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In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 507 of 2003

I.C.I.C.I. Bank Ltd. APPELLANT

Vs

V.T. Prakash and Others RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Constitution of India, 1950 — Article 227
Income Tax Act, 1961 — Rule 11(6)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29, 30

Citation : (2003) 3 ALD 369 : (2003) 4 ALT 408 : (2003) 3 BC 180 : (2003) 114 CompCas 133 : (2003) 45 SCL 441

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Deepak Bhattacharjee, for the Appellant; K. Pratap Reddy, for T. Srikanth Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The revision petitioner-ICICI Bank invoked the supervisory jurisdiction of this court under Article 227 of the Constitution of India to revise the order passed by the District Judge, Ranga Reddy District dated January 29, 2003, in I. A. No. 316 of 2003 in O. S. No. 14 of 2003, where-under the learned District Judge, issued ad interim ex parte injunction restraining the revision petitioner-ICICI Bank and the Recovery Officer, Debt Recovery Tribunal, Hyderabad, from selling the suit schedule property in O. S. No. 14 of 2003.

2. The facts which are not in dispute are as under : The revision petitioner-bank initiated proceedings for recovery of debt due to it before the Debt Recovery Tribunal under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act/1993 (for short "the Act 51 of 1993"), against the third respondent herein and others and obtained a recovery certificate for a sum of Rs. 36,42,211.74. After obtaining the recovery certificate, the revision petitioner-bank initiated proceedings for sale of mortgaged property. When the third

respondent herein and others failed to comply with the demand notice dated March 8, 2000, order of attachment of immovable pro- perty and notice for settling a sale proclamation dated April 12, 2001, in respect of the mortgaged property of the third respondent herein situate at Gaganpahad Village, Rajendra Nagar Mandal, Ranga Reddy District, have been served. On issuance of Forms Nos. 16 and 17 notice, the third respondent and others failed to pay the amount, proclamation of sale dated August 28, 2002, has been issued fixing the date of auction on October 17, 2002. At that stage, respondents Nos. 1 and 2 herein filed a Claim Petition No. 3 of 2000, before the Debt Recovery Tribunal, Hyderabad, under Rule 11 of the Second Schedule to the Income Tax Act, 1961, seeking to raise the attachment order dated April 12, 2002, in R.P. No. 487 of 2001 over the agricultural lands admeasuring Ac. 10-31 guntas in S. Nos. 263, 281, 282 and 283 situate at Gaganpahad village. The Recovery Officer, Debt Recovery Tribunal, Hyderabad, after enquiring into the claim by its order dated November 1, 2002, dismissed the claim petition holding that the petition schedule property is a self acquired property of the third respondent herein and not a joint Hindu family property, the debt involved is not a "avyavaharika" debt and the Tribunal has rightly attached the property under the provisions contained in Rules 48 and 53 of the Second Schedule to the Income Tax Act, 1961. In view of the rejection of the claim, the Recovery Officer issued proclamation of sale dated December 11, 2002, fixing the date for sale of attached properties on January 30, 2003. Respondents Nos. 1 and 2 herein who are the sons of the third respondent instituted suit O. S. No. 14 of 2003, on the file of the District Judge, Ranga Reddy District, (a) for partition of the plaint schedule property into three equal shares and for allotment of one such share to each of the plaintiffs and the first respondent (respondent No. 3 herein) and put them in exclusive possession of the suit schedule property ; (b) to declare the order dated November 1, 2002, of the Recovery Officer, Debt Recovery Tribunal in C. P. No. 3 of 2003 as void, illegal, arbitrary and unlawful and unenforceable against the plaintiffs and suit schedule properties. The District Judge, Ranga Reddy District by the impugned order granted ad interim ex parte injunction. Questioning the same, the second respondent-bank in I. A. (revision petitioner herein) filed the present revision petition and obtained interim suspension of the ad interim ex parte injunction granted by the District Judge. In view of the injunction granted by the trial court, which was communicated to the fourth respondent-Recovery Officer on January 30, 2003, he cancelled the auction and returned the EMD to the concerned and no further schedule of auction was fixed. In view of the suspension of the ad interim ex parte injunction granted by this court, it appears, the fourth respondent without notifying the date of auction conducted auction on February 4, 2003, by calling the bidders through telephone and the same is in the process of confirmation of sale (which fact, as stated by respondents Nos. 1 and 2 has not been denied by the revision petitioner-bank) on expiry of 30 days i.e., March 4, 2003. In view of the same, respondents Nos. 1 and 2 moved this court for vacating the interim suspension.

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3. Learned counsel for the revision petitioner-bank contends that the impugned order passed by the District Judge is without jurisdiction and contrary to law in view of the bar imposed u/s 18 of the Act 51 of 1993. It is next contended that against the order passed by the fourth respondent-Recovery Officer dismissing the claim petition in C. P. No. 3 of 2002, an appeal lies to the Tribunal u/s 30. In view of the alternative remedy available to the claim petitioners (respondents Nos. 1 and 2 herein), the suit, as such, instituted by them cannot be maintainable. More so, no suit, prosecution or other legal proceedings shall lie against the Recovery Officer for the action taken in good faith as per Section 33. Lastly it was contended that u/s 41 of the Specific Relief Act, such an injunction cannot be issued by the trial court. In view of the same, the trial court erred in granting ad interim ex parte injunction restraining the fourth respondent-Recovery Officer herein from discharging his functions.

4. Sri K. Prathap Reddy, learned senior counsel appearing for respondents Nos. 1 and 2 in his equal vehemence opposed the arguments advanced by learned counsel for the revision petitioners and would contend that the suit, as such filed by the third parties who are not parties to the proceedings in R.P. No. 487 of 2001. The properties which were attached belong to the third respondent who stood as guarantor for due performance of the debt. The bar contemplated u/s 18 is in respect of disputes arise between the bank and its debtors u/s 17 but not against the third parties. The Tribunal''s job ends on deciding the lis between the bank and its debtor but not against the third parties. The right given to third parties to prefer claim is contemplated under the Second Schedule to the Income Tax Act, 1961. Accordingly, respondents Nos. 1 and 2 put forward their claim before the Recovery Officer who dismissed the claim petition. In view of the same, the only option left open to the third parties i.e., respondents Nos. 1 and 2 is to institute a suit in a civil court to establish their rights over the properties in dispute and any order passed by the Recovery Officer rejecting the claim will be subject to the result of such suit instituted as the said procedure is made applicable in view of Section 29 of the Act 51 of 1993. Learned senior counsel further submits that in view of the alternative remedy available to the revision petitioner, namely, moving the civil court for vacating the injunction order or can file an appeal as contemplated under Order 43, Rule 1 of the Code of Civil Procedure, the petitioner cannot invoke the jurisdiction of this court under Article 227 of the Constitution and under the guise of suspension of the ad interim ex parte injunction, the Recovery Officer, who earlier cancelled the auction scheduled to be held on January 30, 2003, and returned the EMD, called the bidders and conducted auction on February 4, 2003, is in total defiance of the procedure contemplated in this regard and hence, this court should set aside the said auction which was proceeded with pursuant to the interim suspension granted by this court.

5. In view of the rival submissions made by learned counsel for both parties, it is necessary to have a look at the various provisions of the Act 51 of 1993, which have direct bearing on the issue involved in the revision petition.

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6. Section 17 prescribes jurisdiction, powers and authority of Tribunals to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions and jurisdiction of the Appellate Tribunal to entertain appeals against any order made by a Debt Recovery Tribunal. Section 18 bars the jurisdiction of the civil court in relation to the matters specified in Section 17. Section 19 contemplates issuance of certificate by the Tribunal on an application made by the bank or a financial institution and authorizes the Tribunal to order attachment of the whole or any portion of the property as specified in Sub-section (14) of Section 19. On conclusion of trial, the Tribunal shall issue a certificate as specified in Sub-section (22) of Section 19. Against the orders of issuance of a certificate passed by a Tribunal, appeal lies to an Appellate Tribunal u/s 20 of the Act 51 of 1993. Section 25 prescribes modes of recovery of debts by the Recovery Officer on receipt of a copy of the certificate under Sub-section (7) of Section 19. Section 28 prescribes other modes of recovery by issuance of notice under Forms Nos. 16 and 17 and if any third party objects to the above recovery proceedings, he can move the Recovery Officer. The provisions of the Second and Third Schedules to the Income Tax Act, 1961, and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time are made applicable for enquires of claims made by the third parties. It is useful to extract Section 29, which is crucial for deciding the issue.

"29. Application of certain provisions of Income Tax Act.--The provisions of the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961), and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income Tax Act :

Provided that any reference under the said provisions and the rules to the ''assessee'' shall be construed as a reference to the defendant under this Act."

7. Having noticed the various provisions as referred to above, it is also useful to extract the procedure of recovery of tax as provided under the Second Schedule to the Income Tax Act.

"11. Investigation by Tax Recovery Officer.--(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to

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security or otherwise, as the Tax Recovery Officer shall deem fit....

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

8. In view of the provisions as referred to above, the third parties who claim rights over the property, which was attached for due recovery of debt by a financial institution, where the Recovery Officer issued a sale proclamation, can file their objections to the attachment or sale of any property in execution of the certificate. Respondents Nos. 1 and 2 who are claiming a share in the property owned and possessed by the third respondent herein, who is karta of the family filed their claim petition before the Tax Recovery Officer who by order dated November 1, 2002, dismissed the claim petition. Against every such dismissal of the claim petition, the third party may prefer an appeal as provided u/s 30 of the Act, notwithstanding the provision of Section 29. If the third parties are aggrieved by the rejection of the claim may institute a suit as per Sub-rule (6) of Rule 11 of the Second Schedule to the Income Tax Act, 1961, and can establish their rights in the property, which is in dispute. Any order passed by the Recovery Officer rejecting the claim will be subject to the result of such suit, if any, and his order will be conclusive only as per the judgment and decree passed by the civil court but not otherwise. When once respondents Nos. 1 and 2 moved the civil court for partition of the suit schedule property, it is for the civil court to decide whether they are entitled to a share in the property or not and any order passed by the Recovery Officer, either rejecting the sale or proceeding with the sale pursuant to the notice will be subject to the result of such suit. In view of the same, the contention advanced by learned counsel for the revision petitioner that the civil court will not have any jurisdiction do not merit consideration. Once the civil court had jurisdiction to entertain the suit for partition, it is always open for the civil court to pass appropriate orders to safeguard the interest of the parties pending suit. In view of the same, the reliance placed by learned counsel for the revision petitioner-bank, namely, Punjab National Bank Vs. O.C. Krishnan and Others, and observation made therein at para. 6, are misplaced to the facts of the present case. In fact Section 29 of the Act 51 of 1993 itself recognizes the jurisdiction of the civil court to entertain the suits filed by the third party claimants.

9. In view of the foregoing reasons, prima facie, it is held that civil court will have a jurisdiction to entertain the suit and if the revision petitioner is aggrieved by the ad interim injunction granted by the District Judge, it can approach the

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said court for vacation of the ad interim ex parte injunction or can approach the appellate court under Order 43, Rule 1 of the CPC by filing an appeal. In view of the same, the revision petitioner cannot invoke the supervisory jurisdiction of this court under Article 227 as held by the apex court in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, .

10. Having regard to the fact that the petitioner moved this court under Article 227 and obtained interim suspension of the injunction granted and it is specifically alleged in the counter that the Recovery Officer postponed the auction which was scheduled to be held on January 30, 2003, and returned the EMD without further notifying the date of auction, under the garb of interim suspension, calling the bidders to participate in the auction and conducting the auction on February 4, 2003, is highly irregular and contrary to the procedure contemplated for such auction. It is well settled that an interim order causing injustice to a party must be set right by the court while making a final order, (see Prabodh Verma and Others Vs. State of Uttar Pradesh and Others,). It is also well settled that no one should be allowed to suffer for act of the court and at the final disposal, the High Court can correct the damage caused. (see AIR 1997 993 (SC) .

11. In view of the same, it is held that the sale, which was conducted by the Recovery Officer under the garb of interim suspension of the ad interim ex parte injunction granted by this court is non est in the eye of law and the same cannot be proceeded with.

12. The civil revision petition is accordingly dismissed with costs of Rs. 2,000 (rupees two thousand only) payable by the revision petitioner-bank to the Court Masters'' Welfare Fund, High Court of Andhra Pradesh.

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