Narayan Chandra Ghosh vs Uco Bank & Ors on 18 March, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1913, 2011 (4) SCC 548, 2011 AIR SCW 2572, 2011 (2) AIR JHAR R 790, 2011 (2) AIR KANT HCR 819, AIR 2011 SC (CIVIL) 1184, (2012) 1 PUN LR 411, (2011) 3 CAL HN 142, (2011) 3 CALLT 39, (2011) 2 KER LJ 24, (2011) 4 MAH LJ 529, (2011) 3 MPLJ 490, (2011) 4 CAL HN 102, (2011) 2 CAL LJ 109, (2012) 113 CUT LT 592, (2011) 4 SCALE 93, (2011) 102 CORLA 260, (2011) 1 CLR 958 (SC), (2011) 4 ALL WC 3395, 2011 (2) KLT SN 42 (SC), 2011 (3) KCCR SN 286 (SC)

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Bench: D.K. Jain, H.L. Dattu

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2681 OF 2011

[Arising out of S.L.P. (C) No. 5488 of 2011]

Narayan Chandra Ghosh -- Appella

VERSUS

UCO Bank & Ors. -- Responden

O R D E R

1. Leave granted.

2. This appeal by the borrower is directed against judgment dated 7th December, 2010 delivered by the High Court of Calcutta in C.O. No.3608 of 2009. By the impugned judgment, the High Court has

set aside the order passed by the Debts Recovery Appellate Tribunal, Kolkata (for short, "the Appellate Tribunal") in Appeal No.35 of 2009, whereby the Appellate Tribunal, while allowing the application filed by the appellant under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act") had exempted the appellant from making any deposit in terms of second proviso to Section 18 of the Act before entertaining the appeal against the order passed by the Debts Recovery Tribunal.

3. With the consent of learned counsel for the appellant as also the respondent-bank, which is on caveat, we have heard the matter finally at the motion hearing stage itself. Since the issue canvassed before us is a pure question of law, we deem it unnecessary to state the facts giving rise to this appeal.

4. Assailing the judgment, Mr. Ranjan Mukherjee has submitted that since the Debts Recovery Tribunal had not entertained the appeal preferred by the appellant under Section 17 of the Act on a technical ground and the quantum of amount due from the appellant had not been determined, the Appellate Tribunal could not saddle the appellant with any liability of pre-deposit under Section 18 of the Act.

It is thus, asserted that the Appellate Tribunal was justified in entertaining the appeal without insisting on any deposit in terms of Section 18 of the Act.

5. Per contra, learned counsel for the bank, while supporting the judgment of the High Court has submitted that the Appellate Tribunal had failed to appreciate that the deposit of an amount in terms of Section 18 of the Act is a condition precedent for entertainment of the appeal. According to the learned counsel, the language of Section 18(1) of the Act being clear and unambiguous, the order passed by the Appellate Tribunal was clearly unsustainable.

6. Thus, the short question for consideration is whether the Appellate Tribunal has the jurisdiction to exempt the person, preferring an appeal under Section 18 of the Act from making any pre-deposit in terms of the said provision?

7. Section 18, which provides for appeal to the Appellate Tribunal, reads as under:

> "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) ....

..."

8. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal.

However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates 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.

However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt

is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third proviso to the said Section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed.

10. It is stated before us that in the notice issued to the appellant under Section 13(2) of the Act, the debt due from the appellant as on 25th September, 2006 was `52,42,474/-. Since in the present case Debts Recovery Tribunal had not determined the debt due, we direct that on appellant's depositing with the Appellate Tribunal an amount of `15 lakhs within a period of four weeks from today, his appeal shall be entertained and decided on merits. We direct that till the Appellate Tribunal takes a final decision in the appeal, the bank shall maintain status quo in respect of the property of which physical possession is stated to have been taken by it.

11. Needless to add that if the appellant fails to make the said deposit within the time granted, his appeal before the Appellate Tribunal shall stand dismissed and it will be open to the respondent bank to take further steps in the matter in accordance with law.

12. The appeal stands disposed of with no order as to costs.

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(D.K. JAIN, J.) .....

(H.L. DATTU, J.) NEW DELHI;

MARCH 18, 2011