

(2001) 02 AHC CK 0025

In the Allahabad High Court

Case No : C.M.W.P. No. 55722 of 2000 & Civil Miscellaneous Writ Petition No. 55722 of 2000

Hindustan Ferro and Industries Ltd. and Another

APPELLANT

Vs

Debt Recovery Tribunal and Another

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 19, 20

Citation : AIR 2001 All 155 : (2003) 113 CompCas 58 : (2001) 2 UPLBEC 1088

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : R.N. Singh, A.K. Kalara and Prakesh Kumar, for the Appellant; S.C. and Satish Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The woodcut profile of the case of the petitioner No. 1, a company duly registered under the Companies Act, carrying on the business of manufacturing Ferro Silicon and of which the petitioner No. 2 is the director is that an agreement was executed in 1990 between petitioner company and respondent No. 2 State Bank of India, Industrial Finance Branch, Sarvodaya Nagar, Kanpur for grant of credit facility. It was renewed on 3-11-1997. The credit facility was granted to petitioners on hypothecation of stock, stores, spares and finished goods etc. That apart, U.P. Financial Corporation Limited and Pradeshia Industrial and Investment Corporation of U.P. have also granted term loans to the petitioner and they have the first priority/charge to claim fixed assets of the company, such as, land, building, plant, machineries etc. On the amount of loan, the respondent No. 2 Bank had charged interest of about Rs. 20 Lacs, with the result that the petitioners company could not pay off the loan amount, and it became sick unit in 1998. Thereafter, the promoters had taken over the company and the respondent no. 2-Bank had issued clean credit to the

tune of Rs. 70 lacs to the promoters. The petitioners claim that they have repaid a sum of Rs. 46,56,565 to the Bank however, despite this, the Bank continued to charge excess interest from the petitioners. The amount of interest sought to be charged by the Bank swelled to Rs. 13,25,000. The petitioners filed a complaint and referred the matter to the Banking Ombudsman, Kanpur, an authority constituted under a scheme (Annexure 1) formulated by the Reserve Bank of India under the Banking Regulation Act, 1949. A notice was issued to the Bank which submitted its reply on 15-7-2000, a copy of which is Annexure 3 to the petition. The Banking Ombudsman, thereafter called upon the petitioners to furnish details, as required by the Bank. The petitioners submitted their reply and thereafter the matter remained pending before the Banking Ombudsman. During the pendency of the aforesaid matter before the Banking Ombudsman, the respondent No. 2-Bank called upon the petitioner through a notice dated 12-6-2000 (Annexure 5) to make payment of cash credit to the Bank within 10 days from the date of receipt of the notice. The petitioners were warned that in case they fail to make aforesaid payment, proceedings u/s 19 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the act") shall be initiated. The petitioners failed to make payment and instead they submitted a reply to the Bank on 23-6-2000. The respondent No. 2-Bank, therefore, moved an application before Debt Recovery Tribunal (for short called "the D.R.T.") registered as O.A. No. 90 of 2000, u/s 19 of the Act for recovery of Rs. 39,24,379.52 from the petitioners. The petitioners moved an application duly supported by an affidavit praying for stay of the proceedings u/s 19 of the Act on the ground that the matter is sub judice before Banking Ombudsman. The application of the petitioners has been rejected by the D.R.T., Allahabad respondent No. 1 by the impugned order dated 1-12-2000, Annexure 8 to the petition. It is this order which has given rise to the present writ petition under Article 226 and 227 of the Constitution of India. The petitioners have prayed for quashing of the order dated 1-12-2000 passed by respondent No. 1 Tribunal and for a direction in the nature of mandamus commanding the respondent No. 2 to stay the proceedings till the complaint No. 75 of 2000 is finally decided by the Banking Ombudsman, Kanpur.

2. Heard Sri R.N. Singh, learned Senior Advocate, assisted by Sri Rakesh Kumar and Sri Satish Chaturvedi for the State Bank of India as well as learned Standing counsel.

3. The learned Standing counsel raised a preliminary objection that the present petition is not maintainable in view of the fact that the D.R.T. has been constituted u/s 3 of the Act and an appeal against an order passed by the Tribunal lies u/s 20 of the Act before the Debts Recovery Appellate Tribunal, (for short called the D.R.A.T.) constituted u/s 8 of the Act. Section 17(2) of the Act, provides that an Appellate Tribunal (D.R.A.T.) 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 the Act. Sri R.N. Singh, learned Senior counsel repelled the aforesaid submission and urged

that this Court has the jurisdiction, under Articles 226 and 227 of the Constitution, to analyse and Scrutinize the correctness, propriety or otherwise of the interim order passed by a tribunal or subordinate court. To fortify his submission, he placed reliance on a decision of the apex court in Industrial Credit and The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, The provisions of Section 3(1) and 19(6) of the Act came to be interpreted in the said case. In paragraph 14 of the report, it was held :--

"14..... There was no bar on the High Court to itself examine the merits of the case in the exercise of its Jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the Courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When facts of the case brought before the High Court are such that High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in vacuum."

The provisions of Section 18 of the Act bars the jurisdiction of other Court or authority, in relation to the matters specified in Section 17, (sic) Hon"ble Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution. Therefore, this legal position that this Court has the power to interfere, if the circumstances so require, is beyond the pale of challenge. In appropriate matters, this Court will not hesitate to intervene if the justice demands, even though there is an alternative statutory remedy of appeal u/s 20 of the Act.

4. Now the moot point for consideration is whether on account of the complaint pending before the Banking Ombudsman under the Banking Ombudsman Scheme, 1995 (hereinafter referred to as "the Scheme") the proceedings in O.A. No. 90 of 1999 before the D.R.T. are required to be stayed . At the outset, it may be pointed out that the scope, object and purpose of the Scheme and that of the Act are entirely distinct and different. They operate in entirely different fields. While the object of the Scheme is to enable resolution of complaints relating to provisions of banking services and to facilitate the satisfaction, or settlement of such complaints, the purpose of the Act is 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. The statement of the objects and reasons in the form of prefatory note records that Bank and Financial Institutions experienced considerable difficulties in recovering loans and enforcement of securities charged with them. The procedure for recovery of debts due to the Banks and Financial Institutions as was prevailing prior to the enactment of the Act has blocked a significant portion of their funds in unproductive assets, the value of which deteriorated with the passage of time. It was for this compelling reason and to obviate the difficulties

in recovering debts due to the Banks and Financial Institutions that the Act was brought on the statute book. A particular procedure has been prescribed in the Scheme to entertain and process the complaints with a view to facilitate the satisfaction of its customers with regard to banking services. The Scheme has nothing to do with the proceedings of recovery of debts due to the banks and financial institutions. A Scheme formulated by the Reserve Bank of India under the Banking Regulation Act, 1949 cannot override or nullify the provisions of the Act. As a matter of fact, the application moved by the petitioners to stay the proceedings in the suit for recovery of dues on the ground of pendency of their complaint under the Scheme was misconceived.

5. The contention of Sri R.N. Sing, learned Senior counsel that the Presiding Officer has rejected the application of the petitioners merely on the ground that he has no power to pass interim order does not bear an impress of reality. It distorts the reasoning enumerated in the impugned order.

6. The various provisions of the Act have been drastically amended by the Amendment Act No. 1 of 2000. There has been substitution of new Section for Section 19. Sub-section (25) of newly substituted Section 19 provides as follows :

"(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 process or to secure the ends of justice."

7. It is, thus, indubitable legal position that the D.R.T. has the jurisdiction and competence to pass interim orders as may be necessitated to prevent the abuse of its process or to secure the ends of justice. An application seeking interim orders cannot be shelved or rejected on the mere assumption that the D.R.T. has no power to pass interim orders. The amendment and substitution of Section 19 explodes the myth. Indubitably, now the D.R.T. has power to pass interim orders.

8. A bare reading of the impugned order clearly shows that the Presiding Officer D.R.T. has nowhere mentioned that he has no power to pass an interim order. The Tribunal has refused to pass an interim order on the application of the petitioners solely on the ground that the application was not maintainable as reference to the Scheme was otiose and unavailing for.

9. In the conspectus of the above facts, even though a petition under Article 226 and 227 of the Constitution may be entertained, in appropriate cases in view of the decision of the Apex Court in *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, I feel persuaded to observe that it is not a case fit enough requiring invocation of the extraordinary writ jurisdiction by this Court. Accordingly, the writ petition is dismissed.