
(1998) 02 MAD CK 0100

In the Madras High Court

Case No : Writ Petition No's. 15891, 15892, and 16798 to 16801 and 16358 to 16369 of 1997

M/s. Gemini Arts Pvt. Ltd.

APPELLANT

Vs

Indian Bank and 4 others

RESPONDENT

Date of Decision : 25-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(6), 20, 22, 3

Citation : (1999) 95 CompCas 345 : (1998) 1 CTC 485

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. T.R. Rajagopalan, for M/s. Shanmugham and R. Maheswari, for the Appellant; Mr. A.L. Somayaji, for M/s. Aiyar and Dolia Mr. N. Peruvazuhudhi, Additional Central Government Standing Counsel; Mr. T. Poornam, for M/s. King and Patridge, for the Respondent

Final Decision : Dismissed

Judgement

1. All these writ petitions arise out of proceedings initiated against the writ petitioners under the provisions of the Recovery of Debts Due to Banks

and Financial Institutions Act, 1993 (Act 51 of 1993) (hereinafter called "the Act"). In Writ Petition No. 15892 of 1997 the validity of the

provisions of the Act has been challenged, with the prayer for declaration that the provisions of the Act are void and ultra vires the Constitution of

India and beyond the Legislative competence of the Legislature. In all the other writ petitions, the prayer is for the issue of writ of certiorari

questioning the interim orders passed by the Tribunal created under the Act. The interim orders relate to various types of reliefs such as

appointment of garnishee, appointment of advocate Commissioner, and orders of

interim injunction restraining the parties from either operating the shares of the respective company or to deal with the assets and properties belonging to the company etc.

2. The validity of the Act was challenged before several High Courts and the Delhi High Court has held ""that the Act was unconstitutional"" vide its

judgment in Civil Writ Petition No. 3050 of 1994, dated 10.3.1995. As against the said judgment and other similar cases, Special Leave Petitions

have been filed before the Supreme Court. Interim Orders have been passed by the Supreme Court in those proceedings and as on date, the

following order as extracted below is the latest prevailing order issued by the Supreme Court governing the Special Leave Petitions pertinent to the

validity of the Act, as passed by the Court in its Order dated 18.3.1996.

Interim order dated November, 27, 1995 passed by this Court is modified and. it is directed that notwithstanding any stay order passed in any of

the writ petitions sought to be transferred the Debt Recovery Tribunals established under the Recovery of Debts Due to Boards and Financial

Institutions Act, 1993 shall resume their functions. The transfer petition shall be listed after 8 weeks after the service of the notice is effected"".

3. As a result of the interim order passed by the Supreme Court would be futile to take up the writ petitions challenging the vires of the Act, even

though there is no bar for the High Courts to proceed with the writ petitions challenging the validity of the Act. As seen from the interim order of

the Supreme Court, no purpose will be served by this Court taking up the issue of the vires of the Act, for the simple reason that even if this Court

holds that the Act is invalid, it would be of no consequence having regard to the interim order passed by the Supreme Court, which implies that the

functioning of the Debt Recovery Tribunals cannot be interrupted. Therefore, there is no purpose in taking up W.P.No.15892 of 1997 for final

disposal. As far as the other writ petitions questioning the interim orders passed by the Tribunals are concerned, it is necessary to consider the

various provisions under the Act.

4. It is not disputed that the Tribunals have been duly constituted u/s 3 of the Act and Appellate Tribunal has also been established as

contemplated u/s 8 of the Act. The jurisdiction of the Tribunal and the procedure of the Tribunals have been stated under Sections 19 and 22 of

the Act. The remedy by way of appeal has also been provided u/s 20 of the Act which is as follows:-

Section 20 - Appeal to the Appellate Tribunal:- (1) Save as provided in sub-section(2), any person aggrieved by an order made, or deemed to

have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or

deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was

sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard,

pass such orders thereon as it thinks fit confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall

be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal".

5. According to the learned Additional Advocate-General appearing for the writ petitioners in the very nature of interim orders passed by the

Tribunal, several types of hardships have been created and impracticable interim orders have been passed. The prohibitory orders issued by the

Tribunal restraining the parties from dealing with the properties have only tied the hands of the petitioners from making any attempts to realise any

money to enable them to repay the loan or to negotiate with the creditor Banks who are the applicants before the Tribunal. Inasmuch as the validity

of the Act had been challenged, exposing the parties to such situations can be avoided either by this Court itself dealing with the issues on merits or

to grant an order of interim stay till the Supreme Court decides the issue of the validity of the Act finally. It is also contended that the appellate

remedy provided u/s 20 of the Act will not apply to the interim orders passed on Interlocutory Applications. At any rate, it is pleaded that the

Appellate Tribunal being stationed at Bombay, the petitioners, would be subjected to irreparable hardship if required to approach the Appellate

Tribunal for even appeals against interlocutory orders.

6. Mr. A.L. Somayaji, learned Senior Counsel appearing for the respondent of Bank would however, contend as follows:-

(a) Section 20 of the Act would apply for interlocutory orders also and therefore, an appeal would also lie before the Appellate Tribunal.

(b) Though the jurisdiction of this Court under Articles 226 and 227 is not barred, as a matter of policy, this Court will not interfere when there is a properly constituted statutory Appellate Tribunal.

(c) The fact that the tribunal is stated to be at Bombay cannot be a reason to bypass the Appellate Tribunal.

(d) The writ petitioners have approached this Court directly against exparte interim orders without even seeking for vacating the interim orders and

on that ground also this Court may not exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

7. As regards whether the appellate remedy u/s 20 of the Act would apply to interim orders passed by the Tribunal, on a plain reading of Section

20 of the Act, as extracted above, I am inclined to hold that the provision is all pervasive and there is absolutely no indication to assume or to

import any restricted meaning to the expression ""by an order made, or deemed to have been made, by a Tribunal under this Act"" learned counsel

for the petitioners relied on a judgment of the Calcutta High Court reported in M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, ,

which is a decision rendered in the context of the very provision under consideration. With due respect, I am unable to agree with the view

expressed by the learned Judge of the Calcutta High Court that Section 20 of the Act shall be applicable only to final orders and not interlocutory

orders. The only tangible reason given by the learned Judge in paragraph No.5 of the judgment in which he deals with the said issue, is based on

the requirement of deposit of the amount of debt due on filing the appeal as

contemplated u/s 21 of the Act. Section 21 of the Act states that an appeal shall not be entertained unless the appellant "has deposited with the Appellate Tribunal 75 per cent of the amount debt so due from him as determined by the Tribunal u/s 19." Therefore, according to the learned Judge, an order which has not determined the amount of debt, cannot be a subject matter of any appeal before the Appellate Tribunal. The said reasoning completely overlooks that the requirement u/s 21 would apply only to orders where the debt is "determined" by the Tribunal and not to other types of orders. If the Legislature was inclined to restrict the scope of the appeal before the Appellate Tribunal, it would have said so, u/s 20 of the Act itself to the effect that any person aggrieved by an order determining the amount of debt as due from him may prefer an appeal. But Section 20 of the Act is contemplated as against "an order made, or deemed to have been made by a Tribunal under the Act". There is no justification to give a restricted meaning to the said expression. It is not as though the Tribunal is entitled to pass only a final order u/s 19 of the Act. Section 19(6) of the Act empowers the Tribunal to pass interim orders and there is no reason to exclude such interim orders from the scope of Section 20 of the Act. Therefore, the requirement to deposit the "determined" amount while filing the appeal would arise only in appeal against final orders and not in other appeals against orders u/s 19(6) of the Act. A perusal of the latter part of paragraph No.5 of the judgment in which the learned Judge has dealt with the issue also, shows that the learned Judge was carried away by the fact that even otherwise u/s 18 of the Act, the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India was kept in tact. I am afraid that the said reasoning cannot lead to the interpretation or inference that the interlocutory orders are not appealable. Therefore, I am of the view that the interlocutory orders are also appealable u/s 20 of the Act.

8. The next question is as to whether the aggrieved parties can approach this Court under Articles 226 and 227 of the Constitution of India as against the orders passed by the Tribunal notwithstanding the availability of an appellate remedy. Section 18 of the Act is very clear to the effect that the High Courts jurisdiction under Articles 226 and 227 of the Constitution of India is very much available as against any order of the Tribunal

or the Appellate Tribunal. Even in the absence of such a provision the inherent powers of this Court are always available and any provision

restricting the said powers under Articles 226 and 227 of the Constitution of India would be ultra vires and void vide judgment of the Supreme

Court in L. Chandra Kumar Vs. Union of India and others, . This point is fairly conceded by Mr.A.L. Somayaji, learned Senior Counsel.

9. But what Mr.A.L. Somayaji, learned Senior Counsel, would contend is that this Court, as a matter of long accepted practice, policy and

precedents would not be inclined to exercise its discretion to interfere with an order which is appealable before a competent Appellate Authority.

The Appellate Authority under the Act is either or has been a High Court Judge or is qualified to be a High Court Judge and hence the Appellate

Authority is a competent forum to act as Appellate Tribunal. In this context, he also refers to the history behind the passing of the Act, the

objection and reasons behind the Act being expeditious adjudication and recovery of debts due to the Banks and Financial Institutions and

involving public interest and economy of the country. Therefore, it would be all the more necessary that this Court, as a matter of sound exercise of

the discretion, would not entertain these writ petitions by-passing the appellate remedy. He also relied on a number of judgments of the Supreme

Court and other Courts as listed below:-

(1) K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., ; (2) U.P. State v. Mohd. Nooh AIR 1958 S.C. 86; (3) N.T.

Veluswami Thevar Vs. G. Raja Nainar and Others, (4) The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs,

Calcutta and Others, ; (5) Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, ; (6) Joharmal

Murlidhar and Co. Vs. Agricultural Income Tax Officer, Assam and Others, ; (7) Union of India (UOI) and Another Vs. K.S. Subramanian, ; (8)

Delhi Cloth and General Mills Co. Ltd. and Others Vs. R.R. Gupta, Commercial Tax Officer, Jaipur and Another, ; (9) Assistant Collector of

Central Excise Vs. Jainson Hosiery Industries, ; (10) Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, ; (11) Assistant

Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ; (12) S.A. Khan Vs. State of Haryana and others, ;

(13) The General Manager, Southern Railway Madras-3 v. The State Consumer Protection Disputes Redressal Commission, R.K. Mutt Road

Madras- 4 1993 WLR 515; (14) Y. Philomena v. Government of A.P. 1994 Lab. I.C. 1631; (15) U.P. Jal Nigam and Another Vs. Nareshwar

Sahai Mathur and Another, ; (16) State of Himachal Pradesh Vs. Shri Pirthi Chand and another, ; (17) State of Goa and others Vs. Leukoplast

(India) Ltd. etc., ; (18) Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others, .

10. It is not necessary to deal with the each and every decision or to extract the relevant passages from each and every one of the above decisions.

Suffice it to summarise the salient ratio of these decisions in short as follows:

(a) The remedy under Article 226 of the Constitution of India is discretionary and the Court has discretion to refuse if the aggrieved party has

adequate remedy.

(b) The jurisdiction under Article 226 of the Constitution of India is not barred but it is a rule of self imposed limitation which Courts have laid

down for the exercise of their discretion.

(c) A lower authority has the power to decide a question either rightly wrongly, but as long as a remedy by appeal is provided, there is no

justification to interfere under Article 226 of the Constitution of India.

(d) Where an Act provides an adequate and complete machinery to challenge an order, the hierarchy of authorities and Appellate Authorities,

Tribunal etc. the order can be challenged only by the mode prescribed under the Act.

(e) The matters involving revenue, economic offences, fiscal and tax planning of the State etc. where statutory remedies are available, are not

matters where such discretion would be exercised.

11. After referring to the above rulings the Mr. A.L. Somayaji would also stress on the need to implement the objects of the Act as it has been

stressed by the Supreme Court in the case of Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, . He

would also content that the petitioners have rushed to the High Court merely as against exparte interim orders without even seeking to vacate them;

It is open to the petitioners to put forth their difficulties before the Tribunal or to project any proposal for compromise or for repayment of the loan.

12. The learned Additional Advocate-General for the petitioners in his reply sought to rely on some of the observations from and out of a few of

the Rulings referred to by Mr.A.L. Somayaji. He would refer to Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila

Parishad, Muzaffarnagar, to the observation that in exercising the discretion under Article 226 of the Constitution of India it was a mere discretion

rather than Rule of law and in exceptional cases, the writ of certiorari will be issued where the constitution of the authorities under the Act were not

valid. He would contend that at least a Division Bench of a High Court (Delhi) has found the provision of the Act and the constitution of the

Tribunal under the Act as unconstitutional. Also in the judgment reported in Ram and Shyam Company Vs. State of Haryana and Others, it was

held that when the appeal was not an effective remedy, the writ was maintainable. He would also refer to the observations of the Supreme Court in

paragraph 93 of the judgment in L. Chandra Kumar Vs. Union of India and others, . While dealing with the powers of the Tribunal regarding their

competency to hear the matters where the vires of the statutory provisions are questioned, the Supreme Court has observed that the Tribunal

cannot act as a substitute for the High Court or the Supreme Court and that in such cases, the High Court concerned may be approached directly.

The petitioners approach to the High Court was therefore, justified, according to the learned counsel.

13. The principles stated on behalf of the respondent Bank on the basis of the numerous decisions relied upon by Mr. A.L. somayaji are

unexceptionable. This Court under Article 226 or 227 of the Constitution of India cannot be converted intoan Appellate or Revisional forum for all

the statutory appeals for which regular authorities are prescribed under the Act. But as a Constitution Bench of the Supreme Court in the judgment

reported in U.P. State v. Mohd. Nooh AIR 1958 S.C. 86 pointed out, ""there is no rule, with regard to certiorari as there is with mandamus, that it

will lie only where there is no other equally effective remedy. It is well established that provided the requisite grounds exist, certiorari will lie

although a right of appeal has been conferred by statute."" In the present cases, I am inclined to hold that there are at least two requisite grounds to

permit the petitioners to approach this Court as mentioned below, subject to the aggrieved parties having moved the Tribunal itself for vacating the

interim orders and final orders being passed thereon:

(a) The validity of the Act and the Constitution of the Tribunals are under challenge and at least one Division Bench of a High Court has declared

the provisions as ultra vires and void. The interim directions issued by the Supreme Court is only to enable continuance of the functions of the

Tribunal, but not a bar on the power of the High Courts to scrutinise the correctness of the orders issued by Tribunals. That the power under

Article 226 of the Constitution of India can be exercised where the validity of the Act is questioned, is approved by a few decisions of the

Supreme Court. Apart from the two decisions of the Supreme Court relied on by the petitioners in Baburam Prakash Chandra Maheshwari Vs.

Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and Ram and Shyam Company Vs. State of Haryana and Others, in the judgment

reported in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, also the challenge to the vires

of the Act is mentioned as ground which may warrant interference under Article 226 of the Constitution of India, notwithstanding the availability of

an alternative remedy. Therefore, in these cases, there is no harm in the High Court scrutinising the correctness of interlocutory orders till such

time the Supreme Court renders its decision on the validity of the Act.

(b) It is admitted that as on the date, only one Appellate Tribunal has been constituted under the Act which is stationed at Bombay. It is true that

Mr.A.L. Somayaji, contended that there are certain other forums like the Company Law Board or National Consumer Forum which are stationed

at distant places and that cannot be a reason to by-pass an alternative remedy. In this context it is to be borne in mind that we are dealing with

interlocutory orders and not final orders. I agree with the views expressed by the learned single Judge of the Calcutta High Court in M/s. Pratap

Ch. Dey and others Vs. Allahabad Bank and others, , to the extent of his observation that to expect a litigant to approach the Appellate Tribunal at

Bombay as against simple interlocutory order of the Tribunal, ""shall involve not only huge expenses, but also considerable period of time and the

delay in disposal of the appeal shall defeat the very purpose of the Act"". If the appeals against all interlocutory orders through out the country are

to be truly and seriously entertained, heard and disposed of by only one

Appellate Tribunal constituted at Bombay, one can easily visualise the resultant situation. Section 8 of the Act contemplates constitution of more than one Appellate Tribunal. There should be at least four Appellate Tribunals one for each region, if not one for each State. The failure on the part of the Central Government to have constituted adequate number of Appellate Tribunals to serve all the Regions in the country in terms of the Act, cannot be an excuse to inflict hardship on the litigant public.

Undoubtedly, the object of the Legislature in having brought-forth the Act may be welcome and in the interest of the expeditious disposal of cases from the angle of public interest. But if the Executive while implementing the objects of the Act, chooses to be indifferent to furnish proper and adequate infrastructure to enable these Tribunals to effectively take over the functions of the Civil Courts, the resultant situation would be only worsening the existing state of affairs and putting the litigants to lot of miseries. The legal and litigant fraternity in our country are aware of how the Tribunals constituted recently under various enactments are functioning much to the disappointment of everyone. To expect a loanee at Kanniyakumari or Madurai, to go to Bombay to file an appeal against an interlocutory order, is to say the least, unfair. In *Assistant Collector of Central Excise Vs. Jainson Hosiery Industries*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , the Supreme Court has held that there will be no interference under Article 226 of the Constitution of India if there is an alternative remedy unless if the statutory remedy is likely to be too dilatory or difficult to give quick relief or ill-suited to meet the demands of the situations.

Therefore, I am inclined to hold that till such time the Supreme Court passes its verdict on the validity of the Act, and till such time proper constitution of such Regional Appellate Tribunals, it would be in the interest of justice and in the interest of litigant public, for the High Court to exercise its powers of scrutiny of at least the interlocutory orders of the Tribunals and that therefore, any writ of certiorari in the context would be entertained by this Court in its discretion.

14. However, in these writ petitions, the petitioners admit that they have rushed to the High Court against were ex parte orders and had not made any attempt to plead or to put forth their case before the Tribunal. Such an

attitude by the petitioners cannot be appreciated. They are entitled to plead all their objections to the interlocutory petitions, and as to whether such reliefs can be granted u/s 19(6) of the Act and to make constructive suggestions to the Banks so that the Tribunal can pass a considered order after hearing both the parties. After final orders are passed by the Tribunal on such interim applications, the aggrieved parties are free to approach this Court again on the merits of each case.

15. In the result, all the writ petitions and the connected Miscellaneous Petitions except W.P.No.15892 of 1997 (in which a writ of declaration is sought for) are dismissed. No costs. In view of the directions of the Supreme Court, there could be no grant of or continuance of any order of interim stay as regards the functioning of the Tribunal and therefore, W.M.P.No.25195 of 1997 in W.P.No. 15892 of 1997 is also dismissed.

W.P.No. 15892 of 1997 may be posted in the usual course.