

CASE NO.:
Appeal (civil) 5287 of 2001

PETITIONER:
PUNJAB NATIONAL BANK

RESPONDENT:
O.C. KRISHNAN AND ORS.

DATE OF JUDGMENT: 13/08/2001

BENCH:
B.N. KIRPAL & N. SANTOSH HEGDE

JUDGMENT:
JUDGMENT

2001 Supp(1) SCR 466

The following Order of the Court was delivered :

Special leave granted.

In the instant case, a suit was filed by the appellant for recovery of money from the principal debtor as well as the guarantors. The suit was transferred to the Debts Recovery Tribunal and thereafter on 17th May, 1996 decree was passed by the Debts Recovery Tribunal, Calcutta.

The said suit was decreed for a sum of Rs. 12,09,175.39 against the principal debtor as well as against the guarantors, along with interest thereon, and it was further directed that the Recovery Officer shall first proceed to realise the amount on the sale of hypothecated plant and machinery and mortgaged property belonging to respondents 5 and 4 respectively and thereafter proceed to realise the balance, if any, in accordance with law. Pursuant thereto, certificate was issued and recovery proceedings started.

The respondent who was a guarantor and whose property was stated to have been mortgaged filed a petition under Article 227 before the High Court at Calcutta. The High Court allowed the petition by observing that as the mortgaged property was situated in Chennai the Debts Recovery Tribunal had no territorial jurisdiction in respect thereto and it could not have directed sale of mortgaged property. It, accordingly, held that the Bank would be at liberty to proceed against defendant No. 4, respondent herein, in appropriate forum for recovery of debts by sale of mortgaged property. Hence this appeal.

In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this last track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision for court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the court refrains from exercising its jurisdiction

under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

For the aforesaid reasons, this appeal is allowed and the impugned order of the Calcutta High Court in CO. No. 1305/1997 is set aside.

JUDIS