

(2003) 11 DEL CK 0075

In the Delhi High Court

Case No : CM (M) 505 of 1999 and CM No. 2538 of 1999

A.S. Mittal

APPELLANT

Vs

P.O., Debt Recovery Tribunal and Others

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 22

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(6), 22

Citation : (2004) 121 CompCas 309 : (2004) 72 DRJ 440

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Amit Dhupar, for the Appellant; Priyanjali Singh, for R-1, for the Respondent

Judgement

R.S. Sodhi, J.—This petition is directed against the order of the Debt Recovery Tribunal, Delhi, (for short "the Tribunal") whereby the Tribunal vide its order dated 4th May, 1999 on an application moved by the respondent No.2 to the effect that the pass-port of the petitioner be impounded and he be directed not to leave country without prior permission of the Tribunal as the applicants seriously apprehend that in view of the recovery proceedings filed by various creditors including the present one the petitioner herein may siphon off the funds at their disposal and leave the country without clearing the outstanding dues. The Tribunal by an ex parte order restrained the petitioner from leaving the country without permission of the Tribunal while adjourned the matter on the question of impounding of passport to be decided after hearing parties. A copy of the order was directed to be sent to the concerned authorities at the airport for information and necessary action.

2. It is submitted by counsel for the petitioner that the Tribunal has no authority to detain the petitioner and to put any restriction on his travel. He invokes his right under Articles 21 and 22 of the Constitution and says that there is no law empowering the Tribunal to curtail the liberty granted to him under Articles 21

and 22 of the Constitution. Counsel for the respondent on the other hand submits that Section 19(6) of The Recovery of Debt, Due to Banks and Financial Institutions Act, 1993 (for short "the Act") provides the Tribunal with such power. She further says that u/s 22 of the Act the powers of the Tribunal are wider than that of the court under CPC and Therefore, the Tribunal has the power to impose restriction on the freedom of movement of the petitioner. Counsel for the respondent relies upon the judgment of the Supreme Court in The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others,

3. Heard learned counsel for the parties and gone through the material on record. I find that Section 19(6) of the Act reads as under :

"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."

Section 22(1) of the Act reads as follows:

"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 powers to regulate their own procedure including places at which they shall have their settings.

"Rule 18 of the Act reads as under:

"The Tribunal may make such orders to give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are, namely, to make interim order whether by way of an 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. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been exercised by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive Section.

5. Having gone through the powers enumerated above, I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner. In the present case, the tribunal is entitled to pass interim orders in accordance with Section 19(6) of the Act and no more. In this view of the matter, I set aside the order dated 4th May,

1999. However, the petitioner is directed to make himself available before the Tribunal as and when he is required, for which purpose he shall give an undertaking to the Tribunal.

6. Since the order dated 4th May, 1999 has been set aside any direction/intimation to the Airport Authorities to the contrary shall stand withdrawn.

7. CM(M) 505/1999 is allowed. CM 2538/1999 consequently stands disposed of.