

(2009) 09 DEL CK 0261

In the Delhi High Court

Case No : Writ Petition (C) 12030 of 2009

Gurbachan Singh Saluja

APPELLANT

Vs

Debts Recovery Tribunal and Others

RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:

Citation : (2010) 7 RCR(Civil) 2119

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : D.S. Narula and Rajesh Kumar, for the Appellant;

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This writ petition is taken up for disposal at the admission stage itself with the consent of the learned Counsel for the parties.

2. The prayer in this writ petition is that the order dated 23.04.2009 passed by the Debts Recovery Tribunal-II, Delhi, in O.A. 97/2009 restraining the petitioners from leaving India without prior permission of the Tribunal be set aside to that extent.

3. By the said order dated 23.04.2009, apart from other directions, the Debts Recovery Tribunal has restrained the defendant Nos. 1 and 2 (petitioners herein) from leaving India without prior permission of this Tribunal. The petitioners had filed an application before the said Tribunal on 30.07.2009 seeking modification/recall of the order dated 23.04.2009 to the extent that the restriction imposed on the petitioners from travelling abroad be vacated. The said application came up for hearing before the said Tribunal on 04.08.2009, whereupon notice was issued to the respondent No. 2 bank with directions to file the reply before the next date, that is, 28.08.2009. On that date, the application was fixed for arguments. On 28.08.2009, time was sought on behalf of the learned Counsel for the respondent No. 2 to file a reply. However, the Tribunal felt that no ground had been made out for extension of time and, therefore, the request was declined.

The arguments, however, were heard and concluded on that date, that is, on 28.08.2009 itself. The matter was directed to be listed on 04.09.2009 for pronouncement of orders. On 04.09.2009, the Tribunal passed the order that due to paucity of time the order in respect of said application could not be prepared and the date of 20.10.2009 was fixed for pronouncement. The learned Counsel appearing for the petitioners drew our attention to paragraph No. 1 of the application which has been filed before the Debts Recovery Tribunal. The said paragraph has reference to a Division Bench judgment of this Court in W.P. (C) No. 9576/2007 entitled Sanjeev R. Apte v. I.F.C.I. Ltd. and Ors. dated 21.05.2008. The said Division Bench decision pertains to the very question in issue before the Debts Recovery Tribunal i.e., as to whether a direction can be given by the Debts Recovery Tribunal restraining a person from travelling. The Division Bench in the case of Sanjeev R. Apte (supra) was clear and categorical that no such restriction can be placed by the Debts Recovery Tribunal. The relevant portion of the said decision is as under:

4. The appellant is aggrieved by the order of the Tribunal insofar as the order in paragraph 10 deals with the judgment of this Court in the case of A.S. Mittal v. P.O. Debts Recovery Tribunal and Ors. In C.M. (M) No. 505/1999 decided on 21st November, 2003. The Tribunal had distinguished the aforesaid judgment on the ground that in that case the recovery of the liability had not taken place as was done in this case. Therefore, the Tribunal's reasoning is to the effect that once a determination of the liability has taken place, the judgment in A.S. Mittal's case (supra) rendered by the learned Single Judge does not apply. The relevant portion of the said judgment are as under:

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 executed 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 order 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.

5. The law laid down by the learned single Judge is clear that the Tribunal does not have any power to restrain a citizen from traveling. This determination of law

by the learned Single Judge 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 abroad in exercise of its powers to pass an interim order u/s 19(6) of the Act is not dependent upon determination of liability by the Tribunal. In our view, the judgment has been totally misconstrued by the DRAT in confining it to matters where the liability has not been determined.

6. In our view, the judgment of the learned Single Judge of this Court, which we hereby affirm and endorse, is categorical and denies the Tribunal such a right to impose any restriction on the passport of the petitioner. The applicability of the judgment of the learned single Judge in A.S. Mittal's case was applicable to the exercise of the jurisdiction by the Tribunal and was not conditional as wrongly construed by the Tribunal. Accordingly, the order of the Tribunal, to the extent which imposes restriction on the traveling and passport of the petitioner is quashed and set aside.

4. The position in law, as laid down by the said Division Bench, is clear. The same has been relied upon by the petitioners. However, since the Debts Recovery Tribunal has already heard the application of the petitioners and the decision is pending, we direct that the Debts Recovery Tribunal shall advance the date of pronouncement of the decision from 20.10.2009 to a date on or before 09.10.2009. With these observations this writ petition stands disposed of.