(2022) 02 KL CK 0052

In the High Court Of Kerala

Case No : Writ Appeal No. 149 Of 2022

Mohammadali.P APPELLANT

Vs

Board Director HDB Financial Services Ltd RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Kerala High Court Act, 1958 — Section 5(i)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 14

Citation : (2022) 02 KL CK 0052

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : Maria Nedumpara, Mini Gopinath, P.Paulochan Antony, Tek Chand

Final Decision : Dismissed

Judgement

Shaji P.Chaly,J.

1. This appeal is preferred by the petitioner in W.P.(C) No.27754 of 2021, challenging the interim order passed by the learned Single Judge dated

21.12.2021, which reads thus:

â??Â ORDER

PetitionerÂ shallÂ notÂ beÂ dispossessedÂ forÂ aÂ periodÂ ofÂ sixÂ weeksÂ on Â condition that petitioner deposits an amount of Rs.25,00,000/- [Twenty

Â five lakhs only] on or before 20/01/2022.â??

2. In fact the subject matter of challenge in the writ petition is the proceedings initiated by the HDB Financial Service Ltd., apparently a non-banking

finance company, as per the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Various contentions are raised by the appellant in the writ petition relying upon the provisions of the MSME Act and the incompetency of the financing

company to initiate proceedings under the SARFAESI Act.

3. We are not going into the details of those aspects since the writ petition is still pending before the learned Single Judge for consideration and

adjudication of the issues raised by the appellant. Anyhow, it is quite clear and evident that the appellant failed to repay the amount due to the said

finance company and it was due to the failure on the part of the appellant that the finance company invoked the provisions of the SARFAESI Act,

2002. It is evident from the pleadings and record available before this Court that more than Rs.1 Crore is due from the appellant to the institution. It is

also evident that the appellant had earlier approached this Court by filing O.P.(DRT) No.169/2019, invoking Article 227 of the Constitution of India,

which was withdrawn. It is also clear from the documents produced that S.A.No.439/2018 filed by the appellant, is pending consideration before the

Debt Recovery Tribunal, Ernakulam, however the tribunal is not sitting .

4. The paramount contention advanced by the appellant in this writ appeal is that since there is no sitting in the Debt Recovery Tribunal, the appellant

had no other option than to prefer the writ petition and contest the proceedings initiated under the SARFAESI Act. It is also submitted that the learned

Single Judge was not correct in passing the interim order directing the appellant to remit the amount of Rs.25,00,000/- without adjudicating the issues

raised by the appellant in regard to the incompetency of the Finance Company to invoke the provisions of the SARFAESI Act.

5. We have heard learned counsel for the appellant Sri. Mathews.J. Nedumpara and Ms.Maria Nedumpara, Sri.Paulochan Antony for the Finance

Company and its Authorised Officer, Smt.Mini Gopinath - Central Government Counsel, for Ministry of Micro Small and Medium Enterprises &

Union of India, Sri.Tek Chand for the State Officials and perused the pleadings and materials on record.

6. The sole question emerging for consideration is whether any manner of interference is required to the interim order passed by the learned Single

Judge, directing the appellant to remit the amount in order to stay the proceedings initiated under Section 14 of the SARFAESI Act ? On a perusal of

the pleadings and the documents produced by the appellant, it is quite clear and evident that the proceedings were started in the year 2018, however, it

could not attain a logical conclusion due to the intervening circumstances, quite clear and evident from the pleadings put forth by the appellant himself.

7. It is true, the appellant has raised various contentions relying upon the provisions of the MSME Act and the SARFAESI Act, however, those

aspects are yet to be adjudicated in the writ petition by the learned Single Judge. The order impugned in this appeal is only an ad interim order, which

can be modified by the learned Single Judge at any time taking into consideration the contentions put forth by the appellant and the Finance company.

8. The issue with respect to preferring an appeal from an ad interim order was considered by a Large Bench of this Court in K.S.Das v. State of

Kerala [1992 KHC 366 â?" 1992(2)KLT 358] and after assimilating the legal circumstances under section 5(i) of the Kerala High Court Act, 1958,

the majority view is that an appeal is maintainable against an interlocutory order provided it is a final order in the miscellaneous petition in the sense

that it is not an ad interim order if the order substantially affects or touches upon substantial rights and liabilities of the parties or are matters of

moment or matters which would cause real legal prejudice to the parties, even though the parent original proceedings is alive . Therefore, it could be

seen that from every ad interim order passed by a learned Single Judge, an appeal is not maintainable before the Division Bench of this Court.

9. Going through the records and pleadings, we are of the view that the ad interim order passed by the learned Single Judge in the facts and

circumstances, cannot be said to be contrary to law or perverse, causing serious prejudice to the appellant. Though learned counsel for appellant has a

contention that the interim order was passed without properly hearing him, we are unable to agree with the same since the conditional order was

passed to protect the interest of the appellant from being dispossessed from the residential property for a period of six weeks . Following the

proposition of law laid down in K.S.Das (supra), a Division Bench of this Court in Thomas P.T. and Another v. Bijo Thomas and Others

[2021(6)KHC 279] held at paragraphs 10 & 11, as follows:

â??10. Reverting to the facts, a reading of the impugned order would show that such an ad interim order was passed in the matter as the learned Judge found it necessary to pass such an order to protect the interest of the petitioner in the writ petition. An order of this nature, according to us, cannot be understood, at any

rate, as conclusive as to any matter, main or subordinate. The same cannot also be understood to be one intended to be in force until the main dispute is decided.

Orders of this nature can only be understood as one intended to be in force until varied or modified. Merely for the reason that the learned Judge has extended the

impugned order after the appellants entered appearance and filed counter affidavit, it cannot be said to be one intended to be in force until the main dispute is

decided. In other words, the character of the ad interim order would continue to be the same until an adjudication is made by the Court, at least for the

interlocutory purpose, irrespective of the fact as to whether the opposite side had entered appearance. If that be so, according to us, such orders cannot be

impugned in an appeal under Section 5(i) of the Act, for if appeals against such orders are entertained, the appellate court would be usurping the original

jurisdiction of this Court under Article 226 of the Constitution.

â??11. The contention that K.S.Das does not preclude an appeal against an ad interim order, if the same is contrary to law or perverse and causes serious

prejudice to the parties, was advanced by the learned counsel for the appellants, placing reliance on the second paragraph of the majority opinion in the said

decision, wherein it has been held that normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to

law, or perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate

compensation. A close reading of the majority opinion in K.S.Das, especially the first sentence in the second paragraph namely â??But this does not mean that

the Division Bench hearing the appeal against such 'orders' will have to admit the appeal or have to modify the impugned order or set it aside in every caseâ?

would show beyond doubt that the said opinion deals with the manner in which an appeal against an intermediate order is to be dealt with. In other words, the

statement in the second paragraph of the majority opinion in K.S.Das that discretionary orders are not normally interfered with unless they are without

jurisdiction, contrary to law, or perverse, and cause serious prejudice to the parties, cannot be understood as one permitting an appeal to be preferred against an ad interim order if it is without jurisdiction, contrary to law, or perverse, and cause serious prejudice to the parties, for such an understanding would run counter

to the unambiguous statement in the first paragraph of the majority opinion that an appeal will not lie against an ad interim order, even if it falls within the

category of 'intermediate orders' in terms of the decision of the Apex Court in Madhu Limaye.â??

10. We fully agree with the findings of the Division Bench of this Court in Thomas. P.T (supra). On a perusal and appreciation of the contentions put

forth by the appellant, we are of the considered opinion that appellant has not made out any case to interfere with the ad interim order passed by the

learned Single Judge since the interim order passed by the learned Single Judge neither attained finality, nor, it is violative of any rules, or perverse, or

illegal .

Needless to say, writ appeal fails, accordingly it is dismissed.

