

Industrial Credit and Investment Corporation of India Ltd.

Vs

Grapco Industrial Ltd.

Civil Appeal No. 3167 of 1999

(S. Saghir Ahmad, D. P. Wadhwa JJ)

14.05.1999

JUDGMENT

D.P. Wadhwa, J.

1. Leave granted.

2. Question of law that arises for consideration in these appeals is : if the Debts Recovery Tribunal constituted under Section 3(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the 'Act') has jurisdiction to grant ad interim *ex parte* order of injunction or stay against the defendant on an application filed by the bank or financial institution for recovery of debt as defined under clause (g) of Section 2 of the Act ? Tribunal under clause (o) of Section 2 of the Act means the Tribunal established under sub-section (1) of Section 3 of the Act. These appeals are from the judgment of the Calcutta High Court given on petitions filed under Article 227 of the Constitution holding that the Tribunal has no jurisdiction to grant *ex parte* orders under the Act. It is further held on merit as well that the Tribunal was wrong in granting an *ex parte* order of injunction.

3. When we see Preamble to the Act, it provides for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Under Section 17 of the Act a Tribunal shall exercise jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. There is also a provision for establishment of Appellate Tribunal. Under Section 18 of the Act, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in Section 17 of the Act. This bar of jurisdiction, however, does not apply to the Supreme Court or to a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution. It is not necessary for us to consider as to how a Tribunal and Appellate Tribunal are established and their qualifications.

4. Chapter IV of the Act provides for the procedure of Tribunals. Section 19, which is relevant for our purpose, is as under :

"19. *Application to the Tribunal.* - (1) Where a Bank or a Financial Institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction, -

(a) the defendants, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on

business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises.

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee for filing the application as may be prescribed :

Provided that the fee may be prescribed having regard to the amount of debt to be recovered :

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of Section 31.

(3) On receipt of the application under sub-section (1), the Tribunal shall issue summons; requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(4) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such orders on the application as it thinks fit to meet the ends of justice.

(5) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(6) The Tribunal may make an interim order (whether by way of injunction or stay) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(7) The Presiding Officer shall issue a certificate under his signatures on the basis of the order of the Tribunal, to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(8) The application made to the Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within six months from the date of receipt of the application."

5. Section 22 prescribes the procedure and powers of the Tribunal and that of the Appellate Tribunal and, in relevant part, it is as under :

"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 their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes 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 and enforcing the attendance of any person and examining him on 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)"

6. Under Section 24 of the Act, provisions of the Limitation Act, 1963 apply to the applications made to a Tribunal. As per requirements of Section 19(2) of the Act, a form of application has been prescribed under the Debt Recovery Tribunal (Procedure) Rules, 1993 framed under the Act.

7. Bank or a financial institution which files an application for recovery of debt is called the applicant under the Act and the person from whom debt is to be recovered is called the defendant. But when we see the form prescribed for the application for recovery of debt, the terms given are applicant and respondent. For all intent and purpose, an application is like a plaint in civil suit and applicant would be plaintiff and respondent a defendant. The details which are required to be given in the application in substance conform to the requirements of a plaint under the Code of Civil Procedure. To understand the rival contentions, it may perhaps be better to describe the applicant as a plaintiff, an application as a plaint and respondent as defendant.

8. Under sub-section (1) of Section 19, a bank or a financial institution which has to recover any debt from any person can file a plaint before the Tribunal having jurisdiction in the matter. Under sub-section (2) a plaint is to be in the form prescribed. Under Rule 10 of the Rules, a plaint shall not seek relief or reliefs based on more than a single cause of action in one single plaint unless the reliefs prayed for are consequential to one another. Under sub-section (3) of Section 19, on receipt of the plaint, Tribunal shall issue summons to the defendant requiring him to show cause as to why relief prayed for should not be granted. Under sub-section (4), the Tribunal may, after giving the plaintiff and the defendants an opportunity of being heard, pass such order on the plaint as it thinks fit to meet the ends of justice. Thereafter under sub-section (5), a copy of every order passed by the Tribunal is to be sent to the plaintiff and the defendant. Under sub-section (7), the Tribunal is to issue a certificate on the basis of its order to the Recovery Officer as defined in clause (k) of Section 2 of the Act for recovery of the amount of debt specified in the certificate. This is the scheme of

Section 19. But here we have left out sub-section (6) which empowers the Tribunal to pass interim order. The dispute is if the Tribunal can pass *ex parte* order.

9. High Court relied on a decision of this Court in *Morgan Stanley Mutual Fund v. Kartick Das, 1994(4) SCC 225* to hold that the Tribunal has no jurisdiction to grant *ex parte* order. The aforesaid judgment of this Court was under Section 14 of the Consumer Protection Act, 1986 which Section did not provide for grant of any interim relief or even ad interim relief and provided only for final relief. At the same time, High Court noticed that this Court in this very judgment laid down principles to be taken into consideration by a court or tribunal while granting *ex parte* injunction. This Court has said that an *ex parte* order should be granted only under exceptional circumstances. Grant of *ex parte* order is not a rule but an exception. The factors which this court said should weigh with the court or tribunal for the grant of *ex parte* injunction may be noted. These are :

- "a) whether irreparable or serious mischief will ensue to the plaintiff;
- b) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
- c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant *ex parte* injunction;
- e) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application;
- f) even if granted, the *ex parte* injunction would be for a limited period of time;
- g) general principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court."

10. High Court, in its judgment which is quite interminable considered the provisions of the Act and the Rules framed therein and came to the conclusion that grant of ad interim or *ex parte* order of injunction or stay would be against the principles of natural justice and is not contemplated by the Act and the Rules. Reference was made to Section 22 of the Act which provides that the Tribunal shall not be bound by procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice and subject to other provisions of the Act and the Rules. High Court was of the view that grant of *ex parte* order was very antithesis of the principle of natural justice.

11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure. Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice. Contrast Section 22 of the Act with Section 13(4) of the Consumer Protection Act, 1986 which vests certain powers on the authorities under the Act :

"(4) For the purposes of this Section, the District Forum shall have the same powers as are vested in Civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely, -

i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

ii) the discovery and production of any document or other material object producible as evidence;

iii) the reception of evidence on affidavits;

iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

v) issuing of any commission for the examination of any witness; and

vi) any other matter which may be prescribed."

12. We may also have a look at Section 53 of the Foreign Exchange Regulation Act, 1973, which is as under :-

"53. Powers of the adjudicating officer and the Appellate Board to summon witnesses, etc. - (1) Without prejudice to any other provision contained in this Act, the adjudicating officer and the Appellate Board shall have all the powers of 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 and enforcing the attendance of witness;

b) requiring the discovery and production of any document;

c) requisitioning any public record or copy thereof from any court or office;

d) receiving evidence on affidavits; and

e) issuing commissions for the examination of witnesses or documents.

2."

Similarly, Section 169 of the Motor Vehicles Act, 1988 provides for procedure and powers of Claims Tribunals, says that in holding an inquiry, the Claims Tribunal may, subject to any rules follow such summary procedure as it thinks fit and that the Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the production of documents and material objects and such other purposes as may be prescribed. It will, thus, be seen that while there are no limitations on the powers of the Tribunal under the Act, the legislature has thought fit to restrict the powers of the authorities under various enactments while exercising certain powers under those

enactments. We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers of a Civil Court while trying a money suit. Further, when power is given to the Tribunal to make interim order by way of injunction or stay, it inheres in it the power to grant that order even *ex parte*, if it is so in the interest of justice and as per the requirement as spelt out in the judgment of this Court in Morgan's case which has been quoted above.

13. An *ex parte* order is only of short duration and it is granted to safeguard the interest of the applicant, but, at the same time, such an order cannot be granted as a matter of course. A Court or Tribunal has also to consider the consequences of such an order if ultimately the order is to be revoked after hearing the defendant. In such circumstances, the Tribunal must put the applicant on terms while granting an *ex parte* order and compensate the defendant in case the *ex parte* order was obtained without any justification and harm has been caused to the defendant. It must be remembered that an *ex parte* order can also affect the reputation of the person against whom it is issued and sometimes it may be difficult to undo the damage caused by an interim order. A tribunal while granting *ex parte* order of stay on injunction must record reasons, may be brief one, and cannot pass a stereo-typed order in terms of the prayer made. Then an *ex parte* order cannot be allowed to continue indefinitely and the continuance of interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to hear long drawn arguments. Principles on which an interim order can be granted are well settled. Sub-section (8) of Section 19 requires that application for recovery of debt itself is to be disposed of finally within a period of six months from the date of receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted *ex parte* is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an *ex parte* order of injunction or stay.

14. High Court also said that on merits as well the Tribunal was wrong in granting an *ex parte* order. It is not that High Court itself considered the merits of the case. Objection of the High Court was two fold : (1) the Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. Judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When facts of the case brought before the High Court are such that High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in vacuum.

15. We may refer, in brief, facts of the case in the civil appeal arising out of SLP (C) No. 8208 - The Industrial Credit and Investment Corporation of India Ltd. (ICICI) v. Grapco Industries Ltd. & anr. ICICI filed an application under Section 19 of the Act on May 15, 1997 claiming an amount of over Rupees thirty-six and a half crore against respondents 1 and 2 jointly and severally. On that very day, Tribunal granted an order of injunction and restrained the respondents from transferring or alienating the properties hypothecated to ICICI and further appointing a special officer for making inventory of the assets and properties hypothecated and mortgaged by the respondents in favour of ICICI. By the same order, a show-cause notice was also issued by the Tribunal to respondents calling upon them show-cause within 15 days why temporary injunction could not be granted. On

June 23, 1997, respondents moved the High Court under Article 227 of the Constitution praying for setting aside the order of the Tribunal dated May 15, 1997. High Court stayed the operation of the order of the Tribunal. By the impugned judgment, the order of the Tribunal dated May 15, 1997 was set aside. When High Court stayed the order of the Tribunal dated May 15, 1997, it put no restraint on the respondents not to deal with the assets and properties except in the normal course of its working. High Court itself did not consider it appropriate to consider as to what were the merits of the case filed by the ICICI. When the Tribunal issued *ex parte* order, it granted 15 days time to respondents to show cause. Instead of merely setting aside the order, High Court could have remanded the matter to the Tribunal to take a decision expeditiously while, at the same time, continuing the interim order, in modified form or otherwise, since the circumstances of the case certainly so warranted. At this point of time, we do not know the stage of proceedings before the Tribunal. We do not know if there is any interim order passed by the Tribunal after the High Court stayed the operation of the *ex parte* order dated May 15, 1997. The object with which the Tribunal passed the *ex parte* order appears now to have been lost. We may not, therefore, interfere with the impugned judgment of the High Court setting aside the order dated May 15, 1997 of the Tribunal. But that is only because of passage of time and without our knowing the stage of proceedings before the Tribunal on the application filed by the ICICI under Section 19(1) of the Act. It will, however, be open to the Tribunal to pass an interim order on the plea of the ICICI if the matter is still pending before it.

16. While not agreeing with the view expressed by the High Court, we will not interfere with the impugned judgment in view of the circumstances narrated above. The appeals are disposed of accordingly. Appellants shall, however, be entitled of costs.