Before M.M. Kumar and Rajesh Bindal, JJ

M/S KAMS LEATHERWARE LTD.—*Petitioner*

versus

PUNJAB NATIONAL BANK AND OTHERS,—*Respondents*

C.W.P. No. 19311 of 2005

The 29th May, 2007

Constitution of India, 1950—Art. 226–Recovery of Debts Due to Banks and Financial Institutions Act, 1993—S. 21—Petitioner filing appeal against order of DRT—Appellate Authority requiring to deposit an amount of Rs. 5 lacs as a pre condition under section 21 for entertaining its appeal—Challenge thereto—Bank failing to return goods to petitioner which were in its custody—Once petitioner has a prima facie good case on merit then the Appellate Tribunal not justified in requiring petitioner to deposit the amount—Petition allowed.

Held, that the right of one appeal is recognized in all jurisdictions because it is well settled that to err is human. Moreover, the respondent bank is in custody of the leather goods belonging to the petitioner since October, 1994 and despite the insistence of the petitioner it did not sell those goods which were admittedly of perishable nature. The value of those goods has now been assessed at Rs. 25,000. We do not wish to go into these questions or as to whether by virtue of Sections 172 to 176 of the Contract Act, 1872 the suit filed by the bank would be maintainable or not, but we could conclude that there are agruable points in the appeal and the petitioner may have good case on merit. The appellate Tribunal while passing the impugned order dated 22nd November, 2005 has ignored this vital consideration. It is well known that once a plaintiff has a *prima facie* good case, the balance of convenience if lies in his favour and he is likely to suffer an irreparable loss then ordinarily stay in favour of the plaintiff should be granted. Therefore, to that extent, the order of the Appellate Tribunal cannot be sustained. (Para 6)

H.C. Arora, Advocate, *for the petitioner.*

H.R. Bansal, Advocate, *for respondent No. 1.*

JUDGMENT

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 22nd November, 2005 (Annexure P8) passed by the Debt Recovery Appellate Tribunal, Delhi, requiring the petitioner to deposit an amount of Rs. 5.00 lacs as a pre-condition for entertaining its appeal. It is appropriate to mention that the appeal has been filed by the petitioner company against the order dated 7th June, 1999 (Annexure P1) passed by the Debt Recovery Tribunal, Jaipur. It has further been prayed that directionsbe issued to the Debt Recovery Appellate Tribunal, Delhi to entertain the appeal without insisting on any pre-deposit as per the provisions of Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity "1993 Act").

(2) Brief facts of the case, as disclosed in the petition are that the respondent-bank namely Punjab National Bank filed a Civil Suit on 8th September, 1995 in the Courts at Kharar for recovery of its dues alleging default on the part of the petitioner to repay the same. The suit was transferred to the Debt Recovery Tribunal, Jaipur. The final order was passed on 7th June, 1999 (Annexure P1). The Debt Recovery Tribunal recorded a categoric finding that the Punjab National Bank sanctioned cash credit hypothecation limit (CCHL) of Rs.33.00 lacs on execution of loan documents and guarantee deeds. It was also found that the Punjab National Bank was entitled to charge interest at the rate of 16.5% per annum with quarterly rests from 6th September, 1990 to 7th September, 1995 and penal interest at the rate of 2% per annum with quarterly rests from 1st April, 1994 to 7th September 1995. Therefore, revised statement was to be filed after calculating interest for the aforementioned terms. However, the Punjab National Bank was not held entitled to interest from 19th October, 1994 on the amount of Rs.54,78,036 at this stage, it is appropriate to notice certain paragraphs of the application filed by the petitioner company with a request to the Punjab National Bank to dispose of the hypothecated stocks or to grant permission to the petitioner company to sell the same. It was conceded in an application filedby the Punjab National Bank on 29th February, 1996 that possession of the hypothecated goods was taken by the bank in October 1994. The

Tribunal also recorded a finding that the bank was negligent inasmuch as it did not sell the leather goods which were in its custody since October 1994 despite the authority given to it by the petitioner conpany and the obvious stand of the bank was that the goods in its custody were perishable. On the submission of the revised statement, the bank was held entitled to recover a sum of Rs. 41, 82,760 with costs of the suit being the second charge holder. The bank was further held entitled to recover the aforementioned amount by the sale of hypothecated goods.

(3) The petitioner company filed an appeal before the Debt Recovery Appellate Tribunal, Mumbai (Annexure P2). On 22nd July, 1999, the Debt Recovery Appellate Tribual passed an order directing the petitioner company to deposit Rs. 10.00 lacs within a period of three months from the date of the order and it also granted stay of execution of the recovery certificate up to the period of three months. It was also clarified that in case the deposit is made then stay was to continue till the disposal of the appeal, otherwise the stay was to stand vacated on an application filed by the petitioner company for issuance of directions to the bank to recover Rs. 10.00 lacs by selling its goods which were kept in its custody an order dated 20th December, 1999 was passed appointing Local Commissioner for preparing the inventory of stock at the first instance. On 17th February, 2000 the Appellate Tribunal issued directions for sale/auction of the goods. The Tribuanl further directed that on realization of the sale proceeds, the Recovery Officer was to send Rs. 10.00 lacs to the bank and to hold the rest of the balance in deposit by the Debt Recovery Tribunal until the disposal of the appeal (Annexure P3). When the case came up before the Appellate Tribunal after it transferred to New Delhi on 15th February, 2001 an order was passed granting permission to move an appropriate application for seeking waiver of pre-condition of deposit before entertaining its appeal (Annexure P4). It is pertinent to mention that the Local Commissioner appointed by the Appellate Tribunal had assessed the value of the hypothecated goods which were lying in the custody of the bank at Rs. 25,000. The petitioner company filed an application dated 10th March, 2001 with a prayer for waiver of pre-condition of deposit and for entertainment of its appeal on merit (Annexure P5). The application was contested and reply was filed (Annexure P6). The application was disposed of on 22nd November, 2005 directing the petitioner company to deposit an amount of Rs. 5.00

lacs within a period of one month from the date of order as a pre-condition for hearing of the appeal on merit (Annexure P8). The operative part of the order reads as under :—

> "Having regard to the facts and circumstances of the case and in the light of submissions made by the Learned counsel for the applicant as well as learned counsel for the respondent bank, I think it is not a case for total waiver of pre-deposit. It is noticed that DRAT, Bombay had directed this applicant to make a deposit Rs. 10.00 lakhs and later on, with certain modifications, the amount was deposited. Though may learned predecessor in DRAT Delhi permitted the applicant to make an application under Section 21 of the Act, that would not mean that he intended to waive the pre-deposit.
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> The fact placed before this Tribunal is that the hypothecated goods are worth only about 25,000 as per the valuation report of the Local Commissioner appointed by the Recovery Officer, DRT, Chandigarh and if that be so, it is difficult to appreciate how the applicant can escape from the provision of Section 21 of the Act. Accordingly, I direct the applicant to deposit a sum of Rs. 5.00 lakhs with the respondent-bank within a period of one month from today which would be kept in a separate interest bearing 'no lien account'. The deposit would, however, be subject to the results in the appeal. On making such a deposit, let the Registry number the appeal and post this matter on 8th February, 2006 along with connected appeal No 44/2000. In the event of failure on the part of the applicant to deposit the abovesaid amount of Rs. 5.00 lakhs within the stipulated period, the appeal need not be numberd".

(4) Mr. H.C. Arora, learned counsel for the petitioner has submitted that the bank cannot be permitted to continue the recovery suit or original application because it was unable to return the goods to the petitioner company which were admittedly in its custody since October, 1994. In that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **"Lallan Prasad** *versus* **Rahmat Ali and another"** (1). Accordingly, it is sought to be submitted

(1) AIR 1967 S.C. 1322

that once the petitioner has a *prima facie* good case on merit then the Appellate Tribunal was not justified in requiring the petitioner to deposit Rs. 5.0 lacs as a pre-condition for hearing the appeal. Mr. Arora has placed reliance in that regard on the judgment of the Kerala High Court in the case of "**Bright Resorts** *versus* **Debt Recovery Appellate Tribunal and others**" (2) and argued that merits of the appeal to the extent discernible from the nature of the contentions raised, and quality of evidence led by the debtor in support of his contentions and the grounds of appeal are the factors which must be taken into consideration by the Dept Recovery Appellate Tribunal.

(5) Mr. H.R. Bansal, learned counsel forthe Punjab National Bank has submitted that once the Debt Recovery Appellate Tribunal at Mumbai,—*vide* its order dated 22nd July, 1999 had directed the petitioner company to deposit a sum of Rs. 10.00 lacs, which was subsequently modified by permitting the sale of hypothecated goods to satisfy the amount of Rs. 10.00 lacs required as deposit as pre-condition for hearing of appeal, then no fresh order or any fresh application could be filed as the order dated 22nd July, 1999 would be deemed to continue to operate. He has emphasized that the bank has also filed the appeal and the decretal amount of Rs. 42.00 lacs in any case has to be recovered from the petitioner.

(6) After hearing learned counsel for the parties and persuing the record with their assistance, we are of the considered view that the right of one appeal is recognized in all jurisdictions because it is well settled that to err is human. Moreover, the respondent bank is in custody of the leather goods belonging to the petitioner since October, 1994 and despite the insistence of the petitioner it did not sell those goods which were admittedly of perishable nature. The value of those goods has now been assessed at Rs. 25,000. We do not wish to go into these questions or as to whether by virtue of Sections 172 to 176 of the Contract Act, 1872 the suit filed by the bank would be maintainable or not, but we could conclude that there are arguable points in the appeal and the petitioner may have good case on merit. The Appellate Tribunal while passing the impugned order dated 22nd November, 2005 (Annexure P8) has ignored this vital consideration. It is well known that once a plaintiff has a *prima facie* good case, the balance of convenience if lies in his favour and he is likely to suffer

(2) 2003 (2) I.S.J. (Banking) 480

an irreparable loss then ordinarily stay in favour of the plaintiff should be granted. Therefore, to that extent, the order of the Appellate Tribunal cannot be sustained.

(7) The argument of Mr. Bansal that original order requiring the petitioner to pay Rs. 10.00 lacs passed on 22nd July, 1999 still operates, has not impressed us because the Appellate Tribunal,—*vide* its order dated 15th February, 2001 granted permission to the petitioner to move an appropriate application seeking waiver of the pre-condition of deposit under Section 21 of the 1993 Act. Therefore, there is no substance in the aforementioned submissions.

(8) For the reasons aforementioned, this petition succeeds. The order dated 22nd November, 2005 (Annexure P8) requiring the petitioner to deposit a sum of Rs. 5.00 lacs as a pre-condition under Section 21 of the 1993 Act to that extent is quashed. The Appellate Tribunal, New Delhi, is directed to proceed with the hearing of the appeal without insisting upon the payment of Rs. 5.00 lacs as a pre-condition as stipulated under Section 21 of the 1993 Act. In the facts and circumstances of the case we deem it just and appropriate to direct the Appellate Tribunal to conclude the hearing of the appeal preferably within a period of four months from the receipt of certified copy of this order.

R.N.R.

Before K.S. Garewal & Ajai Lamba, JJ

SAVITRI DEVI,—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

C.W.P. No. 17469 of 2006

25th May, 2007

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Petitioners' land sought to be acquired for development of area as residential and commercial area—Petitioners setting up an industrial unit with permission from competent authority—Earlier also land of petitioner released from