

(1998) 06 CAL CK 0029

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 1238 of 1998

Radhakrishan Maity

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 19-06-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(1), 19(6), 3

Citation : (1998) 2 CALLT 395 : (1999) 98 CompCas 217

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Mr. S. Banerjee, Mr. Protik Prokash Banerjee, Mr. Chanchal Kumar Dutta and Mr. Tapas Saha, for the Appellant; Mr. M.R. Sarbadhikari, for the Respondent

Judgement

A. Kabir, J.—This application under Article 227 of the Constitution of India is directed against order No. 6 dated 30th April, 1997 passed by the Debts Recovery Tribunal, Calcutta, in O.A. No. 71 of 1997, restraining the defendants Nos. 1, 2 and 3 before the Tribunal by way of an ad-interim order of injunction from receiving any money from M/s. Bralthwaite & Company Ltd. till the disposal of the application for interim orders. It may be mentioned that the said order was passed on a petition filed on behalf of the Bank for such an order of injunction till the disposal of the pending proceedings before the Tribunal.

2. Appearing in support of the application, Mr. Protik Prokash Banerjee, learned Advocate, firstly urged that the impugned order was not sustainable on account of the fact that it was beyond the scope of sub-section (6) of section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the "1993 Act". Mr. Banerjee urged that the scope of sub-section (6) of section 19 of the 1993 Act which empowered the Tribunal to make interim orders is limited to an order, either by way of injunction or stay, to debar the defendant from transferring, alienating or otherwise dealing with or

disposing of any property and assets belonging to him without the prior permission of the Tribunal.

3. Mr. Banerjee urged that the manner in which the ad-interim order had been passed is beyond the scope of the said provisions, since the Tribunal was not entitled to restrain the defendant from realising money from any third party, having regard to the nature of the interim orders which could be passed by the Tribunal.

4. On behalf of the petitioner, it was also urged that sub-section (6) of section 19 of the 1993 Act did not empower the Tribunal to pass ad-interim orders and that the jurisdiction of the Tribunal was limited to making interim orders only and that too, upon notice to and after hearing the defendant. In support of his aforesaid submissions, Mr. Banerjee referred to and relied upon a single Bench decision of this court in the case of *Grapco Industries v. Industrial Credit Investment of India Ltd. and Ors*- (1) 1998 CLT 278 HC : 1998 (1) CRILJ 78, wherein the question of the Tribunal's power to pass ad-interim orders had been considered in extenso and it had been held that the Debts Recovery Tribunal, being a creature of Statute, it could not travel beyond the powers vested in it by the Statute.

5. The said question has been discussed threadbare in the said Judgment and having regard to the nature and scope of the 1993 Act and the provisions of section 19 thereof, read with the relevant Rules. Including the form in which application under sub-section (1) of section 19 is to be made and served, I see no reason to disagree with the views expressed by the learned Judge. In fact, as has been observed in the said judgment, an application u/s 19(1) of the 1993 Act is required to be made in a particular form, where a specific column has been provided for relief by way of interim orders to be specified, in keeping with the provisions of subsection (6) of section 19. Sub-section (3) of section 19 indicates that on receipt of such an application, the Tribunal is to issue summons requiring the defendants to show cause within 30 days of the service of summons as to why the reliefs prayed for should not be granted. Since the application also contains the prayer for interim orders, it follows that no interim orders can be made without the period for showing cause having expired.

6. In that view of the matter, the Tribunal exceeded its jurisdiction in making the ad-interim order and the same is, accordingly, set aside.

7. There will be no order as to costs.

8. If a xerox certified copy of this order is applied for, the same is to be supplied to the applicant within a week from the date of making of such application, subject to compliance with all the required formalities.

9. Petition allowed