

SUPREME COURT OF INDIA

Mariamamma Roy

Vs.

Indian Bank

C.A.No.5673 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

16.09.2008

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and final order dated 25th of October, 2006 passed by a learned Judge of the High Court of Kerala at Ernakulam in W.P.(C)No.22642 of 2006 by which the writ petition was dismissed on the ground of availability of an alternative remedy to the appellant.

3. We have heard the learned counsel for the parties and examined the impugned order as well as the other materials on record. After examining the impugned order as well as the materials on record, we are of the view that the order of the High Court cannot be sustained. Before the High Court, the appellant sought to contend that before passing the impugned order, the appellant was not at all issued with any notice. The High Court, however, without going into the question whether the notice was at all served on the appellant or not, dismissed the writ petition only on the ground that the appellant has got a right of appeal against the impugned order under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. In our view, the High Court was not justified in passing the impugned order on the aforesaid ground. It is well settled that even if an alternative remedy was available to an aggrieved party against a particular order, but if it was open to such party to move a writ application and the court has the power to entertain the same if it finds that while passing the order there has been a violation of the principle of natural justice. That being the position, in the present case the appellant was not served with any notice before passing the impugned order. That being the position and without going into the merits, the impugned order is set aside and the matter is remitted back to the High Court for decision on merits in accordance with law. The High Court is requested to dispose of the writ petition at an early date preferably within six months from the date of supply of a copy of this order to it. We make it clear that we have not gone into the merits of the dispute raised by the parties before us, all questions are left open to be decided by the High Court in accordance with law. The impugned order is, therefore, set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs.