GAHC010050502021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1842/2021

M/S NEW MALAMATI TEA ESTATE AND ANR
MELAMATI TINIALI, P.O. MELAMATI, TITABOR, DIST. JORHAT, ASSAM, PIN-785632- REP. BY ITS SOLE PROPRIETOR MR. MUKHTAR AHMED, S/O. LT. MUZIBUR AHMED,

2: MUKTAR AHMED
S/O. LT. MUZIBUR AHMED
MELAMATI TINIALI
P.O. MELAMATI
TITABOR
DIST. JORHAT
ASSAM
PIN-785632

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. HEREIN BY THE SECRETARY TO THE MINISTRY OF FINANCE, 3RD FLOOR JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI, DELHI-110001.

2:CANARA BANK

A BODY CORPORATE
CONSTITUTED UNDER THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKING) ACT
1970 AND HAVING ITS HEAD OFFICE AT BANGALORE AND DOING THE BUSINESS OF BANKING AT VARIOUS PLACES THROUGHOUT THE COUNTRY AND HAVING ONE OF ITS BRANCHES AT GARALI
NAMED AS CANARA BANK
JORHAT BRANCH
SITUATED AT GARALI
DIST. JORHAT
ASSAM

PIN-785001- REP. BY ITS BRANCH MANAGER.

3:THE UNDER SECRETARY

TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
3RD FLOOR
JEEVAN DEEP BUILDING
PARLIAMENT STREET
NEW DELHI
DELHI-110001

For the Petitioner(s) : Mr. A. Biswas, Advocate

For the Respondent(s) : Mr. S. Borthakur, Advocate
: Mr. S. S. Roy, CGC

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 31-08-2023

1. The instant writ petition is filed by the Petitioners challenging the communication dated 01.08.2019 issued by the Respondent No.3 i.e. the Under Secretary to the Government of India, Ministry of Finance and also for a direction that the Original Application No. 97/2019 pending before the Debt Recovery Tribunal, Guwahati should be transferred to appropriate Civil Court having jurisdiction over the subject matter.

2. The facts involved in the instant case are that Section 1(4) of the Recovery of Debts and Bankruptcy Act, 1993 (formerly known as Recovery of Debts Due to Banks and Financial Institutions Act, 1993) stipulates that the provisions of the said Act i.e. the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter for short referred to as "the Act of 1993") shall not apply where the amount of debt due to any bank or financial institution or to a consortium

of Banks or financial institution is less than Rs.10,00,000/- or such other amount being not less than Rs.1,00,000/- as the Central Government may, by notification specify.

3. It reveals from the records that the Central Government had issued a notification on 06.09.2018 in exercise of the powers under Sub-Section (4) of Section 1 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 whereby the Central Government specified that the provisions of the said Act shall not apply where the amount of debt due to any bank or financial institutions or to a consortium banks or financial institution is less than Rs.20,00,000/-.

4 It is also seen from the records that the said notification dated 06.09.2018 was put to challenge before the Rajasthan High Court in a writ petition being registered and numbered as D.B.C.WP No.21860/2018. The Rajasthan High Court vide an order dated 26.09.2018 stayed the notification dated 06.09.2018. Thereupon, vide an order dated 01.07.2019, the said writ petition was dismissed. In view of the stay granted by the Rajasthan High Court vide order dated 26.09.2018, a situation arose as to what would happen during the period from 26.09.2018 to 30.06.2019. The said aspect of the matter was deliberated with the Ministry of Law and Justice, Department of Legal Affairs and taking into account the judgment of the Supreme Court in the case of ***M/s Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras*** *reported in* ***(1992) 3 SCC 1,*** an opinion dated 18.07.2019 was expressed by the Ministry of Law and Justice, Department of Legal Affairs that the conclusion can be safely drawn that the cases having suit value between Rs.10,00,000/- to Rs.20,00,000/- which were filed before DRTs during

the stay period i.e. from 26.09.2018 to 30.06.2019 may continue in the DRTs till the conclusion so that no prejudice shall be caused to the parties who have filed such suits in good faith. This very opinion which was rendered by the Ministry of Law and Justice, Department of Legal Affairs was placed before this Court during the course of the hearing by Mr. S. S. Roy, the learned Central Government Counsel which is kept on record and marked with the letter "X".

5. This Court further finds it relevant to take note of another development prior to the opinion being rendered by the Ministry of Law and Justice, Department of Legal Affairs. Vide another notification dated 11.07.2019, the Ministry of Finance (Department of Financial Services) issued a notification in exercise of the powers under Sub-Section (4) of Section 1 of the Recovery of Debt Due to Banks and Financial Institutions, 1993 whereby the notification dated 06.09.2018 was amended. The effect of the amendment so made vide the notification dated 11.07.2019 is that after the words "is less than twenty lakh rupees" occurring in the notification dated 06.09.2018, the words which were added/inserted are "but shall continue to apply to debts in respect of which an application for recovery has been filed before the Debts Recovery Tribunal prior to the date of publication of this notification that is to say, the 6th day of September, 2018". Therefore vide the said notification dated 11.07.2019, those applications which were filed for recovery before the Debts Recovery Tribunal prior to the publication of the notification dated 06.09.2018 were saved and thereby the enhanced jurisdiction of the Debts Recovery Tribunal as made applicable by the Notification dated 06.09.2018 shall not apply in respect to those cases whose suit value was less than Rs.20,00,000/- filed prior to 06.09.2018.

6. As already stated, an opinion was expressed by the Ministry of Law and Justice, Department of Legal Affairs on 18.07.2019 wherein it was mentioned that the cases having a suit value between Rs.10,00,000/- and Rs.20,00,000/- which were filed before the Debt Recovery Tribunals during the stay period (i.e. from 26.09.2018 to 30.06.2019) may continue in the Debt Recovery Tribunal till conclusion. On the basis of the said opinion rendered, the Deputy Secretary to the Government of India, Ministry of Finance issued a communication on 01.08.2019 stipulating that the cases having suit value between Rs.10,00,000/- and Rs.20,00,000/- which have been filed before the Debt Recovery Tribunals during the stay period (i.e. from 26.09.2018 to 30.06.2019) may continue in the DRTs till conclusion so that no prejudice shall be caused to the parties who have filed such suits in good faith. It was also mentioned that cases filed on or after 01.07.2019 may be transferred to the Civil Courts by the DRTs. This communication which was issued by the Respondent No.3 had been assailed in the instant writ petition.

7. In the backdrop of the above preludes, let this Court take into account the reason why the said communication dated 01.08.2019 (hereinafter referred to as "the impugned communication") has been assailed. The facts discernible from the pleadings on record shows that on 12.03.2019, the Respondent No.2 had filed an application under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the Petitioners herein claiming an amount of Rs.13,28,647.04p along with interest @ 12.80% from 01.10.2018 till realization. The said application was registered and numbered as Original Application No.97/2019. The merits of the said application is not required to be gone into taking into account the issue involved herein and as such the facts leading to the filing of the said application is not narrated for the

sake of brevity. To the said application, the Petitioners had filed the written statement wherein a preliminary objection as regards the maintainability of the said application in view of the notification dated 06.09.2018 was taken.

8. Be that as it may, the instant writ petition was filed on 10.03.2021 and this Court vide an order dated 19.03.2021 stayed the further proceedings of Original Application No.97/2019 pending before the Debts Recovery Tribunal, Guwahati. It reveals from the records that the Respondent No.1 and 3 had filed an affidavit-in-opposition stipulating the reasons why the impugned communication was issued by the Respondent No.3. A perusal of the said Affidavit-in-Opposition shows that the reasons assigned are similar to the reasons as opined by the Ministry of Law and Justice, Department of Legal Affairs.

9. It is also relevant to take note of that an Affidavit-in-Opposition has also been filed by the Respondent No.2 Bank stating inter alia that in view of the stay of the notification dated 06.09.2018 by the Rajasthan High Court in its order dated 26.09.2018, the effect of which was that the jurisdiction of the concerned Debt Recovery Tribunal was Rs.10,00,000/- and above, the application of the Respondent No.2 was valued Rs.13,28,647.04p, the Debt Recovery Tribunal had the jurisdiction to entertain the said proceedings.

10. I have heard the learned counsels for the parties and have also perused the materials on record.

11. The points which have arisen for determination by this Court are:

(i) Whether the Respondent No.3 could have by way of impugned communication amended the notification issued under Sub-Section (4) of

Section 1 of the Act of 1993?

(ii) If not, what orders can be passed in the instant proceedings?

12. This Court for the purpose of deciding the first point for determination, finds it apt to reproduce the provisions of Sub-Section (4) of Section 1 of the Act of 1993 which is as hereinunder:

> "*(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less then ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.*"

13. A reading of the above quoted provisions shows that unless it is otherwise provided, the provisions of the Act of 1993 shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than Rs.10,00,000/- or such other amount, being not less than Rs.1,00,000/-, as the Central Government may by notification, specify. The use of the words "as the Central Government may, by notification, specify" makes it clear that the Central Government can only by way of notification change the pecuniary jurisdiction. This Court at this stage finds it relevant to take note of the well settled principles of law that when the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner (see ***Nazir Ahmed Vs. Emperor*** *reported in* ***AIR 1936 PC 253***). This Court also finds pertinent to refer to the judgment of the Supreme Court in the Case of ***Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Others*** *reported in* ***(2015) 13 SCC 722.*** In paragraph No.14 of the said judgment, the Supreme Court held as follows:

> "*14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.*"

14. Now coming back to the facts of the instant case, it would be seen that by the amendment effected vide notification dated 11.07.2019 to the Notification dated 06.09.2018, only those cases were saved from the purview of the notification dated 06.09.2018 which were filed prior to 06.09.2018. Now the question arises as to whether the impugned communication dated 01.08.2019 can be said to be a notification under Sub-Section (4) of Section 1 of the Act of 1993 or in view of the dismissal of the writ petition, there is no requirement for issuance of the Notification in view of the stay order operating during this period. For this purpose, let this Court analyse what is the effect of the stay order and the consequences when the stay order stands vacated upon dismissal of the proceedings.

15. This Court had duly taken note of the well settled principles as regards the effect of stay order as expounded by the Supreme Court in the case of ***M/s Shree Chamundi Mopeds Ltd. (supra)***. In the said judgment, the Supreme Court

observed the distinction between quashing of an order and stay of the operation of the order. The relevant portion of paragraph 10 of the said judgment is reproduced below:

> "*10. ……..While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.*"

16. The above quoted portion of paragraph 10 of the judgment shows that quashing of an order results in restoration of the position as it stood on the date of passing of the order which had been quashed. On the other hand, when an order is stayed, it only means that the order which had been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order which was stayed was wiped out from existence. Now applying the said principles as laid down by the Supreme Court to the facts of the instant case, it would show that the notification dated 06.09.2018

became inoperative w.e.f. 26.09.2018 till 30.06.2019 inasmuch as on 01.07.2019 the writ petition was dismissed by the Rajasthan High Court. It would also show by applying the above principles that the moment the writ petition was dismissed, which consequently led to the vacation of the stay order dated 26.09.2018, the notification dated 06.09.2018 became operational w.e.f. 06.09.2018 itself. The eclipse caused to the notification dated 06.09.2018 by the stay order dated 26.09.2018 till 30.06.2019 was removed by dismissal of the writ petition and consequential vacation of the stay order and resultantly the notification dated 06.09.2018 became operational with all rigors w.e.f. 06.09.2018. Therefore, as on 06.09.2018, the jurisdiction of the Debt Recovery Tribunal on the basis of the notification dated 06.09.2018 stood enhanced to Rs.20,00,000/-. At the cost of repetition, it is again reiterated that vide the notification dated 11.07.2019, only those cases filed prior to 06.09.2018 were saved but not those cases filed after 26.09.2018 to 30.06.2019.

17. In the backdrop of the above analysis, can it be said that vide the impugned communication, the cases filed between 26.09.2018 to 30.06.2019 were saved. In the opinion of this Court taking into account the well settled principles of law laid down in ***Nazir Ahmed (supra)*** and ***Cherukuri Mani (supra)***, the Respondent No.3 could not have saved such cases filed during the stay period i.e. from 26.09.2018 to 30.06.2019 by way of the impugned communication that too when the statute is clear that only by way of a notification issued by the Central Government, the jurisdiction of the Debt Recovery Tribunal could be fixed. The impugned communication under no circumstances can take the place of a notification by the Central Government. The above analysis therefore decides the first point for determination.

Therefore, the impugned communication thereby directing the Debt Recovery Tribunals to adjudicate the cases filed of suit value below Rs.20,00,000/- during the period from 26.09.2018 to 30.06.2019 is without authority and competence as well as ultra vires the provisions of Section 1(4) of the Act of 1993 for which the said impugned communication is set aside and quashed. Accordingly, on the basis of the impugned communication, the Debt Recovery Tribunal, Guwahati cannot proceed with the adjudication of the OA No.97/2019 unless and until the Central Government issues appropriate notifications in terms with Section 1(4) of the Act of 1993, in the manner detailed out in the subsequent stages of the instant judgment.

18. Now coming to the second point for determination as to what relief can be granted to the parties before this Court. From the above it would be seen that this Court had quashed the impugned communication dated 01.08.2019 and consequent effect of quashing the impugned communication dated 01.08.2019 would oust the jurisdiction of Debt Recovery Tribunal, Guwahati to adjudicate the application so filed by the Respondent No.2 being Original Application No. 97/2019. This Court finds it relevant to observe that from a perusal of the provisions of the Act of 1993, there appears to be no provision in the Act of 1993 whereby any proceedings pending before the Debt Recovery Tribunal can be transferred to the Civil Court inasmuch as a perusal of Section 31 of the Act of 1993 only stipulates the transfer of suits or other proceedings pending before any Court immediately before the date of establishment of the Tribunal under the Act to the Tribunal.

19. This Court finds it relevant at this stage to refer to a recent judgment of the Supreme Court in the case of ***Central Council for Research in Ayurvedic***

Sciences and Another Vs. Bikartan Das and Others *reported in* ***(2023) SCC Online SC 996*** wherein at paragraph Nos. 51 and 52, the Supreme Court observed that there are two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issuance of a writ of certiorari. The first cardinal principle is that the High Court while exercising the jurisdiction under Article 226, does not exercise the powers of an Appellate Tribunal. It was observed that while exercising the jurisdiction under Article 226, the High Court demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The second principle which is rather important for the purpose of the instant case is that it is open for the writ Court exercising its flexible power to pass such orders as public interest, dictates and equity projects. It was observed that the legal formulations cannot be enforced divorced from the realities of the facts situation of the case and while administering law, it is to be tempered with equity and the equitable situation demands after setting right the legal formulations not to take to it to the logical end. It was observed that the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. It was further observed that if such an approach is not adopted, it would render the status of a High Court exercising jurisdiction under Article 226 to the status of a normal Court of appeal which it is not.

20. This Court cannot be unmindful of the consequences which would arise in view of the setting aside of the impugned communication dated 01.08.2019 by this judgment inasmuch as pan India, the jurisdiction of the Debt Recovery Tribunal in respect to those cases which were filed during the period from

28.09.2018 to 30.06.2019 having the suit value below Rs.20,00,000/- would be effected. It being the mandate of law that sans a notification issued by the Central Government, the situation cannot be resolved and as already observed the impugned communication cannot be an alternative to the Notification to be issued by the Central Government. Under such circumstances, this Court is of the opinion that the Central Government in right earnest is required to do the needful by issuing appropriate notification, if deemed fit, to resolve the anomaly.

21. It is also equally important to note that the right of the Respondent No.2 to make recovery cannot be forestalled for eternity inasmuch as the Debt Recovery Tribunal, Guwahati for the reasons above mentioned cannot adjudicate the dispute arising in OA No.97/2019 for want of jurisdiction. As already observed supra, there is also no provisions in the Act of 1993 for transferring the proceedings from the Debt Recovery Tribunal, Guwahati to the Civil Court. Under such circumstances, for the interest of justice, this Court directs the learned Debt Recovery Tribunal, Guwahati to return Original Application No.97/2019 to the Respondent No.2 within 10 days from the date of submission of the certified copy of the instant judgment. This Court grants the liberty to the Respondent No.2 to file the recovery proceedings before the competent Civil Court.

22. This Court also finds it relevant herein to observe that Section 14 of the Limitation Act, 1963 would be applicable in the present situation for the benefit of the Respondent No.2 inasmuch as the Respondent No.2 had diligently pursued its remedies before the Debt Recovery Tribunal, Guwahati. The said opinion is based upon the judgment of the Supreme Court in the case of ***P.***

Sarathy Vs. State Bank of India *reported in* ***(2000) 5 SCC 355***.

23. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned communication dated 01.08.2019 stands set aside and quashed and consequently, the Debt Recovery Tribunal, Guwahati cannot adjudicate OA No.97/2019.

(ii) The Respondent Nos. 1 and 3 would be at liberty to issue appropriate notification(s) thereby further amending the notification dated 06.09.2018 or issue fresh notification for taking care of those cases filed during the period from 28.09.2018 to 30.06.2019 whose suit value was below Rs.20,00,000/- before the Debt Recovery Tribunals.

(iii) The Debt Recovery Tribunal, Guwahati is directed to return the Original Application No. 97/2019 to the Respondent No.2 upon a certified copy of the instant judgment being produced before the Registrar, Debt Recovery Tribunal, Guwahati.

(iv) The Respondent No.2 is further given the liberty to file appropriate recovery proceedings before the competent Court of jurisdiction and the period of limitation from the date of filing of the OA No.97/2019 till the date the application is returned shall be excluded while computing the period of limitation.

JUDGE

Comparing Assistant