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(2013) 3 ILR(Allahabad) 1427 : (2013) 31 LCD 2350

**ALLAHABAD HIGH COURT**

SINGLE BENCH

SMT. SHEELA DUBEY — Appellant

Vs.

DEBT RECOVERY APPELLATE TRIBUNAL — Respondent

( Before : Shri Narayan Shukla, J. )

Writ Petition No. 341 (MS) of 2006.

Decided on : 29-10-2013

**A. Debt Recovery Tribunal (DRT) — Procedure and Powers — Not bound by Civil Procedure Code (CPC) — DRT and Debts Recovery Appellate Tribunal (DRAT) are not strictly bound by the procedures of the Civil Procedure Code, 1908 (CPC), but are guided by principles of natural justice and can regulate their own procedure under Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. (Paras 8, 12)**

**B. Debt Recovery Tribunal (DRT) — Substitution of Legal Representatives — Abatement of Suit — Applicability of Order 22 Rule 4 CPC and Limitation Act — While DRTs have powers similar to Civil Courts for specific matters under Section 22(2) of the 1993 Act, these do not include dealing with applications for bringing legal representatives on record for the purpose of strict application of Order 22 Rule 4 CPC or the 90-day limitation period under the Limitation Act, 1963. (Paras 5, 6, 8, 12)**

**C. Debt Recovery Tribunal (DRT) — Regulations of Practice — Applicability — Specific regulations, such as those from 1996 or 2010 for certain DRTs, are not universally applicable to all DRTs unless explicit regulations have been framed for a particular tribunal (Allahabad or Lucknow). In the absence of such specific regulations, the tribunal should**

**proceed guided by natural justice principles and the Act's provisions. (Paras 6, 9, 13)**

**D. Debt Recovery Tribunal (DRT) — Public Money Recovery — Natural Justice — Substitution of Legal Representatives — Recovery of public money from a defaulting debtor company and its guarantors is a paramount consideration. Principles of natural justice demand that legal representatives of deceased debtors/guarantors be brought on record to facilitate recovery, especially where liability is joint and several and the suit survives against other parties. Technicalities regarding the application for substitution should not defeat the purpose of the Act, which is public money recovery. (Paras 10, 13)**

### **Counsel for Appearing Parties**

*Jaspreet Singh, Advocate, for the Petitioner; N.K. Seth, C.S.C. D.K. Pathak, Ravi Shanker Tiwari and Shashank Pathak, Advocates, for the Respondents*

### **JUDGMENT**

**Shri Narayan Shukla, J.**—Heard Mr. Jaspreet Singh, learned counsel for the petitioner as well as Mr. D.K. Pathak, learned counsel for the respondents.

2. The petitioner has assailed the order dated 23.7.2003, passed by the Debts Recovery Tribunal, Lucknow in case No. TA 291 of 2002 (Annexure No. 2) as also the order dated 7.12.2005, passed by the Debts Recovery Appellate Tribunal, Allahabad in appeal, upholding the order passed by the Tribunal of the original jurisdiction.

3. Briefly the facts of the case are that the respondent No. 3, State Bank of India, being plaintiff filed a regular suit before the court of Civil Judge, Lucknow, which was registered as Regular Suit No. 215 of 1991 for recovery of a sum of Rs. 18, 49, 822/- against the respondent No. 4, Company as well as its guarantors.

4. During the pendency of the suit before the Civil Court two defendants i.e. defendant No. 2 Shri B.R. Dubey and defendant No. 4 Shri D.R. Dubey died. In the case at hand the controversy relates to the substitution of legal heirs of Mr. D.R. Dubey, defendant No. 4, who died on 24th of December, 1997. The learned counsel for the answering respondent submits that the information of death of Shri D.R. Dubey, was conveyed by the other defendants to the plaintiff in Civil Court on 28.1.1998, whereas vide notification dated 7th of April, 1998 the Debts Recovery Tribunal, Jabalpur was created and the jurisdiction of the Civil Court ceased w.e.f. that date, therefore, the Bank moved an application before the Civil Court on 20.7.1998 for transfer of the case to Debts Recovery Tribunal, Jabalpur and the case was transferred. Then again it was transferred to Debts Recovery Tribunal, Allahabad and thus the Bank moved the application for substitution of legal heirs of defendant No. 4 on 31.1.2002 before the Debts Recovery Tribunal, Allahabad.

5. The defendants raised objection against the maintainability of the said application being barred by time as according to them the provisions of Order 22, Rule 4 of the Code of Civil Procedure are applicable in case of death of one of several defendants or of sole defendant, for which there is a provision to make legal representation of the deceased as party and to proceed with the suit. However, sub rule (3) CPC provides that where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant. Order 22, Rule 4 CPC is extracted below:-

"4. Procedure in case of death of one of several defendants or of sole defendant.- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place

(5) Where -

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the grounds that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the court shall, in considering the application under the said section 5 have due regard to the fact of such ignorance, if proved."

6. He further submits that under Limitation Act, 1963 the time given to make a party of the legal representative of the deceased-plaintiff or appellant or defendant or respondent, as the case may be, is provided as 90 days from the date of death. Therefore, the application

moved by the plaintiff-bank was barred by time. He further contends that Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short Recovery of Debts Act, 1993) provides that the Tribunal shall have power to regulate its own procedure. The Regulations have been formulated and notified, which are called as the Debts Recovery Tribunal Regulations of Practice, 1996. It came into effect on 2.12.1996. Regulation 89 of which confers the power and makes the provisions of Order 22 of the Code of Civil Procedure applicable in so far as moving an application for legal representative of the deceased as party to the proceeding. Regulation 89 is extracted below:-

"89.Application for making legal representative of deceased persons as parties to proceedings:- Application by or against legal representatives shall be made within 90 days from the date of death of the party or person concerned and for such purpose the provisions of Order 22 of the Code of Civil Procedure, may as far as may be and with necessary modifications be followed."

7. Thus, he submits that once the Regulation limits the period for filing an application as 90 days to bring on record the legal heirs of the deceased-defendant, the application, moved by the Bank beyond, it definitely has become time barred. Thus, he submits that the Debt Recovery Tribunal as well as the Appellate Tribunal have failed to appreciate the law framed to entertain the application to bring on record the legal representatives of the deceased-defendant correctly, therefore, the orders passed by the Tribunal are unsustainable and are liable to be quashed.

8. Per contra Mr. D.K. Pathak, learned counsel for the Bank submitted that Section 22 of the Recovery of Debts Act, 1993 provides that the Tribunal and appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice. He further submits that Section 22 of the Recovery of Debts Act, 1993 further provides that the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they have their sitting. No doubt the Tribunal has been assigned the same powers as are vested in the Civil Court under the Code of Civil Procedure while trying the suit, but those are extracted for certain purposes as is provided under Sub-section (2) of Section 22 of the Act. Section 22 of the Act is extracted below:-

"22.Procedure and powers of the Tribunal and the Appellate Tribunal:- (1) 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.

(2) The Tribunal and the Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of

Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

- (a) summoning an enforcing the attendance of any person and examining him in oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

9. In the light of the aforesaid provisions he submits that there is no iota of doubt that the procedure provided under Order 22, Rule 4 of the Code of Civil Procedure as well as under Article 120 of the Limitation Act are not applicable. So far as the Regulations framed by the Tribunal which provides the limitation of 90 days to move such application is concerned, he submits that the regulations 1996 as referred by the petitioner have been framed for the particular Tribunals, which are not applicable to the Tribunals established either at Allahabad or Lucknow. In support of his submissions he also placed on record one other Regulation of practice 2010, which has been framed in exercise of power conferred by sub Section (1) of Section 22 of the Act, 1993 to regulate the procedure by the Debts Recovery Tribunals at Ahmadabad, Aurangahad, Mumbai, Nagpur and Pune, whereas till date the Tribunals established either at Allahabad or at Lucknow has not framed any such regulation. Therefore, it has to proceed in its own wisdom guided by the principles of natural justice and subject to the other provisions of the Act and Rules framed thereunder.

10. In addition to the aforesaid pleas he further submitted that it is a recovery of public money and the debtor Company as well as other guarantors are on record and in default of payment of loan the liabilities of the debtor as well as the guarantors is joint and several, therefore, the delay, if any, in moving such an application does not affect the proceeding of the case. Since the money is a public money the principles of natural justice demands to incorporate the legal representatives of the deceased party. It is further stated that the

respondent-bank has not committed default in making the application as soon as it was informed by the other defendant with respect to the death of defendant No. 4 on 28.1.1998, who died on 24.12.1997, he tried to move the application, but since by creation of Debt Recovery Tribunal at Jabalpur by means of Notification dated 7th of April, 1998, the Civil Court ceased its power to proceed with the suit, therefore, the bank could not move the application.

11. In connection of constitution of Debts Recovery Tribunals after some time of creation of Debt Recovery Tribunal, Jabalpur, the Debt Recovery Tribunal, Allahabad was created, where ultimately the jurisdiction vested for trial of this case and the respondent-bank moved the application, without fail, therefore, the same is not liable to be thrown out being barred by time under the provisions of the Code of Civil Procedure or the Regulations framed for the particular Tribunals.

12. After considering the rival submissions of learned counsels for the parties as well as the provisions of the Act, I find that by Section 22 of the Recovery of Debts Act, 1993 the Debt Recovery Tribunals are not bound by the procedure laid down by the Code of Civil Procedure. Indisputedly the Tribunals are vested with the same powers as of the Civil Court under the Code of Civil Procedure, while trying the suit, which are extracted for certain proceedings as envisaged in sub section (2) of Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, but after reading the said provisions, it is clear that that does not include to deal with the application to bring on record the legal representatives of the defendants.

13. So far as the Regulations 1996 are concerned, definitely i.e. applicable for the particular Tribunals. Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has empowered the Tribunals to regulate their own procedure. Indisputedly the Tribunal established at Allahabad or at Lucknow has not framed any such Regulations, therefore, in proceeding with the matter, it has to be guided by the principles of natural justice as well as by some other provisions of the Act and Rules framed thereunder. The petitioner has failed to report any violation of the provisions of the Act or Rules made thereunder or even the principles of natural justice. The money which is due for recovery belongs to the public exchequer and is liable to be recovered from the debtor as well as its guarantors, therefore, I am of the view that the principles of natural justice demands to bring the legal representatives of the debtors and or the guarantors on record. It is also pertinent to mention here that the liability being joint and several, the suit for recovery is not going to be abated as a whole, thus once the suit survives even after non impleadment of the legal representatives of the defendant No. 4 and money is recoverable from any or all of the defendants as a whole, there is no harm to allow the application for substitution of the legal representatives of defendant No. 4. Therefore, I am of the view that the application for substitution of the legal representatives of the defendant No. 4 moved by the respondent-bank does not require to be dealt with so technically as it may defeat the purpose of the Act.

14. The parties also cited some decisions in support of their submissions on the point of abatement of case due to non impleadment of legal representatives of the deceased within time, but in the light of the observations made as above, I do not think it necessary to deal with those cases.

15. Therefore, no interference is warranted in the orders impugned. In the result the writ petition stands dismissed.