

(2003) 02 MAD CK 0116

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 278 of 2003, C.M.P. No. 2088 of 2003
and V.C.M.P. No. 2612 of 2003

E. Satheesh Kumar

APPELLANT

Vs

Vijaya Bank, P. Sampath Kumar, Murugesan, Proprietor
Gokulam Spinners and Rajeswari

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2004 Mad 306 : (2003) 116 CompCas 549 : (2003) 2 LW 424 :
(2003) 1 MLJ 741

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Muthukumaraswamy for J. Pothiraj, for the Appellant; J.R.K.
Bhavanantham, Respondents 2 to 4, for the Respondent

Judgement

P. Sathasivam, J.—The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A. No.

226/2002 in T.A. No. 189/2002, appointing an Advocate Receiver.

2. The case of the petitioner is briefly stated hereunder:

According to him, on 2-6-2000 he entered into an Agreement with the second respondent herein for the purchase of a textile unit comprised in

Survey No. 278/2, 273/2B, 279/2A, measuring an extent of 1.74 acres situated at Madampatti village, Coimbatore. The sale consideration of the

entire property is Rs.1,50,00,000/-. On the date of agreement, the petitioner herein had advanced a sum of Rs.1,00,000/- to the 2nd respondent

herein. As per the sale agreement, the petitioner herein undertook to discharge the debts payable to the 1st respondent bank and other creditors of

the 2nd respondent. The petitioner herein and the 2nd respondent herein

entered into a Memorandum of Understanding, and in pursuance to that, the petitioner herein advanced a sum of Rs.1,00,000/- even prior to the agreement of sale. The petitioner was aware that the 2nd respondent herein had borrowed a sum of Rs.50,00,000/- from the 1st respondent- Vijaya Bank, Coimbatore. On the date of execution of sale agreement, the 2nd respondent is liable to pay a sum of Rs.71 lakhs to the 1st respondent Bank and therefore in the agreement it was incorporated that the petitioner herein had to repay the said amount on the condition that the 2nd respondent should obtain Letter of Consent from the 1st respondent Bank. Pursuant to the sale agreement, the petitioner herein advanced a sum of Rs.19,67,000/- to M/s. Bannariamman Finance and M/s. Suchithra Finance. Since the 2nd respondent failed to obtain the consent letter from the first respondent, the petitioner was not able to repay the same to the first respondent Bank at the appropriate point of time. In the meanwhile, based on the sale agreement, the petitioner herein was put in possession of the textile unit and the name of the said textile unit was also changed as Rukma Tex India Private Limited. The sales-tax authorities have also assessed the unit as well as the other departments of the Government, and effected changes in their records. Since the 2nd respondent herein started creating problems interfering with the day to day management of the unit, the petitioner filed a civil suit in O.S. No. 277/2001 on the file of the Principal District Munsif, Coimbatore, seeking for relief of permanent injunction. The said suit is pending. The 2nd respondent herein also filed a civil suit in O.S. No. 323/2001 on the file of the Subordinate Judge, Coimbatore, seeking for permanent injunction restraining the Electricity Board not to give service connection to the textile unit, pending disposal of the suit. Thereafter, the petitioner approached this Court on many occasions for getting electricity service connection. The petitioner is in possession and has been engaged in the process of manufacturing cotton yarn by running the Mill. But this being the position, the first respondent Bank seems to have already instituted O.A. No. 568/97 against the 2nd respondent for the recovery of money payable to them. Pending the application, it seems that there was a compromise proposal initiated by both the 1st and 2nd respondents. Therefore, the said original application was repeatedly adjourned before the Debt Recovery Tribunal at Chennai.

Subsequent to the Notification of the Ministry of Finance, dated 23-2-2002, the matter was transferred to the file of the Debts Recovery Tribunal

at Coimbatore. Therefore, the said Original Application was assigned as T.A. No. 189 of 2002. In the said T.A., the petitioner herein entered

appearance by filing a vakalath on 7-6-2002 and requested for filing counter statement. On that date, the 2nd respondent seems to have filed an

application for appointment of Receiver/Administrator for the machineries. The said T.A. was adjourned periodically from time to time from 7-6-

2002 to 2-7-2002 and to 3-9-2002. Since it has been represented that there is a compromise proposal, the counsel representing respondents 2 to

4 sought time before the Presiding Officer, Debts Recovery Tribunal at Coimbatore. Therefore, the case was adjourned to 1-10-2002. Again the

same was adjourned to 12-11-2002. On 12-11-2002 respondents 2 to 4 herein filed I.A. Nos. 226 and 227/2002 seeking for appointment of a

Receiver to take possession of the mortgaged property for removing the petitioner herein from possession or custody of the property and confer

upon the receiver with all necessary powers. Therefore, the petitioner sought time to file counter. The case was adjourned to 16-12-2002. Again it

was adjourned to 22-1-2003 for filing counter. On 22-1-2003, when the matter was taken up for hearing, the counsel appearing for the first

respondent Bank filed a short memo stating that they have no objection in appointing a Receiver. At that time, the counsel appearing for the

petitioner herein has represented before the Presiding Officer, Debts Recovery Tribunal, Coimbatore that sufficient time may be granted to file its

counter. But the same was not accepted by the Presiding Officer, Debts Recovery Tribunal and had proceeded with the appointment of Receiver

by appointing one Mrs. Revathi Rajesh, Advocate, as the Receiver/Administrator. The petitioner herein is in possession of the unit and has been

carrying on the business by obtaining electricity connection from the Electricity Board. The said unit is also assessed to sales tax and other

departments. Now all of a sudden, the Presiding Officer, Debts Recovery Tribunal, Coimbatore, without providing sufficient opportunity and also

exceeding its jurisdiction appointed the 5th respondent herein as an Advocate Receiver, hence the same is liable to be set aside.

3. The second respondent herein filed a counter affidavit disputing the various averments made by the petitioner. The 2nd respondent has narrated

the pendency of civil proceedings, orders of this Court, granting power connection and the transfer of O.A. pending from Debts Recovery

Tribunal, Chennai to Debts Recovery Tribunal, Coimbatore. By virtue of amendment introduced in Section 19(18)(a) of the Recovery of Debts

due to the Banks and Financial Institutions Act, 1993, the Tribunal is empowered to appoint a Receiver either before or after issue of recovery

certificate. The order passed by the Tribunal is legally valid and in accordance with law. There is no illegality or arbitrariness in the appointment of

Advocate Receiver. The Tribunal is vested with enormous power for recovery of the Debts due to the Banks and Financial Institutions. Since the

Advocate Receiver had taken possession of the premises, the Civil Revision Petition becomes infructuous.

4. Heard Mr. R. Muthukumaraswamy, learned senior counsel for the petitioner and Mr. J.R.K. Bhavanantham, learned counsel for respondents 2

to 4.

5. The only point for consideration in this Revision is whether the Debts Recovery Tribunal is justified in appointing an Advocate Receiver to take

possession of the mortgaged property?; and whether the said order is sustainable in view of the fact that the contesting party, viz., petitioner herein

was not given an opportunity to raise his objection?

6. Before the Debts Recovery Tribunal, defendants 1 to 3, respondents 2 to 4 herein, filed I.A.Nos.226/2002 and 227/2002 for appointment of

an Advocate Receiver and to take possession of the mortgaged property. The Debts Recovery Tribunal has passed the following order:

Ld. Counsel for the a/bank has filed "Short Memo" stating that they have "no objection" if the Receiver is appointed. Heard, Both Ld. Counsels

for the parties. In view of the "No objection" endorsed by the a/bank, Mrs. Revathi Rajesh, Advocate, No. 5, Sengupta Street, Ram Nagar,

Coimbatore-641 009 is appointed as Receiver to take possession of the mortgaged property. Directions is given to Ld. Counsel for Defendants to

hand over peaceful possession and custody of the property for proper management, protection and preservation of the property more fully

described in Item No. 1 & 02 of the schedule "A" property.

Ld. Counsel for the a/bank and D-1 to D-3 is directed to hand over draft for Rs.5,000 in favour of Receiver. For Reports of the Receiver call on

7/3/2003. Ld. Counsel for the remaining Respondents is liberty to file Counter to the IA.

The reading of the above order shows that based on the "short Memo" by the Bank stating that they have no objection for appointment of a

Receiver, an Advocate Receiver was appointed. Though the petitioner herein was a party in the said application, without affording an opportunity

to him to file counter affidavit/statement, the Presiding Officer (Judge) has appointed one Mrs. Revathy Rajesh, an advocate, as Receiver to take

possession of the mortgaged property. In this regard, it is relevant to refer certain provisions from the Recovery of Debts Due to Banks and

Financial Institutions Act, 1993(in short "the Act"). The following provisions are relevant:

PROCEDURE OF TRIBUNALS

19. (18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order,-

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) xx xx

(e) xx xx

(25) The Tribunal may make such orders and 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.

Though learned senior counsel for the petitioner has contended that even without a grant of certificate of recovery of debt, the Presiding Officer has

appointed a Receiver, as rightly contended by the learned counsel for respondents 2 to 4, in view of Clause (a) of sub-section 18 of Section 19 of

the Act, for just and convenient cause, it would be open to the Tribunal to appoint a Receiver of any property, whether before or after grant of

certificate for recovery of debt. Likewise, in view of sub-section (25) of Section 19 of the Act, if the Presiding Officer satisfies that in order to

prevent abuse of process or to secure the ends of justice, it is open to it to issue such direction as may be necessary. All the above provisions

would clearly show that the Debts Recovery Tribunal or the Presiding Officer (Judge) is empowered to appoint Receiver, if it is satisfied that the

same is just and convenient and to give effect its orders and to prevent abuse of its process as well as to secure the ends of justice.

7. Mr. R. Muthukumaraswamy, learned senior counsel for the petitioner, by drawing my attention to the similar provision in the Code of Civil

Procedure, namely, Order 40, Rule 1 (1)(d) regarding appointment of Receiver in civil proceedings, would contend that the said power has to be

exercised for just and convenient reason. He also very much relied on a decision of the Apex Court in Industrial Credit and Investment

Corporation of India Ltd. and Others Vs. Karnataka Ball Bearings Corpn. Ltd. and Others, : While considering order 40, Rule 1 (d) C.P.C., in

the said decision, the Supreme Court has held that the language of Order 40 being of widest possible import, any restriction as regards the power

of the Court to direct a Receiver to effect a sale of immovable property prior to the decree does not and cannot arise. They further held that Order

40, Rule 1 and various sub-rules thereunder unmistakably depict that the Court has unfettered powers in the event the Court feels, that the sale of

property would be just and convenient having due regard to the situation of the matter. Their Lordships further held that the Court must consider

whether special interference with the possession of the defendant is required or not and in the event the Court comes to such a conclusion that

there is likelihood of the immovable property, in question be, dissipated or some such occurrences, or party initiating the action suffering

irreparable loss, unless the Court gives appropriate protection, there should not be any hesitation in directing the sale of immovable property. It is

clear that Section 19(18) of the Act is in pari materia to Order 40, Rule 1 (d) C.P.C. The said power has to be exercised for just and convenient

reasons. I have already extracted the order passed by the Presiding Officer (Judge). It does not disclose any reason at all for appointing a

Receiver. Merely because the Bank has filed a "short Memo" stating that they have no objection in appointing Receiver, the Presiding Officer is not

expected to allow the application without considering the objection of the contesting respondent, namely, petitioner herein. It is unfortunate that

after passing an order of appointment of an Advocate Receiver, the Presiding Officer (Judge) has permitted the other respondents, including the

petitioner herein to file counter to the said applications. In the absence of any other reason or ground for urgency, and in the light of the language

used in sub-Section (18) of Section 19 of the Act, I am of the view that the said order cannot be sustained.

8. Learned senior counsel for the petitioner by relying on another decision of the Apex Court in *Institute of Chartered Accountants of India Vs.*

L.K. Ratna and Others, : would contend that the impugned order is liable to be set aside on the ground of violation of principles of natural justice.

In that decision, Their Lordships have held that even if there is any remedy by way of appeal, failure of natural justice at the first instance cannot be

cured by giving such an opportunity before the appellate court. In our case, though it is stated that against the impugned order, an appeal lies to the

Appellate Tribunal u/s 20 of the Act, in view of the fact that inasmuch as the Debts Recovery Tribunal failed to adhere to the principles of natural

justice i.e., affording opportunity to the contesting party to file his objection, there is no need for the petitioner to file an appeal and the same can be

canvassed before this Court by way of Revision under Article 227 of the Constitution. In *Dr. DEVASAHYAM, V. Rt. Rev. vs. D.*

SAHAYADOSS, reported in 2002 (1)CTC 458, after referring to earlier decisions of the Supreme Court, I have held that ""It is clear that error of

jurisdiction or flagrant violation of the law laid down by the Supreme Court can be set aside by this Court under Article 227 of the Constitution. I

am of the view that in order to do justice between the parties, this Court can interfere by exercising the revisional powers under Article 227 of the

Constitution."" The impugned order which is bereft of reason and laconic cannot stand a moment's scrutiny.

9. Mr. J.R.K. Bhavanantham, learned counsel for respondents 2 to 4, by relying on a decision of the Supreme Court in *Punjab National Bank Vs.*

O.C. Krishnan and Others, : vehemently contended that since there is an effective remedy by way of an appeal u/s 20 of the Act, interference by

this Court under Article 227 of the Constitution is not warranted. It is true that in that decision, Their Lordships have held that ""there is a hierarchy

of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast-track procedure cannot be allowed to be derailed either by taking

recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred"". It has been further held

that "even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution,

nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under

the said constitutional provisions". There is no dispute that in the light of Section 20 of the Act, it would be open to the petitioner to challenge the

same before the Appellate Tribunal, as observed by the Supreme Court. In our case, as I have already referred to, the Presiding Officer (Judge)

was aware of the fact that the contesting respondents, including the petitioner herein is opposing the application for appointment of Receiver and

they prayed for an opportunity to file counter affidavit highlighting their stand. Further, the order does not disclose any reason, justifying for

appointment of an Advocate Receiver. I have already referred to the conditions to be complied with for invoking Section 19(18) of the Act.

Without satisfying the reasons stated therein and without identifying the reasons and in the light of the judicial pronouncements referred to above,

the Presiding Officer (Judge) is not justified in appointing an Advocate Receiver. In this regard, it is also relevant to refer a decision of E.

Padmanabhan, J., in KARTHIKEYAN, D.P. v. CANARA BANK, reported in 2002 (2) C.T.C. 266. The learned Judge, after referring to the

very same decision referred to by Mr. J.R.K. Bhavanantham, namely, Punjab National Bank Vs. O.C. Krishnan and Others, , has held that, (para

13 and 14)

13. In Punjab National Bank Vs. O.C. Krishnan and Others, : the Apex Court held that provisions of Recovery of Debts due to Banks and

Financial Institutions, the jurisdiction of this Court under Articles 226 and 227 of the Constitution has not been expressly ousted, yet when there is

an alternate remedy, the High Court shall refrain from exercising its jurisdiction under Article 227.

14. While respectfully following the above pronouncements, it is not every or any order that is passed by the Recovery Tribunal or Appellate

Tribunal that could be interfered by this Court under Article 227 of the Constitution. The jurisdiction of this Tribunal under Article 227 over the

Debts Recovery Appellate Tribunal is judicial and not administrative. It is true that the decision of the appellate tribunal is subject to judicial review

and judicial superintendence of this Court under Article 227. But such interference could be on one or more of the grounds as has been held by the Apex Court in the above pronouncements.

In the light of the factual position in the case on hand, I am in agreement with the view expressed by the learned Judge.

10. In the light of what is stated above, I hold that the Presiding Officer, Debts Recovery Tribunal, Coimbatore has committed an error in

appointing an Advocate Receiver without assigning any reason for the same. Further, the Tribunal has failed to provide sufficient opportunity to the

petitioner herein to submit his objection before passing the impugned order of appointment of Advocate Receiver, which is an abuse of process of

law; hence the same is liable to be set aside. Accordingly, the impugned order of the Presiding Officer, Debts Recovery Tribunal, Coimbatore

dated 22-01-2003, passed in I.A. No. 226/2002 in T.A. No. 189/2002 is set aside and the Presiding Officer, Debts Recovery Tribunal,

Coimbatore is directed to restore the said application on its file and dispose of the same afresh, after affording sufficient opportunity to all the

parties, including the petitioner herein, uninfluenced by any of the observations made above. Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed. In view of the order of setting aside the order of appointment of the Advocate

Receiver, the Advocate Receiver is directed to hand over the properties, which he had taken possession pursuant to the impugned order to the

petitioner forthwith.