
(2005) 02 KL CK 0055
In the High Court Of Kerala
Case No : W.A. No. 1793 of 2004

Annai Jayabharathi

APPELLANT

Vs

Debt Recovery Tribunal

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 18
Income Tax Act, 1961 — Section 29
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(7),
22, 22(1), 22(2), 25

Citation : AIR 2005 Ker 137 : (2005) 3 BC 365 : (2005) 126 CompCas 888 :
(2005) 1 ILR (Ker) 549 : (2005) 1 KLT 921

Hon'ble Judges : B. Subhashan Reddy, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : C. Unnikrishnan, for the Appellant; P.S. George, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—At issue, is the power of the Debts Recovery Tribunal to order impounding of Passport of the defendant facing the claim for recovery of debt by the Bank/Financial institution?

2. The appellant is the unsuccessful writ petitioner challenging the order of the Debts Recovery Tribunal (for short "the DRT") in ordering impounding of her passport. Other persons against whom such impounding has been made are not parties before this Court, and, as such, we need to confine the adjudication only in respect of the appellant.

3. Mr. C. Unnikrishnan, the learned counsel, submits that when a question of law has been raised before the learned Single Judge regarding the power and jurisdiction of the DRT in ordering impounding of passport, the learned Single Judge ought to have decided the same instead of relegating the appellant to the DRT.

4. The appellant, along with others, raised loans from the second respondent - Bank in connection with her business of partnership firm of which she is the Managing Partner. Admittedly, the business concern of the appellant is not running well, and, there are huge debts and the second respondent's case is that the debts outweigh the securities offered, and, in effect, the second respondent specifically pleads that the securities so offered can satisfy only a fraction of the claim totaling to 30 crores and that the appellant, her husband and other family members, who are the debtors are planning to flee the country, and, as there was a need to prevent that, they filed applications impounding the passports and that the DRT has rightly responded.

5. Mr. Unnikrishnan, the learned counsel for the appellant, contends that the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act") and the Rules framed thereunder nowhere empower the DRT to impound the passport and Section 10 of the Passports Act is not applicable for cases like the instant one, and, submits that the order of the DRT grossly infringes the valuable and the cherished fundamental right guaranteed under Article 21 of the Constitution of India, and, heavily relies upon the judgment rendered by the Seven-Judge Bench of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *ICICI Ltd. v. Passport Officer, Bangalore* 2002 (2) KLT 28(Kar) : AIR 2002 Kar 118

6. Mr. P.S. George, learned counsel appearing for the second respondent - Bank submits that there is no infraction of Article 21 of the Constitution of India, as the impugned order passed by the DRT is traceable to the provisions of the Act and the Rules.

7. Article 21 of the Constitution of India grants fundamental right to all persons that they shall not be deprived of their life and liberty, save, by authority of law. We are now concerned with the liberty part. There is a fundamental right to free movement, but reasonable restrictions can be placed. The Passports Act, 1967 is one such Act requiring the passport to be taken for travelling abroad. Conditions for granting of passport as also variation of the conditions, impounding and revocation of passports and travel documents are also provided in Passports Act, 1967. Section 10(4) of the Act states that if it is brought to the notice of the Passport Authority that a warrant or summons for appearance or a warrant for the arrest of the holder of the passport or travel document has been issued by a Court under any law for the time being in force, or, if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such Court and the Passport Authority is satisfied that a warrant or summons has been so issued, or, an order has been made, it may impound, or, cause to be impounded, or, revoke a passport or a travel document. The learned counsel for the appellant submits that the order of the DRT cannot fit into any of these conditions stated in Section 10(h) of the Passports Act, 1967, and, as such, the passport cannot be ordered to be impounded.

8. In *Maneka Gandhi's case* (1 supra), it was held that the expression "personal

liberty" in Article 21 has to be read along with Article 19(1) and that the expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights, which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. It is also held that Article 21 affords protection in a limited sphere in the context of foreign tour and it safeguards the right to go abroad against executive interference, which is not supported by law, and, law here means enacted law or State law, and, that no person can be deprived of his right to go abroad, unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure, and, that the said procedure cannot be arbitrary, unfair, or, unreasonable. It is also held that if a law depriving a person of "personal liberty" and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19, which may be applicable in a given situation *ex hypothesi*, it is also liable to be tested with reference to Article 14. It is also held that the principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14 and that it must be right and just and fair and not arbitrary, fanciful or oppressive, or, otherwise, it should be no procedure at all and the requirement of Article 21 would not be satisfied.

9. In the light of the above principle stated, it has to be seen as to whether Section 10(h) of the Passport Act is applicable to the instant case coupled with another legal question in the light of the contest to the very power of the DRT to issue an order of impounding. In order to sustain Article 21 of the Constitution of India, as also, conform to the legal principles enunciated by the Supreme Court in *Maneka Gandhi's case* (1 *supra*), two conditions have to be satisfied to sustain the order of impounding of passport passed by the DRT, namely, (1) whether the DRT has got power to impound the passport; and (2) whether such an order comes within the ambit of Section 10(h) of the Passport Act, 1967. If the answer to the both questions is found to be in the affirmative, then only the order of the DRT can sustain, as, otherwise, the order has to be set aside.

10. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force from 27.8.1993 with an avowed object of expeditious disposal of debts due to Banks and financial institutions so as to enable the fast recovery of debts due to them, and, for matters connected therewith or incidental thereto. The Act is applicable if the debt is more than Rs. 10.00 lakhs. Upto the said limit, the common law Courts still continue to exercise jurisdiction, subject to such pecuniary limits of the Civil Courts, as may be fixed by the respective States. For debts which can be recovered by filing suits in the Civil Courts upto the above pecuniary limit, the CPC is applicable and, as a necessary corollary, all provisions therein including the attachment before judgment, Order XXXVIII and Rules

made therein apply. Apart from that, Section 151 confers inherent power. A question arises as to whether for higher pecuniary jurisdiction, which is now taken off from the Civil Courts and invested in the Tribunals, Tribunals are made less powerful than the common law Court, when the very purpose of setting up of Tribunals under the Act is not only for fast adjudication, but, for effective and early recovery of debts, which has got vital role in economic stability of the country. In fact, a presumption can be raised very safely that the special Tribunals are vested with such powers so as to adopt such procedure, by which all effective measures can be taken not only for fast disposal of the cases, but, for fast recovery of the dues, as may be found to be payable after adjudication. It is specifically provided that after adjudication, a decree is passed, and, in execution thereof, u/s 25 of the Act, decree passed by the DRT can be enforced by (i) attachment and sale of movable or immovable property of the judgment debtor; (ii) arrest of the judgment debtor and his retention in prison; and (iii) appointing Receiver for the Management of the movable or immovable properties of the judgment debtor. But, what happens if the judgment debtor escapes from the country in order to evade and defeat the decree? Is the DRT so powerless to do anything is the question. If a power is given to arrest the judgment debtor and to detain him in prison for enforcing the realisation of a debt ordered to be paid in decree by issuance of a Certificate u/s 19(7) of the Act, it carries with it an incidental power to prevent a person from going abroad, as an interim measure, so as to give effect to the power of ordering arrest of the judgment debtor and his detention in prison conferred by Section 25(b) of the Act. Otherwise, the said provision becomes redundant and otiose. The arguments of the learned counsel for the appellant that Section 22 of the Act bars the application of C.P.C., excepting those which are enumerated in Sub-section (2) thereof, and that power to impound the passport is not the one of such powers enumerated, and, therefore, the DRT has got no power to impound a passport cannot be acceded to, as Section 22(1) has to be read in a different perspective than understood by the learned counsel for the appellant. Section 22(1) of the Act relieves the DRT from the bondage of rigour of procedure laid down by the Code of Civil Procedure, leaving it to be guided by the Principles of Natural Justice, subject to other provisions of the Act and the Rules, and, vests the DRT with such wide powers to regulate its own procedure including the place at which it can have sittings. As such, the powers of DRT have not to be read to have been truncated by Section 22(1), and, in fact, it has to be read and understood to have been widened giving a free hand to the Tribunal to pass any such orders, which have got the effect of not only speedy trial, but, effective enforcement of the decree in the event of the same being passed. It cannot be denied that presence of the appellant in the country enables the smooth and speedy disposal of the case before the DRT, and, in the event of the decree being passed and a Certificate is issued u/s 19(7) of the Act, the same can be effectively executed. If there are no grounds to pass the impugned order, certainly, it is arbitrary as it violates not only the fundamental right under Article 21, but also Articles 14 and 19 too. But, the DRT is of the considered view that the security offered is far too

meagre as compared to the debt to be realized, and, in that context, it cannot be said that the order of the tribunal is arbitrary. u/s 22(2) of the Act, the DRT is vested with some powers as are vested in a Civil Court under CPC while trying a suit, and, while such powers are enumerated in clauses (a) to (g), but clause (h) is residuary in nature, which empowers to adopt a procedure on any other matter, which may be prescribed. Further u/s 29 of the Act, provisions of the II and III Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, are also made applicable by referential legislation to read the assessee as a "judgment debtor" and "tax due" as "the debt payable under the Act". Under Clause 75 of Schedule II of the Income tax Act, interim detention can be ordered pending enquiry relating to final detention in jail for recovery of the amount determined under the Income Tax Act. Section 34 gives overriding effect to the Act over other enactments. Section 36 confers rule making power by virtue of which the Debts Recovery Tribunal (Procedure) Rules, 1993 were framed. Rule 8 of the Rules empowers the DRT to make such orders and to give such directions as may be necessary or expedient to give effect to its orders or to prevent a use of its process or to secure the ends of justice and, certainly, the impugned order falls within this Rule read with Section 25(2) of the Act. The Karnataka High Court in ICICI's case (2 supra) did not deal with these aspects and, in our considered view, the order of the DRT sustains, as it is valid under law. The Writ Appeal, therefore, is dismissed. This order shall not preclude the appellant from furnishing sufficient security to the satisfaction of the DRT and to file an application to consider lifting the impounding of passport and, on such an application, the DRT can always consider the matter in accordance with law. No costs.