
(1998) 01 CAL CK 0012
In the Calcutta High Court
Case No : Civil Revisional Jurisdiction
In re: Grapco Industries Ltd. and Another

Date of Decision : 06-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 10, Order 39 Rule 2A, Order 39 Rule 3, Order 39 Rule 6, Order 39 Rule 8
Constitution of India, 1950 — Article 227
Consumer Protection Act, 1986 — Section 14
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 10, 4, 5, 6, 7
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(1), 19(2), 19(3), 19(4)

Citation : AIR 1998 Cal 170 : (1998) 1 CALLT 278 : (1998) 1 CHN 202 : (1999) 97 CompCas 99

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. S.K. Kapoor, Mr. Pratap Chatterjee, Mr. Abhrajit Mitra, Mr. Debal Banerjee, Mr. Amitesh Banerjee, Mr. Dilip Kr. Ghosh, Mr. Sudhis Dasgupta, Mr. Subhra Kamal Mukherjee, Mr. Paritosh Sinha, Mr. Ajay Chawbey, Mr. S.P. Roychowdhury, Mr. Raja Basu Chowdury, Mr. Abrajit Mitra, Mr. N.K. Roy, Mr. S.P. Roychowdhury and Mr. Bhagat Choudhary, for the Appellant; Mr. Prodosh Mallick, Mr. S. Mitra, Mr. D. Basak, Mr. Hirak Mitra, Mr. Soumen Sen and Mr. A. Mitra, for the Respondent

Judgement

B.M. Mitra, J.—In all these above noted revisional applications under Article 227 of the Constitution of India the impugned orders challenges are in nature of ad-interim orders passed by the Debt Recovery Tribunal. The said revisional applications are numbered as five separate applications and before dealing with them serially this court will consider the common questions of law and jurisdiction involved in the said proceedings.

2. The common question which permeates the crux of the central range of controversy along with series of other pending revisional applications is centered-round on resolution of a question raised which has an element of commonality in character as to how far Debt Recovery Tribunal is Competent and is authorised to pass under a self-contained statute known as the Recovery of Debts due to

Banks and Financial institutions Act, 1993 (Act No. 51 of 1993) which has been contended by the learned counsels appearing on behalf of series of the petitioners and attention of this court has been drawn to different dimensions focussed in order to substantiate their contention that the Debt Recovery Tribunal has neither any authority nor they are conferred by any blessing of the statute to pass such ad-Interlm orders. It has been contended by way of echo in a cohesive manner by all the petitioners that it has no vestige of jurisdiction by the same Tribunal to pass ad-interlm orders. The said contentions have been controverted by the counsels appearing on behalf of the respondents Financial institutions by joining issues to the propositions canvassed before this court. This court has carefully considered the contentions and counter-contentions of the respective parties at length and there has been some "delay caused because of change of determination of this court and because of the intervention of Annual vacation. This court has tried to carefully assess the respective contentions of the contentious propositions canvassed by the contesting parties. Before dealing with elaborate contentions raised by the learned counsels on behalf of the petitioners separately, this court tends to take up the common pleas of the submissions made by the learned counsels for the petitioners. Before dealing in details about "the specific contentions raised by different lawyers on behalf of the petitioners, this court tends to deal on the substantive substance of their arguments. At the very outset it is salient to refer to the gist of the arguments and contentions made by the respective counsels on behalf of the petitioners. Attention of this court has been repeatedly drawn to the provision of section 19 of The Recovery of Debts Due to Banks and Financial institutions Act, 1993 (hereinafter referred to as the Act) wherein it has been stipulated in sub-section (2) of section 19 that every application under sub-section(1) shall be in such form as may be prescribed. The Rules known as Debt Recovery Tribunal [Procedure) Rules, 1993 have come into force on the date of the publication in the official gazette and in terms of Rule 10 thereof it has been envisaged that an original application u/s 19(1) shall not seek relief or reliefs based on more than a single cause of action in one single application unless the reliefs prayed for are consequential to one another. The procedure for final application and of its presentation in form has been prescribed in terms of Rule 4 of the said Rules. In terms of the said Rule, form has been prescribed in the said Rules with different clauses as detailed therein. Column G of the said form formulated under Rule 4 contemplates filling up of the reliefs sought for in the main application u/s 19(1) of the Act itself. Column 7 of the said form envisages interim order pending final decision on the application issuance of interim orders which are asked for what are being prayed for. It is necessary in this context to refer back to section 19 itself and attention of the court has been drawn to Clauses 4 and 6 of section 19. Section 19(4) contemplates that the Tribunal may after giving the applicant and the respondent an opportunity of being heard pass such orders on the application as it thinks fit to meet the ends of justice. Section 19(6) envisages that the Tribunal may make an interim order (either by way of the injunction or stay) against the respondent to debar him from transferring, alienating or otherwise dealing with or disposing

of any property and assets belonging to them without the prior intimation of the defendant. It is clear from perusal of Clause 19(6) that the court may pass an interim order and the expression used is by way of mention of an order of interim nature. The said interim order has been further circumscribed by way of injunction or stay as adumbrated within the bracketed portion specifying the object of order of such interim nature to debar the defendant from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to the petitioner without prior permission of the Tribunal. There has been adaptation of section 19(6) in the form prescribed under the Rules covered by Rule 4 as mentioned in column 7 which also make the same pinpointed by describing the nature of the order as interim. The term of the adjective "interim" as appended to order has been exemplified in column 7 itself by making the mention pending final decision on the parent application which is u/s 19(1) of the Act. Even from the phraseology of column 7, the term "interim order" has been explained away as an order pending final decision on the parent application. Peculiarly enough, section 19(6) read with the format as contained in the form in terms of Rule 4 of The Debt Recovery Tribunal (Procedure) Rules, 1993 and column 7 seems to be the adaptation of the engrafting of section 19(6) of the Act. There does not appear to be any column which is required to be filled up for prayer of ad-Interim order. In terms of provision of section 19(2) every application u/s 19(1) shall be in such form as may be prescribed and the expression used there is by way of coinage of the word "shall". It apparently appears to be mandatory that unless a new application at the threshold of the commencement of the proceeding after the promulgation of the Act is not in form, the same will become procedurally Irregular and it is bound to be in compliance of such form. Any addition, alteration or deletion of the columns as prescribed in the form covered by Rule 4 will not be in strict conformity with the procedures as prescribed in terms of section 19(2) which IS by way of a mandate. The significant omission in the form as prescribed under Rule 4 of the Rules seems to be eloquent having a germane Implication. This court on prima facie scrutiny cannot decipher as to why there is no mention of any column about inclusion of ad-Interlm prayers. From the resume of entire section 19 of the Act itself there also does not appear to be any reference about ad-interlm orders. In the backdrop of the same this court has been confronted with another provisions as contained in section 19(4) which prescribes that the Tribunal may after giving the applicant and the respondent an opportunity of being heard pass such orders on the application as H thinks fit to meet the ends of Justice. This court has been asked to reconcile both the provisions contained in sub-section (4) and 16) of section 19 and has been requested to make a harmonious construction to do away with any element of dichotomy in between the said two provisions as contained in sub-section (4) and (6) of section 19. This has left this court on the precipice of its platform to interpret and to decipher the meaning of the word "orders" as mentioned in section 19(4). The expression used, namely, "orders" appears to be a plural expression which previously in terms of grammatical construction contained reference to plurality of orders. The said orders are

attempted to be comprehended by an expression of prefix such as a prelude to the expression "order" to meet the ends of Justice. The court is made to wonder as to what is meant by such orders meaning thereby as to what should be the nature of such orders. This court to make the point threadbare wants to refer to the purpose of such orders to meet the ends of justice which cannot be except for the purpose of meeting the ends of justice. The same has been proceeded by sub-section (3) of section 19 which prescribes as to what the Tribunal should do on receipt of an application u/s 19(1) and after appearance or service of such notice it can pass such orders to meet the ends of justice in compliance of the provisions of section 19 itself coupled with the other ancillary provisions and the rules framed thereunder. It has been followed by incorporation of sub-section (5) of section 19 that the Tribunal shall send a copy of every order passed by it to the applicant and the respondent. In terms of format of Rule 4, column 6 several reliefs are sought to be contemplated by way of incorporation to fill up column 6 and reliefs should be of plural nature on a particular cause of action or initiation of proceeding. If there are several reliefs prayed for, then there may be plurality of orders which can be singled out by way of specification of species. Sub-section (4) being placed in between sub-section (3) and subsection (5) it gives an inkling that it relates to the orders passed on the substantive application u/s 19(1) itself and it excludes orders of interim nature. It has been contended by Mr. Roy, one of the learned Advocates on behalf of the financial institutions in one of the pending matters that such orders must be deemed to be orders of final nature. This court for the reasons as aforesaid is in agreement with the submissions of Mr. Subrata Roy so far as his contention is concerned that such orders as appearing in sub-section (4) of section 19 must refer to as orders of final nature.

3. Now coming at the doorstep of the construction of section 19(6) of the Act which contemplates the Tribunal may pass an interim order and the same has been circumscribed within the exhaustive list as bracketed namely by way of injunction or stay from transferring, alienating or otherwise dealing with or disposing of any property and assets without prior permission of the Tribunal. It is significant to make the mention that the Illustrations as put in within the bracket appear to be exhaustive and not illustrative because it is not followed up by use of any omnibus expression as "etc". The pattern put in appears to be significant as it indicates exhaustive catena and the same cannot be construed as illustrative in nature. So far as the connotation of the interim order is concerned, the same has been explained away in the form under Rule 4 of the Debt Recovery (Procedure) Rules, 1993 in column 7 thereof which tends to pinpoint that interim order is pending final decision of the adjudication of the parent application which must be one u/s 19(1) of the Act. As the modern trend is to make all of us plunge into domain of terminology and in order to extract the essence of the said terms there should be clarity of conception about the terms used. So far as a plurality of orders contemplated in a pending case (mainly in suits) from the inception and/or commencement of the proceeding are classifiable in the separate categories, namely, orders of final nature, interim

orders, ad-interim orders and interlocutory orders. Orders of final nature mean and connote the plurality of orders in terms of separate reliefs prayed for being based on one cause or action in a composite application at the state of its disposal giving rise to finality. So far as interim order is concerned common notion of law is that such orders are required to be passed during the pendency of the proceeding and/or pendency of the suit. in the same tune, column 7 for filling up of interim orders have been explained as pending final decision on the parent application. in column 7 of Rule 4 of the connected Rules of 1993 during the pendency of the application u/s 19 of the Act there are other species of ad-interim order conceivable which tend to connote the orders which are capable of being comprehended only during the pendency of an interlocutory application either in the main proceeding or in the suit. Here, the main proceeding is one u/s 19(1) of the connected Act. Therefore, there is no confusion in between the interim orders and ad-interim orders because interim orders are passed and they remain operative during the pendency of the suit and/or proceeding and ad-interim orders remain in force during the pendency of an application where orders are usually passed before showing cause by the opposite party in an ex parte hearing. in terms of the provision of the CPC it is possible to conceive another species of orders, namely, interlocutory orders and this court after going through the relevant provisions of the CPC tend to think that the provisions are incorporated under Order 39, Rule 2A, Rule 6 thereof and also the provisions covered by Order 39, Rule, 8 and Rule 10 of the Code of Civil Procedure. in terms of the course of experience and comprehension about the para materia as forecast under Code of Civil Procedure, the distinction appears to be on a clear line of water-shade between the interim orders and ad-interim orders as interim orders will remain in force during the pendency of the suit or proceedings and ad-interim orders will have its longevity upto a limited period till the opposite party shows cause in an ex parte hearing during the pendency of adjudication of the pending interlocutory application praying for relief by way of injunction or stay in the case of the instant Act. Here, in all the cases before this court, ad-interim orders are passed which have not been provided for under the statute, namely, the concerned Act. A controversy seems to have arisen as to whether they are capable of being passed by the Debt Recovery Tribunal but as it is a creature of a particular statute, it is not expected unlike a court to be vested with inherent powers. It is also not out of context to refer to the procedure to be followed in the process of adjudication before the forum of the Debt Recovery Tribunal and the procedure has been laid down to be the procedure of conformity to the principles of natural Justice and subject to other provisions of the Act and the Rules and the Tribunal shall have the power to regulate their own procedure. The power to regulate its own procedure cannot be treated at par to that of uncanalised powers of the Tribunal and adaptation of procedure have been laid down in Rule 4 to Rule 9 of the Debt Recovery Tribunal (Procedure) Rules, 1993. The aforesaid rules relate to procedure for filing application, namely, the parent application u/s 19(1) and its presentation and scrutiny of application, place of application, contents of the application which must be in conformity with Rule 4

as adopted in terms of the Debt Recovery Tribunal (Procedure) Rules, 1993 derived from section 19 of the Act. It is doubtful as to whether in terms of section 22 of the Act the process of adjudication can be guided by powers to regulate their own procedure save and except selection of the places at which they shall have their sitting excepting the procedures as laid down in the aforesaid rules of Rule 4 to Rule 9. If the guiding norm or procedure for adjudication is mandatory compliance of the principle of natural justice whether it can pass orders behind the back of the party litigant and the court will be required to scrutinise as to how far this offends against the elementary canons of the principles of natural Justice. Natural justice ordinarily tends to suggest that nobody not to speak of a quasi Judicial authority nor a tribunal but even an executive authority is not entitled to pass order which are likely to be followed by pernicious Implications affecting the interest of a party who has not been heard. The insistence and/or mandate as forcast u/s 22 of the Act about compliance of natural justice also cast a doubt as to whether the tribunal has a right to pass any order whether interim or ad-Interim without hearing and/or without affording an opportunity of hearing to the aggrieved party. The same becomes exclusively clear as section 19(6) refers only to interim orders of special type, namely, by way of injunction or stay but it has not included ad-Interim orders. Even if it be assumed that column 7 of the form as specified under Rule 4 of the connected Rules is properly filled up, the same must form a part and parcel of the composite application u/s 19 giving a detailed catalogue of 11 columns in terms of totality. Therefore, even if a prayer is included of any type in the form under Rule 4, the same must be embodied in the composites format of the rule which has to be served by the tribunal by way of issuance of summons in terms of section 19(3) of the Act. As soon as there shall be service of summons in terms of mandatory requirement of section 19(3) of the Act, the concerned opposite party /respondent will come to know of the prayers of interim nature or of any other type which will be manifest from the perusal of the composite application as park format. Therefore, as soon as the opposite party/respondent is served with a copy of the summons or there is effective notice of service of summons, the Tribunal can proceed on the basis that there is appearance. Accordingly, there is no scope for any doubt of any contingent event where the applicant had no scope to pray for any order under whatsoever caption without knowledge of the opposite parties. Therefore, in terms of the statute and the rules framed thereunder. It appears that at all stages contested proceeding have been envisaged and statute does not appear to have permitted any walk-over by one of the parties so that it can march ahead over the field in the arena of litigation without the knowledge of the concerned respondent as the Tribunal is judicially empowered to affix liability which has far reaching implication. Therefore, the same has been obliterated from the entire compass of the connected statute being the recovery of debts due to Banks and Financial institutions Act, 1993 and the Rules framed thereunder.

4. In the backdrop of the tentative assessment of the compass of the controversy

as to be discerned from the relevant provisions of the connected statute. The Recovery Debts Due to Banks and Financial institutions Act, 1993 (Act No. 51 of 1993) and the Rules framed thereunder, this court proposes to deal with the aforesaid applications serially and the respective contentions of the parties raised or canvassed before this court. This court first proposes to take up one of the revlslonai applications under Article 227 of the Constitution of india and other pending applications which tend to challenge an order being order No.2, dated 15th May, 1997 passed by the Presiding Officer. Debt Recovery Tribunal, Calcutta in O.A./106 of 1997. in the prefix of the said order impugned a reference was made to the prayers in paragraph (vli) of the connected application u/s 19 of the original proceeding which is for a prayer for an order of injunction restraining the respondents No. 1 and 2 and/or their men and/or agent and/or successor-In-office and/or their assigns from alienating and/or transferring and/or encumbering or parting with possession with any of the securities mentioned in annexure Kl. J2 and M of the application u/s 19. in the said application a notice appears to have been issued to show cause as to why the order for temporary injunction as prayed for will not be granted. There has been further reference about the interim order in terms of the said prayer considering the prima facie case balance of convenience and inconvenience, apprehension of the applicant and the amount of the claim of the applicants there and by a reference made thereof the said respondents are restrained from alienating and/or transferring, encumbering, parting with possession and/or dealing with any of the securities mentioned in annexure J, J2 and N of the application u/s 19. There has been a further order recorded that the prayer for appointment of a Special Officer is allowed for the purpose of making an inventory of the properties mentioned in the aforesaid annexures and the only reason which have been mentioned is that the prayers were considered by the learned Presiding Officer of the Debt Recovery Tribunal as being very modest. The said pending petition as aforesaid in respect of Grapco industries Limited & Anr. o. industrial Credit and investment Corporation Limited & Ors. is also being dealt with along with another application which is in between Aarpeejay Construction Ltd. v. UTI Bank Limited & Ors. The same is directed against order dated 4th June, 1997 passed by the Debt Recovery Tribunal, Calcutta in O.A. No.65 of 1997. By the impugned order a show-cause notice has been issued and an ad-Interim order of injunction appears to have been granted restraining the respondents and/or their agents from disposing of or encumbering or dealing with their assets and properties till the disposal of the injunction matter. There has been a reference made that considering the prima facie case, balance of convenience and apprehension for the applicant Bank, the said order has been proposed to be passed and Special Officer has been appointed for the purpose of holding an inventory of the properties of the respondents No. 1,2,3 and 4 exparte as the prayer has been considered to be modest. Both the above two matters are being taken up for hearing together as same set of lawyers appeared in respect of respective Parties for the purpose of resolution of the said controversy.

5. This court first proposes to take one of the revisional applications under Article 227 of the Constitution of India, namely in re: Grapco Industries Limited & Anr. v. Industrial Credit Investment Corporation of India Ltd. & Ors. wherein a challenge has been thrown in respect of an order being order dated 15.5.97 passed by the Debts Recovery Tribunal, Calcutta in O.A. Case No. 106 of 1997. The said order has been assailed by the learned counsels appearing on behalf of the petitioners contending inter alia that one of the prayers granted in connection with an interim prayer is for police help which is an exceptional remedy and the court should be cautious to grant such remedy in absence of any evidence transpiring from record that there has been resistance on the part of the revisionist petitioner in obedience to the order of the court. It has been also contended that in the format of the application whether in the main relief or in the interim relief no prayer of whatsoever nature has been made for police help. As such, without any formal prayer emanating from the records of the proceeding such prayer cannot be granted. It has been contended with force that facile reference was made to balance of convenience and inconvenience but the same cannot be discerned from the pleadings. In absence of proper pleadings about the balance of convenience and inconvenience the tribunal cannot record about balance of convenience and inconvenience, from the texture of the Impugned order No.2, dated 15.5.97, it appears that the first part of the order is in compliance of receipt of the original application u/s 19(1) of the Act in terms of sub-section (3) of section 19 it has issued summons to the defendant to show cause within a certain period of time and before receipt of show-cause of the application as recorded in terms of section 19(3) it has proposed to pass the subsequent order which calls for a debate as to whether the same has been in compliance of section 19(6) of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is peculiar to refer to the second portion of the Impugned order where from it appears that a prayer for interim injunction is granted but from the explanatory portion of the said paragraph of the Impugned order it appears that the concerned authority seems to be in a welter of confusion in drawing a clear-cut water-shed line of distinction between the interim order of injunction and ad-interim order of injunction. In view of the wording of that portion it appears that the concerned respondents have been restrained from alienating, transferring, encumbering or parting with possession and dealing with any of the securities mentioned u/s 19 till the disposal of the injunction matter. If during the period of subsistence and/ or pendency of the hearing of a petition for injunction application, the same cannot be dubbed as grant of an order of injunction application, the same will be required to be interpreted as grant of an order of ad-interim injunction. These expressions are not loose expressions of ordinary significance but they are of germane significance having the texture of legal nomenclature. The same cannot be attributed to the commonsense view of the matter. It is not out of context to visualise the types of orders conceivable during the pendency of a suit, or a proceeding either before a court or before a tribunal and there are various orders which may be orders of interim nature and ad-interim nature. The distinction has been well established from the experience

of judicial process as moulded in civil disputes, namely, by the part materia of the Code of Civil Procedure. Therefore, there is no scope for confusion between the interim order of injunction and ad-Interim order of injunction. This court cannot harmonise the premise and the conclusion and it also does not appear either from format or from the Act and the Rules as referred to earlier that there is any power conferred on this tribunal of special jurisdiction to pass ad-Interim orders as it is only entitled to pass interim orders u/s 19(6) of the Act. There is no provision u/s 19(6) itself either for appointment of a special officer or for grant of police help unless extraordinary conditions of a strong case of police help are made out. It has been commented at the instance of the petitioner that the tribunal in terms of section 19(6) can have only the power to pass interim orders in the nature of injunction and stay but not in the nature of Receiver or Special Officer. Though reference was made to section 19(4) in terms of which Tribunal has been given the power to pass such orders on the application as it thinks fit to meet the ends of justice but according to the petitioners the said power is to be exercised only at the time of final disposal. It has been further contended that there cannot be any decree of final order appointing Receiver or Special Officer. While drawing attention to the expression after giving due opportunity of hearing, the same cannot be treated as to be absent. In the said context, reference was made to a decision in the case of State of Kerala Vs. Mathai Verghese and Others, with emphasis that word in a statute cannot be substituted by the court. The court cannot do so as it can merely interpret the section. While interpreting it cannot re-write, re-cast or redesign the section. In interpreting the provisions the exercise undertaken by the court is to make explicit the intention of the legislature. Accordingly, the contention rotates that there is no question of making any attempt to make an ingenious harmony between sub-sections (4) and (G) of section 19. Section 22 also grants specific powers on the Tribunal which, however, does not include the power to appoint Receiver/Special Officer. A Tribunal being a creature of the statute can only exercise such powers specifically conferred upon it and it cannot have any inherent or Implied power. It cannot re-write, re-cast or re-design the section. It is not for the court to reframe the legislation for the simple reason that the power to legislate has not been conferred on the court. It has been further contended that section 22 also grants specific powers on the Tribunal which does not include the power to appoint Receiver/Special Officer. Accordingly, the question of appointing any Special Officer or Receiver at the ex parte ad-Interim stage does not and cannot arise and as such the order of the Tribunal is vitiated by excess of statutory power which is without Jurisdiction. It is not out of context to make a reference to the case to Morgan Stanley Mutual Fund Vs. Kartick Das, where it has been held on construction of section 14 of the Consumer Protection Act, 1986, that there is no power u/s 14 to grant any interim relief of even an ad-interim relief, only a final relief can be granted. If the Jurisdiction of the forum to grant relief is confined to 4 clauses mentioned u/s 14, no interim injunction can ever be granted in regarding even the balance of convenience. The apex court has further laid down in the said decision that as a principle ex parte injunction

would be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of *ex parte* injunctions are :--

- (a) whether Irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant *ex parte* injunction;
- (e) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application;
- (f) even if granted, the *ex parte* injunction would be for a limited period of time;
- (g) general principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court.

6. Thus, the apex court has laid down seven criteria which are to be strictly observed before passing an *ex parte* order of ad-Interim injunction. Here, in the impugned orders in the pending revisional applications it does not appear that the Tribunal has formed satisfaction about fulfilment of pre-requisite conditions as laid down by the apex court as enumerated herein before. Even on construction of the statute the apex court is very specific that no relief can be granted in the form of interim order unless the said power is conferred by the relevant statute. Here, applying this same tests, it does not appear that there is either any conferment of powers to pass ad interim order or interim order in terms of the relevant provisions of the statute. The present act under consideration will also be required to be assessed in the light which is being radiated from the aforesaid decision as propounded by the Supreme Court. Here, neither the tests have been fulfilled nor jurisdiction has been conferred on the creature of the statute to pass ad-Interim orders.

7. The Act in section 22 has specifically directed the Tribunal to observe the principle of natural Justice. Natural justice as has been observed in AIR 1976 SC 1786 at para 6 has two facets, one, the right to be given notice to the recording of reasons for the decisions. The statute does not expressly exclude the right of hearing and on the contrary it incorporates the principle of natural justice. A controversy seems to have been attempted to be raised on behalf of the respondents in this context is as to whether the right of hearing is excluded by necessary implication. It is the case of the respondents that section 19(6) which empowers the Tribunal to pass an interim order itself Implies that the Tribunal may make an *ex parte* ad-interim order. in support of the said contention reference was made to provisions of section 19(4) and 19(6). As such it is

submitted that the intention of the legislature must be to exclude any notice before grant of injunction u/s 19(6). Any other interpretation will amount to amending the statute. A reference may be made to the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where the Supreme Court observed, "We have been told that wherever Parliament has intended a hearing it has said so in the Act and the Rules and where it has not been specified it must be treated as nonexistent". Even the said problem can be comprehended in the perspective of the decision of the apex court in S.L. Kapoor Vs. Jagmohan and Others, where it has been observed that section 238(1) did not provide for such an opportunity and so by necessary Implication it must be considered that the principle of audi alteram partem was excluded. It is not always a necessary inference that if opportunity is explicitly provided in the provision and not so provided, another opportunity is to be deemed to be a consideration as excluded from the other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether administrative action entails civil consequence. It has been submitted by the respondents in the said context by placement of reliance on AIR 1978. SC 596 that there is no need to give notice and post-decisional hearing would meet the requirements for ends of justice. The recent trend of the Supreme Court has been to reject the doctrine of post-decisional hearing except in very rare and extreme emergent cases. As it has been observed in K.I. Shephard and Others Vs. Union of India (UOI) and Others, by the Supreme Court that, "we may now point out that the learned single Judge of the Kerala High Court has proposed a post amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply". The contention has been raised on behalf of the petitioners that it is a common experience that once a decision has been taken there is a tendency to uphold and the representation may not yield any fruitful purpose. In 1989(1), SCC 765, the Supreme Court approved the aforesaid observation of the previous case and further observed, "in our opinion post-decisional opportunity of hearing does not subserve the Rules of Natural Justice. The authority to embark upon a post-decisional hearing will naturally proceed with a close mind and there is hardly any chance of getting proper consideration of the repetition at such a post decisional opportunity. Here, in these cases under reference with which this court is dealing with, the orders impugned smack of mechanical process of passing of stereo-type orders which bespeak of close mind. Where the statute has made rules of natural Justice a part and parcel of the process of part materia, there should not be any question of bypassing the said part materia of normal rule by relegating the petitioner to post-decisional hearing. Such an extraordinary stage is fraught with grave implications where Tribunal may be armed with such draconian powers which is not otherwise vested with. Nothing prevented the Parliament in exercise of its legislative wisdom to confer such powers specifically on the authorities even we may come across Illustrations on CPC where court has been conferred with such powers of emergent and extreme nature when

situation so demands but the same is capable of being passed in consonance with compliance of the rigours of the stringent rules as provided under the provisions of Order 39, Rule 3 of the Code of Civil Procedure. Here no such conferment of analogous powers was made on the adjudicating authority created under the statute.

8. It has been further submitted by the respondents that it is necessary for the petitioner to demonstrate as to what prejudices have arisen by reason of the ex parte orders Impugned of ad-interim nature and if no prejudice has arisen then the fact that no notice was given would not vitiate the order of the Tribunal. This approach as the been contended by the learned counsels for the petitioners has been specifically rejected by the Supreme Court and a reference was made to S.L. Kapoor Vs. Jagmohan and Others, in the aforesaid decision of S.L. Kapoor's case, Supreme Court has observed that the non observance of natural justice by itself is prejudicial to the party concerned and proof of prejudice independent of ex-facte denial of natural Justice is unnecessary. in the said context a further reference can be made to the case reported in Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, where the Supreme Court has observed that non observance of natural Justice by itself causes prejudice to a party and proof of prejudice independent thereof is unnecessary and can be termed as illusory exercise. The respondents wanted to take refuge under the shelter of the decision reported in State Bank of Patiala and others Vs. S.K. Sharma, in the said decision the Supreme Court makes a distinction between different types of procedural violation and further opines that each and every procedural violation cannot automatically vitiate the order passed. The Supreme Court distinguishes between the cases of no notice of hearing and cases where it has been alleged that there has been no adequate hearing. in the second category of cases the petitioner is required to demonstrate proof of prejudice. The Impression has been formed by this court that the Supreme Court has opined that in the case categorised under the caption of "No Notice", principle of natural Justice has to be strictly complied with and no proof of prejudice is necessary. It has been contended in the backdrop of the instant case that if a party is prevented by an order from dealing with its assets which are not the securities of the bank, then the party is likely to suffer prejudice. if the properties of a third party or properties held by a person in personal capacity are threatened to be affected by an all pervasive order, then prejudice is no longer restricted to the parties to the litigations but it tends to encompass within its ambit even the outsiders. Even in the case reported in Haryana Unrecognised Schools Association Vs. State of Haryana, in Stanley Morgan's case, Supreme Court while, construing the Consumer Protection Act has been pleased to hold that the creature of the said statute has no inherent power to pass any interim order as the same has not been comprehended nor the same is covered by the Act. Even the power conferred upon the Tribunal u/s 22(ii)(g) of the present Act for setting aside an ex parte order of dismissal of an application for default is contemplated after issuance of notice. Further credence has been attempted to

be lent to the force of submission of the petitioners that the entire scheme of section 19 of the recovery of debts Due to Banks and Financial institutions Act, 1993 militates against the idea of ad-Interim order of exparte nature even the orders impugned are not backed up by recording of reasons. The entire superstructure of an order is bound to collapse if it is not founded on the basic foundation of reason. It is accordingly submitted that on the ground of non-recording of reasons the impugned orders of the Tribunal are liable to be set aside as they are recorded in a stereo-typed fashion without making any particular mention of the special features of the case. Here in (he above noted case the impugned exparte orders of ad-Interini nature are of widest amplitude and they are to some extent bordering on omnibus nature. The Tribunal cannot transgress the fetters even of passing interim orders as specified in the bracketed portion of section 19(6), namely, injunction or stay and it has not been explicitly covered by any power to grant any such powers even interim nature beyond that. Even if it be assumed that there is imminent danger or risk involved unless ad-interim orders of injunction in respect of the assets are not passed, the Tribunal can exercise its powers by taking recourse to expeditious service of its show-cause notice on the concerned party by communication in a speedy and efficacious manner, say for example, by way of courier service, speed post or special messenger at the cost of the applicant and can fix it for orders after notice at the shortest possible time. in the emerging situation of the evolution of social fabric where speed has become a *sin qua non* in view of scientific improvement social change must keep pace with technical progress and scientific innovation so that there may not be any disparity between the technological and social development. in the complexity of the pattern of the existing society technological innovation must preclude into the social fabric and they must be given effect to at the cost of the applicant for efficacious, prompt and urgent service so that the matter in question can be posted for orders at the earliest point of time to grapple with situations of such emergent nature. Even rules can be prescribed or amended at the first instance to effect service by affixation and other modes of service wherefrom inference can be drawn that the person concerned to be contacted has become the recipient of the notice.

9. There are other three applications which are awaiting disposal and are pending decision before this court being tagged up with the earlier two revisional applications, one of such revisional applications is also under Article 227 of the Constitution of India, in the case of Howrah Wire industries & Ors. v. UCO Bank and another is M/s. Quality Pharmaceu-ticals Ltd. v. Dena Banks & Ors. a challenge is being thrown in respect of Order No.2 and Order No.3 respectively dated 24.2.97 & 4.4.97 passed by the learned Presiding Officer, the Debt Recovery Tribunal in O.A. No. 212 of 1996. in the concluding portion of Order No.2. It has been opined that considering *prima facie* case, balance of convenience and inconvenience of the matter and interest of the bank which is dealing with public money the prayer for ad-Interim injunction is granted. The respondents are restrained by an ad-Interim order of injunction from disposing of or alienating,

encumbering or dealing with any of the properties mentioned in the schedule as appended vide annexure "G" hereto the application. The substance of the order appears to be mechanical and stereo-type in nature and there is no reference made even as regards the prayer contained in the application. The prayers stand allowed in terms of entire hog. There is no mention of the particular feature of this case and the pleadings taken by the party on the basis of which the prima facie formation of opinion has been based, the said order smacks not only of non application of mind but also of stereo-type pattern of disposal of matters and the same appears to be denuded of the foundation of reasoning. It is well-known that any order whether to be passed by a quasi-judicial authority or even by an administrative authority having civil consequences has got to be backed up by reason. Such orders are to be vibrant with the music of reason as otherwise they should not be allowed to withstand the test of scrutiny. As such the Impugned orders in the abovenoted revisional applications are set aside for ends of justice and Irregular exercise of assumption of jurisdiction by the Tribunal which does not otherwise vested with the terms of the statute. Accordingly, the said revisional applications succeed for the reasons as aforesaid and no detailed mention with regard to the particulars is made because of the views of this court about the legal position as expounded earlier. The fifth revisional application is also one pending application under Article 227 of the Constitution being directed against order No.2. dated 9.4.97 passed by the presiding officer, Debt Recovery Tribunal, Calcutta in O.A. No.70 of 1997 in the case of Tea Packs Speciality Limited u. Central Bank of India & Ors. Here also the Tribunal seems to have relied on the same stereo-type verbose of phraseology, namely, considering the prima facie case, balance of convenience and inconvenience and apprehension of the applicant bank and the amount of the claim of the bank for ad-Interim injunction is granted thereby restraining the respondents from disposing of or transferring, encumbering or dealing with in any manner the assets and properties mentioned in annexures "G" and "H" of the application and also there other assets without paying the claim of the applicant. The reference to the other assets of the applicant bank appeared to be omnibus in nature being bereft of any particulars but instead of order of ad-interim nature is bereft of specification it appears that in all the cases same language is echoed by way of formalistic vibration of ritual by enchanting a "montra" without any reference to the particulars of the averments and the pleadings constrained in the connected petition. Such repetitious process of echoing a verbatim phrase and language without any reference to substance of particulars of the petition and being bereft of reason cannot but stand on a ramshackle basis. Even shorn of compliance of dictum of construction of statute adherence to the principle of natural Justice and other appurtenant facets of legal position, the said orders cannot withstand a moment scrutiny because of stereotyped pattern of passing of orders by way of rubber stamp by the said authority. The trend seems to have setting as precedent which will also make this court hesitant to confer such uncanalised powers on the statutory authority to go ahead with its arbitrariness being unmindful of the fact that it is a statutory body entrusted with quasi-Judicial

functions and to render it in accordance with the sanction of the statute. As such this court is of the opinion that the orders Impugned cannot withstand the test of any assessment cost. No scope nor any avenue has been led upon to this court to explore for assessment of the impugned orders. The impugned orders are bristled with intricate implications of arbitrariness, non-application of mind, stereo-type pattern of functioning in all cases irrespective classification blind-folded approach to the records of the proceeding and orders themselves are bordering themselves on the point of perversity. As such these orders are liable to be set aside for impropriety in exercise of Jurisdiction and Tribunal is required to keep within its bounds and this High Court is inclined to exercise its power of judicial super intendence so that Tribunal can pass orders in terms of the statute and not otherwise.

10. In the other pending matter of Quality Pharmaceuticals Ltd. v. Dena Bank & Others, the same is directed against an order dated 6.1.97 passed by the learned Presiding Officer, Debt Recovery Tribunal, Calcutta and also an order passed by the said Authority on 21.1.97 in O.A. No. 1 of 1997. Here also the order echoes the same pattern of consideration in terms of language, substance and form and the pith and substance is that considering the prima facie case, balance of convenience and inconvenience, urgent of the matter and protection of public money with which bank has been dealing with and the prayer for ad-interim injunction is granted thereby restraining respondent No. 1 and its agents from selling, transferring and/or otherwise dealing with the properties mentioned in annexures "X" and "HH" of the application u/s 19. The respondent No. 1 was also restrained from operating its several bank accounts in different branches of Allahabad Bank, UCO Bank, Indian Overseas Bank, State Bank of India. Ad-Interim orders of ex parte nature of such blanket forms on a stereo-type recital of orders which manifestly bear insignia of complete non application of mind are flout with grave Implications. Even quasi-Judicial authorities like the Debt Recovery Tribunal are required to subserve the purpose of the statute in consonance with its objective and principle of natural justice. It appears from the orders Impugned in two proceedings that one is replica of another with regard to the substance and the latter one tends to extend its frontier even beyond the earlier one as in the latter one, operation of accounts of several banks has been directed to be suspended. It is likely to create not only a deadlock in the business but also with regard to the other business activities of the applicant and applicant may become affected because of withdrawal of the benefit to have run in transactions with several banks. This may lead to a preposterous situation where a person can be led to the precipice of crisis without hearing and such party may stand condemned without hearing and even for a period of interregnum if such person is required to suffer such pattern of injury it may become Irreparable and one may not withstand the onslaught of such types of draconic rigorous orders without any notice. At the point of threshold of the commencement of the proceeding no party can be presumed to have a full proof case for which a party to a litigation can make a walkover Just on mere asking. The tenor of the order

tends to militate against basic norms of judicial tenets which are required to be confirmed when non conformity is likely to result any such drastic repercussions. This court need not go into repetition of its opinion as expressed earlier in extenso but after having formed such an opinion it has no hesitation to strike down the orders impugned and they are liable to be set aside. As such all the abovenoted revisional applications succeed and the impugned orders therein are set aside. The said order will guid and govern all the five applications referred to above. There shall, however, be no order as to costs.

11. Applications succeed