

(1996) 02 CAL CK 0002

Calcutta High Court

Case No: Civil Revision No. 2935 of 1995

Sudhir Jalan and Another

APPELLANT

Vs

Presiding Officer, Debts
Recovery Tribunal and Others

RESPONDENT

Date of Decision: Feb. 7, 1996

Acts Referred:

- Constitution of India, 1950 - Article 227
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 19, 2, 22

Citation: 100 CWN 721

Hon'ble Judges: Nripendra Kumar Bhattacharyya, J

Bench: Single Bench

Advocate: Saptangsu Basu and Sudhesna Bagchi, for the Appellant; P.K. Dutta and S.K. Dutta, for the Respondent

Judgement

Nripendra Kumar Bhattacharyya, J.

Heard the submissions of the learned Advocate for the petitioners Mr. Saptangsu Basu appearing with the learned Advocate Sm. Sudhesna Bagchi and the learned Advocate for the opposite party no. 2 Mr. P.K. Dutta appearing with the learned Advocate Mr. S.K. Dutta, Mr. Dutta undertakes to file his Vakalatnama on behalf of the opposite party no. 2 in course of this day. Let that undertaking be recorded. No one is appearing on behalf of the other opposite parties. Let the affidavit of service affirmed on 16.1.96 be kept on record. Considered the materials on record. An application for extension of further stay of the interim order has come up for hearing. By consent of the parties the main revisional application is taken up for hearing by treating the same as on the day's list for hearing, along with the application for extension of further stay filed in Court on 5.2.96, and both the matters can be disposed of by one order and/or judgement.

2. This revisional application under Article 227 of the Constitution of India arises out of the fact that the Punjab National Bank, opposite party no. 2 herein, made an application u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, with the Debt Tribunal (Procedure) Rules, 1993, (hereinafter referred to as "the Act and Rules") before the Debts Recovery Tribunal, Calcutta, and the same has been registered there as case no. O.A./5/94 and the case proceeded. By that application the Bank claim that there is a due of about Rs. 2 crores and odd recoverable from the petitioners. The case proceeded and it arrived at the stage of cross-examination of witnesses. At this stage the petitioners made an application for supply of the copy of documents that has been disclosed by the petitioners in their affidavit as contemplated under Sub-Section (2) of Section 2 of the Act. The learned Tribunal Judge rejected that prayer on an observation that "there is no provision either in the law or in the Recovery of Debts due to Banks and Financial Institution Act 1993 or rules thereunder for inspection of original documents." Adjournment was also prayed for but no such adjournment was granted. On the contrary cross-examination of the witness being witness no. 1 was closed and 12.12.95 was fixed for hearing. Ultimately an adjournment was granted upon the prayer of the petitioners on the ground that they would move this court in revision challenging this order.

3. Mr. Basu in this background of the fact contended on behalf of the petitioners that on a wrong understanding of law the learned Tribunal Judge came to a finding that the Tribunal has not the power to give inspection of the original documents as the Act or the rules thereunder do not provide any provision for the same.

4. Mr. P.K. Dutta on the other hand submits that the matter can be resolved as the opposite party no. 2, the Bank is ready and willing to give inspection of the documents as has been annexed with the affidavit of opposite party no. 2, used before the Tribunal.

5. Having heard the learned Advocates for the parties and considering the materials on record, it appears that Section 19 of the Act contemplates that an application of the Bank is to be filed before the Tribunal. Section 22 of the Act prescribes the procedure as to how that application is to be disposed of. There is no provision in the Act as to what procedure or practice is to be followed by the Tribunal in case an application is being filed by the opposite party but for that a provision has been made in Sub-Section (1) of Section 22 of the Act, where it has been provided inter alia that The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings, (Underscoring by me), So, this gives an indication that the Tribunal has the power to regulate its own procedure keeping in view the principles of natural

justice. That application gives an ample power to the Tribunal to grant relief to the parties in a proceeding before it where an Act or the Rules made thereunder does not specifically provide any provision for the same. But they must be done keeping in view the principles of natural justice. In the instant case as has been put forth in the petition by the petitioners and as has been put forth by Mr. Basu before this Court, natural justice demands that such an inspection should be given of the original documents so disclosed and, if necessary, the copy of the same should be provided to the petitioners. Mr. Dutta in his fairness readily agreed to the same.

6. In such circumstances, I modify the order impugned to this effect that the Tribunal shall direct supply of the copy of the documents disclosed in the affidavit of the petitioners before the Tribunal to the petitioners herein or to their learned Advocates, as the case may be, and to give inspection of the original documents within seven days from date of the order of the Tribunal.

7. The Tribunal is further directed to give opportunity to the petitioners to cross-examine the witness being P.W. 1, the representative of the opposite party no. 2 herein. The Tribunal shall also give an opportunity to the petitioners to use affidavit as evidence, if so advised by the petitioners herein, disclosing their documents. The opposite party no. 2 will also be at liberty to use its own affidavit in such case.

8. It is, however, made clear that in the event of filing affidavits by the parties opportunities shall be given to the parties to further examine and cross-examine the witness already examined. It is further made clear that once the hearing starts the Tribunal must go on hearing the case day to day.

9. This order and/or judgement disposes of the revisional application by allowing it in part. The other part of the order impugned shall remain as it is. The stay application also stands disposed of. No order as to costs.

10. The parties are given liberty to take down the gist of this order and to communicate the same to the Tribunal and the Tribunal is directed to act on such communication. For adequate precaution, let a copy of this order be sent down to the Tribunal by a special messenger at the cost of the petitioners. Such cost be put in by tomorrow.