

(2008) 05 DEL CK 0209

In the Delhi High Court

Case No : Writ Petition No. 9576 of 2007 and C.M. No. 17993 of 2007

Sanjeev R. Apte

APPELLANT

Vs

I.F.C.I. Ltd. and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(6), 22(1)

Recovery of Debts Due to Banks and Financial Institutions Rules, 1993 — Rule 18

Citation : (2009) 3 PLR 44

Hon'ble Judges : V.K. Shali, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : M. Dutta, for the Appellant; Atul Sharma and Abhishek Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—The writ petition challenges the order dated 27th November, 2007 passed by the Chairman, Debts Recovery Appellate Tribunal, Delhi. The facts of the case are as under:

2. The dispute arose from the judgment of the Debts Recovery Tribunal (hereinafter referred to as the "DRT") in O.A. No. 415/2000 filed by IFCI Ltd. against M/s A.E.C. Ssangyong Ltd. and others for recovery of Rs. 50 crores and odd with pendente lite and future interest. The petitioner herein was the guarantor for the repayment of the said loan amount. Pursuant to the said suit, a recovery certificate was issued where the petitioner was Certificate Debtor No. 2. In these proceedings on 24th December, 2002, the following order was passed:

CD No. 2 through his counsel is directed to deposit his passport with the undersigned immediately. He is directed to file affidavit of assets/movable/immovable and details of bank accounts and details of family members by next date of hearing. CD. No. 2 is directed not to leave the country till further orders

from the undersigned.

3. This order was challenged in appeal before the DRT and by the order dated 25th August, 2005 the said challenge was dismissed leading to the appeal before the Debts Recovery Appellate Tribunal (hereinafter referred to as the "DRAT") which led to the impugned order dated 27th November, 2007.

4. The appellant is aggrieved by the order of the Tribunal insofar as the order in paragraph 10 deals with the judgment of this Court in the case of A.S. Mittal v. P.O. Debts Recovery Tribunal and Ors. in C.M. (M) No. 505/1999 decided on 21st November, 2003. The Tribunal had distinguished the aforesaid judgment on the ground that in that case the recovery of the liability had not taken place as was done in this case. Therefore, the Tribunal's reasoning is to the effect that once a determination of the liability has taken place, the judgment in A.S. Mittal's case (supra) rendered by the learned Single Judge does not apply. The relevant portion of the said judgment are as under:

4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are namely to make interim order whether by way of an injunction or stay against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of any property and assets belonging to him without the prior permission of the Tribunal. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been executed by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive section.

5. Having gone through the powers enumerated above. I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner. In the present case, the Tribunal is entitled to pass interim order in accordance with Section 19(6) of the Act and no more. In this view of the matter, I set aside the order dated 4th May, 1999. However, the petitioner is directed to make himself available before the Tribunal as and when he is required, for which purpose he shall give an undertaking to the Tribunal.

5. The law laid down by the learned single Judge is clear that the Tribunal does not have any power to restrain a citizen from traveling. This determination of law by the learned Single Judge that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner abroad in exercise of its powers to pass an interim order u/s 19(6) of the Act is not dependent upon determination of liability by the Tribunal. In our view, the judgment has been totally misconstrued by the DRAT in confining it to matters where the liability has not been determined.

6. In our view, the judgment of the learned Single Judge of this Court, which we hereby affirm and endorse, is categorical and denies the Tribunal such a right to impose any restriction on the passport of the petitioner. The applicability of the

judgment of the learned single Judge in A.S. Mittal's case was applicable to the exercise of the jurisdiction by the Tribunal and was not conditional as wrongly construed by the Tribunal. Accordingly, the order of the Tribunal, to the extent which imposes restriction on the traveling and passport of the petitioner is quashed and set aside.

7. However, as a pre-condition of exercising of the equitable jurisdiction under Article 226 of the Constitution of India, we had enquired from the petitioner whether he will undertake to abide by the terms of the conditions contained in the letter dated 5th April, 2008 issued by the sister company of the petitioner-company from which the present dispute arose and of which company the petitioner is also a Director. The petitioner says that he has no objection to give an undertaking to comply with the terms imposed in the letter dated 5th April, 2008. If an when such an undertaking is filed, the order passed today shall come into effect. The learned Counsel for the petitioner shall also state that the conditions imposed on the letter dated 5th April, 2008 shall be complied with not later than 3rd September, 2008. He shall file an undertaking to the said effect with the learned Registrar General of this Court. In view of the aforesaid observations, the petition is allowed with no order as to costs.