, by the order dated March 21, 2024 has dismissed.

The petitioners, aggrieved by the said order, had intended to file an appeal before the Debts Recovery Appellate Tribunal.

The petitioners, by an application being I.A. 236 of 2024, had prayed before the Appellate Tribunal for exemption of the condition of pre-deposit as contemplated under Section 21 of the said Act of 1993.

The Appellate Tribunal by the order impugned has allowed the said application in part by directing the petitioners to deposit 35% of the debt due instead of 50% of it.

Mr. Nag, learned Advocate for the petitioners submits that the said appeal was not against the order of the Tribunal determining the debts due from the petitioners under Section 19 of the said Act of 1993 but was directed against an order passed on an miscellaneous application for setting aside of the *ex-parte* orders, as such the condition of pre-deposit envisaged under Section 21 of the Act of 1993 is not applicable in respect of the said appeal.

He further submits that by virtue of Section 22(2)(f) and (g) of the said Act of 1993, the Appellate Tribunal exercises the same power of a Civil Court

and the application of the petitioners since is in the nature of setting aside of an *ex-parte* decree or order, the rejection of it would attract the provision of Order XLIII Rule 1(d) of the Code consequently in such an appeal, the Appellate Tribunal is exercising the same powers of a Civil Court, therefore can entertain the said appeal without insisting the compliance of the condition of pre-deposit. To buttress his such argument, Mr. Nag places reliance on a decision of the Hon'ble Allahabad High Court in **JAI GOPAL KANSAL & ANR. vs. INDIAN BANK, BRANCH OFFICE, INDIAN BANK, RAILWAY ROAD HAPUR & ANR.** reported in **2019 SCC Online All 4669.**

Heard Mr. Nag, perused the materials-on-record.

The remedy of appeal since flows from the provision of Section 20 of the said Act of 1993, to avail the said remedy, the procedure prescribed in the said Act is to be followed which cannot be diluted by lending support of the provisions of appeal from the Code. The condition of making pre-deposit to maintain an appeal as envisaged under Section 21 of the said Act of 1993 being mandatory, as has been held by the Hon'ble Supreme Court in the case of **NARAYAN CHANDRA GHOSH vs. UCO BANK** reported in **(2011) 4 SCC 548**, I am unable to convince myself with the proposition of law laid

down in the case of **JAI GOPAL KANSAL (supra)** relied on by Mr. Nag inasmuch as the provision of Section 21 of the said Act of 1993 shall apply irrespective of the nature of the order against which an appeal under Section 20 of the said Act of 1993 is preferred.

The order impugned, for the aforesaid reasons, does not call for any interference.

C.O. 2174 of 2024 is dismissed without any order as to costs.

Mr. Nag seriously disputes the calculation of the amount of pre-deposit; if there is an error in such calculation, the petitioners are at liberty to approach the Appellate Tribunal for re-calculation.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)