

(2001) 01 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 131 of 2001

Core Healthcare Ltd.

APPELLANT

Vs

Standard Chartered Bank and Another

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 3, 4

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 34

Citation : (2001) 107 CompCas 501

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : S.N. Soparkar and Amar N. Bhatt, for the Appellant; M.J. Thakore, for Sonia Hurra, for the Respondent

Judgement

D.A. Mehta, J.—This is an application filed by the petitioner challenging the order dated December 21, 2000 in Original Application No. 459 of 1999 passed by the second respondent, viz., the Debt Recovery Tribunal ("the Tribunal") whereby the petitioner's application for stay of proceedings was rejected on the ground that the provisions of the Bombay Relief Undertakings Act, 1958 ("BRU Act"), cannot prevail over the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act").

2. When the petition was called out for hearing Mr. M.J. Thakore appeared for Dr. Sonia Hurra on behalf of respondent No. 1 and raised a preliminary objection. It was contended on behalf of respondent No. 1 that the petition should not be entertained as an appeal was provided u/s 20 of the DRT Act and once a statutory alternative remedy was provided this court should not entertain the petition under Articles 226 and 227 of the Constitution of India. In support of this contention Mr. Thakore stated that the application being Original Application No. 459 of 1999 was moved by respondent No. 1 before the Debt Recovery Tribunal some time in December, 1999, while the petitioner had been declared as a relief undertaking under the BRU Act by the State of Gujarat only on May 17, 2000.

Thus, he wants to show that there was a proceeding pending when the notification was published by the State Government, and that the Tribunal was seized of the matter already and the petitioner had submitted to the jurisdiction of the Tribunal. It was further contended that as the Tribunal's order dated December 21, 2000 was appealable u/s 20 of the DRT Act an appeal could be filed within a period of 45 days from the said day. He further submitted that there was no lack of jurisdiction in the Tribunal and if that was so, it was not open to this court to entertain this petition in the light of the availability of the statutory alternative remedy. In support of his contention, he relied upon the, following decisions :

(1) Bank of India Vs. Baroda Cables Pvt. Ltd. and Others, .

(2) Kavita Pigments and Chemicals (Pvt.) Ltd. and Others Vs. Allahabad Bank and Others, .

(3) An unreported decision of this court (coram : Justice Pradip Kumar Sarkar) in (Oriental Bank of Commerce v. Mount Processor Pvt. Ltd. SCA No. 9013 of 2000, dated 14-12-2000).

3. Mr. S.N. Soparkar appeared with Mr. Amar N. Bhatt for the petitioner and submitted that the Tribunal had no jurisdiction to take up the matter in the light of the notification under the BRU Act and if that was so, any order passed by the Tribunal was illegal and bad in law. Elaborating on this, it was submitted that there was no question of availability of any alternative remedy in such circumstances and it was only this court which could exercise its jurisdiction and entertain this petition. He relied upon an unreported judgment of this court (coram : Mr. Justice M.S. Shah) in Special Civil Application No. 6324 of 2000 dated December 8, 2000 and stated that it was in no uncertain terms held by this court that the DRT Act and the BRU Act operated in different fields. It was further contended taking support from this unreported decision that under the BRU Act only the remedy was suspended till notification was in force and hence, even though the rights of the creditors were not affected those rights could not be enforced. Mr. Soparkar relied upon the following three decisions in support of his contentions :

Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another, .

Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, .

M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, .

4. The facts briefly stated are :

The petitioner-company had availed of various loan facilities from the respondent-bank and other banks belonging to the joint consortium. The respondent-bank filed application being O. A. No. 459 of 1999 before the Tribunal for recovery of US Dollars 13,272,040.59 from the petitioner. Similarly other banks filed

different O. As. to recover in all Rs. 211,86,57,948.09 over and above the sum claimed by respondent No. 1. The petitioner had hypothecated its plant and machinery, stocks/movable assets and other immovable properties in favour of the banks in order to secure the credit facilities. The petitioner filed an application praying for stay of recovery proceedings on the basis of the notification issued under the BRU Act. Similar applications for stay were filed in relation to each of the O. As. The Tribunal vide its order dated December 21, 2000 (annexure B) rejected these stay applications. This impugned order is under challenge in this petition before us.

5. For the purpose of deciding the controversy at hand we may reproduce the preamble and the provisions of Section 4 of the BRU Act.

"An Act to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief."

"4. Power to prescribe industrial relations and other facilities temporarily for relief undertakings.--(1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, order or other provision whatsoever, the State Government may by notification in the Official Gazette direct that-

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3 ;

(iv) any right, privileges, obligations or liabilities accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof, shall be suspended and all proceedings relative thereto pending before any court, Tribunal, officer or authority shall be stayed ;

(b) the right, privilege, obligation or liability referred to in Clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued :

Provided that in computing the period of limitation for the enforcement of such privilege, obligation or liability, the period during which it was suspended under Clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force."

6. The preamble to the DRT Act and other provisions which are reproduced hereunder for ready reference are also material for our purpose :

"An Act to provide 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."

17. Jurisdiction, powers and authority of Tribunals.--(1) A Tribunal shall exercise, on and from the appointed day, the 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.

An Appellate Tribunal shall exercise on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

18. Bar of jurisdiction.--On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court and High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

7. As stated by the Supreme Court and this High Court it can be seen that the object of the BRU Act is to make temporary provisions for industrial relations and other matters for the conduct of industrial undertakings as a measure for preventing unemployment. While the underlying object of the DRT Act pertains to making a provision for establishment of a Tribunal for expeditious adjudication and recovery of debts due to banks and financial institutions. The apex court in the case of *Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another*, , while dealing with the provisions of Section 4(1)(a)(iv) of the BRU Act has explained the object of the said provision as under (page 1184) :

"6. The object of Section 4(1)(a)(iv) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By Sub-clause (iv), any remedy for the enforcement of an obligation or liability against the relief undertaking is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. u/s 4(b), on the notification ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. "Relief undertaking" means u/s 2(2) an industrial undertaking in respect of which a declaration u/s 3 is in force. By Section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, "as a measure of preventing unemployment or of unemployment relief. Relief undertakings, so long as they continue as such, are given immunity from legal actions so as to render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceeding or the threat of such proceedings. That is the genesis and justification of Section 4(1)(a)(iv) of the Act."

8. The Division Bench of this court in the case of *D.S. Patel and Co. v. Gujarat State Textile Corporation Ltd.* 13 GLR 33; [1971] 41 Comp Cas 1098 has very succinctly analysed the provisions of the BRU Act and it is laid down in these

terms :

"The main object of the Bombay Relief Undertakings (Special Provisions) Act, is to make temporary provision for industrial relations, to conduct or to provide loan, guarantee or financial assistance for the conduct of certain industrial undertakings and thereby to prevent unemployment or to provide for unemployment relief. The main burden of the different provisions of the State Act including its long title and preamble point out clearly that it is enacted with a view to relieve or to prevent unemployment . . .

The Bombay Relief Undertakings (Special Provisions) Act is enacted by the State Legislature with the dominant object of preventing unemployment and of providing relief against unemployment. Even the provisions of Section 4 of the Act are made to subserve the main purpose of the Act, namely, prevention of unemployment, but as embodied in the long title and preamble, there are ample safeguards to see that the authorised controller carries out the object of preventing unemployment. Therefore, the idea of preventing unemployment cannot be said to be incidental. It is the main subject which determines the true nature and character of the legislation.

The Bombay Relief Undertakings (Special Provisions) Act provides for sufficient guidance and checks on the exercise of the power by the State Government while acting u/s 4. If in a particular case the Government finds that the industry cannot stand on its legs without getting some temporary relief in the payment of its huge wage bill, then the Government would issue notifications under any of the first three sub-clauses of Section 11(1)(a). But if the Government finds that the payment of the wage bill is not much of a financial problem for the industry and that it is the protection from its creditors which the industry requires, then instead of taking action under Sub-clauses (i), (ii), (iii) the Government may well take action under Sub-clause (iv) and suspend all or any of the rights, liabilities and obligations under that clause. Whatever action the Government proposes to take u/s 4, would obviously be guided by one supreme consideration, namely that of putting the industry on a sound footing so that the apprehended unemployment resulting from the closure of the industry can be avoided ...".

9. As against this, if the provisions of the DRT Act are taken into consideration it is primarily an Act which makes provisions for establishing a Tribunal and the procedure which would govern such Tribunal and its functioning for the purpose of expeditious adjudication and recovery of debts due. Apart from the preamble, this becomes amply clear from the headings of chapters of the said Act which are themselves quite significant and pointers to the object for which the said legislation has been enacted.

Chapter No.

Heading

Chapter II

Establishment of Tribunals and Appellate Tribunals

Chapter III

Jurisdiction, power and authority of Tribunals

Chapter IV

Procedure of Tribunals

Chapter V

Recovery of Debt determined by Tribunal

Chapter VI

Miscellaneous.

10. That, basically the Tribunal is to adjudicate the liability of the borrower and then issue a certificate u/s 19(22) of the DRT Act. Section 17 of the said Act gives the jurisdiction, powers and authority of the Tribunal while Sub-section (2) of the said section provides for jurisdiction and powers of the appellate forum under the said Act. However, the provisions of Section 18 which oust the jurisdiction and powers of any other court or authority in relation to any order passed u/s 17 of the Act save the jurisdiction of the Supreme Court and High Courts exercising jurisdiction under Articles 226 and 227 of the Constitution. Thus, it is not as if there is a complete bar against exercising jurisdiction by High Court in appropriate cases. It was in this context that Mr. Thakore, contended that though this court could exercise its jurisdiction and that a writ petition was maintainable yet it should not be entertained in view of the alternative remedy provided under the said Act.

11. The unreported decision in Oriental Bank of Commerce v. Mount Processors Pvt. Ltd. of this court in SCA No. 6324 of 2000 was one dealing with a situation where the financial institution had challenged the renewal of the notification issued by the State of Gujarat. In support of this plea, on behalf of the financial institution it was contended that Section 34 of the DRT Act gave an overriding effect to the DRT Act over all other laws except those specified and that the BRU Act is not one of those expected and further that the DRT Act which is a Central Act contains overriding provision and thus will prevail over the BRU Act which is a State legislation. Dealing with this contention, this court has laid down as under :

"As regards the contention about the applicability of the provisions of the DRT Act, the court is of the view that the BRU Act and the DRT Act operate in different fields. The BRU Act empowers the State Government to temporarily suspend the rights and privileges of the creditors and the obligations and liabilities of the relief undertaking and so long as the notification under the BRU Act remains in force the creditors cannot avail of any remedy to enforce their substantive rights. The provisions of the DRT Act merely provide for the forum and the procedure for adjudication and recovery, but they do not expand the

rights and remedies of public financial institutions and banks nor do they purport to remove the embargo imposed by or under another statute upon the enforcement of the rights of the creditor institutions. At this stage the court would like to clear one misconception entertained by the respondents that what Section 4(1)(a)(iv) suspends is the substantive rights. In *D.S. Patel and Co. Vs. Gujarat State Textile Corporation Ltd. and Others*, , the Division Bench has held that by the said sub-clause the right is not suspended but only the remedy for enforcement of the right is suspended. The Division Bench explained this aspect in the following words (page 1130) :

"A bare reference to Section 4 shows that the only restriction which it contemplates is that of temporary suspension of the rights and liabilities relating to the relief undertaking in question. The petitioners being the creditors of the undertaking, their right to recover their dues is suspended under Sub-clause (iv). Shri Vakil contended before us that since under the said Sub-clause (iv) even the substantive right itself is suspended, the petitioners will not be entitled to claim any interest on their outstanding dues for the period during which the notification u/s 3 remains in force. It is undoubtedly true that Sub-clause (iv) is so worded that on a plain reading it gives an impression that what is suspended is not only the remedy for the enforcement of the right to hold but also the right itself. But we find that on a true construction of this sub-clause the right itself is not suspended, but only the remedy for the enforcement of the right is suspended . . .

We find that the Legislature has advisedly used the word "suspended" and "stayed" in Sub-clause (iv) with reference to rights, remedies and proceedings. "Suspension" is not tantamount to "destruction" or "annihilation". Therefore, when the sub-clause speaks about "suspension" of a right, it only means suspension of its execution or enforcement. The incidents of a right, except its executability, are therefore, not suspended by the sub-clause."

Hence, the question of the provisions of the DRT Act overriding the provisions of the BRU Act does not arise. They operate in two different fields."

12. Therefore, as held by this court both the DRT Act and the BRU Act operate in different fields and the DRT Act cannot have overriding effect over the BRU Act. To put it in other words the intention of the DRT Act is to protect public money whereas the intention of the BRU Act is to protect the workmen.

13. The decision of this court in the case of *Bank of India v. Baroda Cables Pvt. Ltd.* 40 GLR 381; [1999] 95 Comp Cas 356, which was relied upon by Mr. Thakore was not specifically dealing with the controversy at hand and the main dispute in the said decision pertains to what could be termed an "order" for the purpose of applicability of the provisions of Section 20 of the DRT Act. In para. 11 of the said decision, this court has stated that (page 360): "Now, the term "order" is not defined in the Act but it is settled law that "order" may mean "interim order" as also "final order"". It was in this context that this court has

come to the conclusion that it is clear that any order passed by the Debt Recovery Tribunal is subject to challenge u/s 20 before the Appellate Tribunal and it was further held that as the alternative remedy was available to the appellant in the said matter it was open to it to approach the appellate forum.

14. The next decision on which reliance was placed on behalf of the respondents is in the case of Kavita Pigments and Chemicals (Pvt.) Ltd. and Others Vs. Allahabad Bank and Others, . Mr. Thakore read extensively from the said decision from paragraph 44 onwards to show that once an alternative remedy is available it was not open for the High Court to entertain the petition under Article 226 of the Constitution and this was laid down by the Supreme Court in a number of decisions and the Patna High Court had extracted the relevant portions in paragraphs 45 and 46 of the said decision. We find that even the said decision cannot advance the case of the respondent any further. The reason is, the controversy before the Patna High Court was also only in relation to the nature of the order and it was contended on behalf of the petitioner that in the event of an interlocutory order being deemed to be an "order" which was appealable, the provisions of Section 20 would come into play. This is apparent from the opening portion of paragraph 8 of the said judgment which is reproduced hereunder (page 45) :

"This fact has not been disputed by learned counsel for the petitioners but learned counsel contended that the impugned order dated December 30, 1998 being not a final order, no appeal would lie against the said order."

15. Now, we may usefully reproduce the extract from the Supreme Court decision in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, which has been taken into consideration by the Patna High Court (page 522 of STC) :

"It is, however, equally obvious that while exercising the power under Article 226/32 the court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment",

(Page 549 of STC); "This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them."

16. Mr. Thakore relied upon another decision in the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, . In support of his contention that once an alternative remedy was available under the statute a writ petition was not maintainable unless and until (i) the provision was ultra vires, (ii) the authority had no jurisdiction and (iii) there was denial of natural justice. According to him none of the three factors were present in the case of the petitioner and as such the petition should not be entertained. It is true that on

behalf of the petitioner there is no challenge to either the vires of any provisions of the Act or that there was any violation of principles of natural justice. However, it is specifically contended that in view of the notification under the BRU Act, the Tribunal did not have any jurisdiction to proceed ahead with the matter. In so far as the unreported decision dated December 14, 2000 rendered in Special Civil Application No. 9013 of 2000 is concerned the same need not detain us any further in the light of what is reproduced hereunder :

"It is submitted by Mr. Joshi, learned counsel appearing on behalf of the petitioner that because of the few holidays intervening it was not possible for the petitioner-bank to approach the Appellate Tribunal at Bombay and to obtain any stay order and therefore the petitioner-bank was constrained to file the present petition along with the prayer for stay of the order passed by the Debt Recovery Tribunal on August 17, 2000."

17. Thus, it can be seen that it was specifically contended on behalf of the petitioners that they were invoking the extraordinary jurisdiction of this court only for a limited purpose and for a limited period i.e., in the interregnum protection was sought from the court till the appeal was filed in the appellate forum.

18. Mr. Soparkar, learned counsel for the petitioner placed reliance upon the Supreme Court decision in the case of Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, , and specifically referred to the observations of the court at page 1225, in support of his contention that this court could justify and intervene when an order of a Tribunal is (i) violative of the fundamental basic principles of justice and fair play or (ii) where a patent or flagrant error in procedure or law has crept in or (iii) where the order passed results in manifest injustice. It was further submitted that both the second and third factors would come into play in the present case. He further relied upon the decision rendered in the case of M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, , wherein the Calcutta High Court has specifically stated thus (page 647) :

"Therefore, it can be safely said that even if an appeal lies against an order of the Debt Recovery Tribunal under the Act itself in an appropriate case, the High Court still retains its jurisdiction to entertain a petition either under Article 226 or 227 of the Constitution which is moved against an order of the Debt Recovery Tribunal."

19. Over and above the aforesaid case-law we have also taken into consideration two decisions of the apex court--one in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , and Anr. in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, for the purpose of deciding whether it would be proper to exercise jurisdiction under Article 226/227 of the Constitution of India in the present case. The apex court in the case of Calcutta Discount Company Limited Vs. Income Tax

Officer, Companies District, I and Another, , while dealing with the availability of alternative remedy has stated (headnote of ITR) :

"The existence of such alternative remedies as appeals and reference to the High Court was not, however, always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. When the Constitution conferred on the High Courts the power to give relief it became the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief were refused without adequate reasons."

20. This earlier decision in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , has been approved by the Supreme Court in the later decision of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, :

"The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights contained in Part III of the Constitution but also for "any other purpose".

21. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act are challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

22. Rashid Ahmed Vs. The Municipal Board, Kairana, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid's case, namely, K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

23. A specific and clear rule was laid down in State of U. P. v. Mohammad Nooh, AIR 1958 SC 86 ; SCR 595, as under :

"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

24. This proposition was considered by a Constitution Bench of this court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and was affirmed and followed in the following words :

"The passages in the judgments of this court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

25. Another Constitution Bench decision in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , laid down :

1 "Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writs of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction u/s 34 of the Income Tax Act."

26. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation." On a careful consideration and analysis of the various decisions cited before us we find that the following legal propositions emerge :

(1) An interlocutory order is also an order which is appealable u/s 20 of the DRT Act.

(2) The power to issue a prerogative writ is plenary in nature.

(3) Such power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition or certiorari to ensure fundamental rights but also for any other purpose.

(4) The High Court having regard to the facts of the case has discretion to entertain or not to entertain the petition depending upon various facts and circumstances special to individual cases.

(5) The High Court having imposed upon itself certain restrictive fetters one of which is availability of alternative and efficacious remedy, it would not normally exercise jurisdiction,

(6) However, the availability of alternative remedy per se does not operate as a bar in all contingencies.

(7) The rule requiring exercise of alternative remedy is a rule of policy, convenience and discretion.

(8) The court should exercise jurisdiction under Article 226/32 taking note of the legislative intent manifested by the provisions so as to be consistent with such provisions and not to frustrate them.

(9) The court should exercise jurisdiction to effectuate the regime of law as the power under Article 226 is meant to serve the ends of law and not to transgress the same.

27. If the object of the BRU Act is kept in view along with the object of the DRT Act, it is apparent that there is no conflict between two Acts and both can be read harmoniously to operate together. As stated by the apex court, the BRU Act is framed for the purpose of resurrecting and rehabilitating industrial undertakings by temporarily suspending remedies to enforce fulfilment of obligations and liabilities so as to prevent unemployment and thus give immunity from legal actions so as to render working of such undertakings in smooth and effective manner. At the same time the DRT Act has been brought on the statute book to subserve the purpose of protecting public money of which the banks and financial institutions are custodian, and to recover dues of such money expeditiously; if that is so, both the statutes are beneficial in nature with an underlying public purpose.

28. Under the BRU Act what is suspended is the remedy against the right to enforce the liabilities which have already been incurred and in the event of notification prevailing over the DRT Act all that happens is that the undertaking is permitted to run and there is no question of public money being siphoned away in the interregnum. To the contrary, if the DRT Act operates in spite of notification under the BRU Act, the entire legislative intent of framing the latter

would be frustrated as the moratorium on the creditors will not operate. The court cannot be expected to be a helpless spectator where in the guise of effectuating one Act another is transgressed. Testing this proposition from the converse situation wherein operation of the DRT Act is kept in abeyance till the notification under the BRU Act subsists; then both the laws are effectuated one after another; an undertaking which is resurrected and rehabilitated will be ultimately in a position to satisfy the demands of its creditors, than the one whose financial death is certain on invoking powers under the DRT Act immediately, in spite of existence of notification under the BRU Act.

29. Therefore, this petition is required to be entertained not only because the Tribunal lacks jurisdiction but also for "any other purpose", namely, to further the legislative intent instead of frustrating it. In view of what is stated hereinbefore, we reject the preliminary objection raised on behalf of the respondent caveators.

30. We are aware that we are deciding this matter at the stage of admission and hence the views expressed hereinbefore are only prima facie views and no observations may be taken to be final on the merits, because the said observations have been made only for the limited purpose of ascertaining whether we could entertain the petition or not in view of the preliminary objections. We should not be understood to have stated anything on the merits of the matter at this juncture.

31. Rule returnable on February 22, 2001. Interim relief in terms of para. 7(b). Mr. Soparkar seeks leave to join all opponents in O. A. No. 459 of 1999 with O. A. Nos. 110 of 2000, 202 of 2000, 236 of 2000, 295 of 2000, 298 of 2000, 349 of 2000, 369 of 2000 and 438 of 2000 as respondent No. 3 onwards. Permission granted.