

(2002) 12 SC CK 0106
In the Supreme Court Of India
Case No : Civil Appeal No. 8424 Of 2002

State Bank of Hyderabad

APPELLANT

Vs

Pennar Patoruon Ltd. and Another

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Companies Act, 1956 — Section 446

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

Citation : (2003) 114 CompCas 66 : (2003) 4 SCALE 125

Hon'ble Judges : G. B. Pattanaik, C.J;K. G. Balakrishnan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

K.G. Balkrishan, J.—Leave granted.

This is an appeal against the order of the Division Bench of the Andhra Pradesh High Court, and the question for consideration is whether when the Debt Recovery Tribunal under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "Act") exercises his power u/s 19(1)(e) and appoints a Commissioner for preparation of an inventory of the properties of the defendants, whether prior leave of the Company Judges under the provisions of Companies Act be necessary, since the company in question is under liquidation and a provisional liquidator has been appointed.

2. The appellant Bank as well as the other members consortium issued notice to the Company and its guarantors calling upon them to pay the outstanding debts to which the Company replied and acknowledged the liability to the amount. Before filing of an application to the Tribunal under the Act, in a winding-Up Petition before the learned Company Judge of the High Court in Company Petition No. 131/1999, the High Court appointed a provisional liquidator. An interlocutory application was fled before the Tribunal with the prayer that the official liquidator should be restrained from making any payment lying with him to the depositors

or the Company or to any other person. The Tribunal appointed an Advocate Commissioner for making an inventory of the properties and when the Commissioner approached the provisional liquidator the said liquidator replied that he is in custody of the property and all necessary steps are being taken to recover the dues of the debtors of the Company and he would abide by the orders to be passed by the Andhra Pradesh High Court in the Company Jurisdiction. The Tribunal thereafter passed an order on 9.1.2001 calling upon the official liquidator to cooperate with the Commissioner appointed by the Tribunal for preparing the inventory of the company, and in the event the liquidator does not cooperate, then the Commissioner would be entitled to take police help in making the inventory. Against the aforesaid order of the Tribunal, the liquidator filed an application before the Company Judge with the prayer that the Advocate Commissioner be restrained from proceeding with the matter any further. The learned Company Judge referred the matter to the Division Bench. The Division Bench by the impugned order came to the conclusion that the "Tribunal itself being subject to the supervisory jurisdiction of the High Court, it is unthinkable that the Tribunal would pass orders/directions in respect of the matters, which are in seisin of the Company Judge, and the properties in question are in custody of the provisional liquidator. The High Court also came to the conclusion that the Judgment of this Court in Allahabad Bank Vs. Canara Bank and Another, is not an authority for the proposition whether any leave of the Company Judge is necessary before the Commissioner appointed by the Debts Recovery Tribunal is authorised to hold an inventory of the properties, which properties remained in the custody of the provisional liquidator by virtue or application of the provisions of Companies Act. It is this order of the Division Bench of the High Court, which is the subject matter of challenge in this appeal.

3. Mr. G.L. Sanghi, the learned senior counsel appearing for the appellant contended that decision of this Court in Allahabad Bank applied in all force to the point in issue, and therefore, the High Court committed error in holding that the leave of the Company Court is necessary before an Advocate Commissioner could be appointed by the Tribunal for making an inventory. Mr. Rohtagi appearing for the respondents, on the other hand, contended that by operation of law, particularly the provisions contained in Section 456 of the Companies Act on and with effect from the appointment of the provisional liquidator, it is the liquidator who is in custody and control of all reporting effect and actionable claim to which the Company may be entitled to and the said liquidator acts on behalf of the Company Judge, who is in seisin of the matter, where a winding up order is passed or a provisional liquidator is appointed. That being so, the minimum requirement that without the leave of the Company Court no other authority can issue any direction in relation to the matter, which is the subject matter of the proceedings of the Companies Act, is unassailable and consequently the High Court was justified in passing the impugned order. Mr. Rohtagi also further contended that the decision of this Court in this context may require a consideration by a larger Bench inasmuch as in other eventualities, there may be

a clash between the Tribunal and the Company Judge, and therefore, the matter should be referred to a larger Bench.

4. The power of the Tribunal under the Act to appoint a Commissioner for preparation of an inventory of the properties of the defendant is undisputed in view of the clear and unambiguous provisions contained in Section 19(13)(e) and Jurisdiction of other Courts, excepting the Supreme Court and High Court exercising jurisdiction under Article 226 and 227 is also ousted u/s 18 of the Act in relation to matters specified in Section 17; Section 17 empowers a Tribunal to exercise on and from the appointed day the jurisdiction, powers and authority to entertain and decide application from the Banks and financial Institutions for recovery of debts due to such banks and financial institutions. The ancillary power of the Tribunal to appoint a Commissioner for preparation of an inventory of the properties is in aid of the power of the Tribunal u/s 17. This Court in the case of Allahabad Bank referred to (supra) formulated the questions as to what is the extent and under what situation the provisions of Section 446 of the Companies Act will have no application to a proceedings before a Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being questions two and three in the aforesaid judgment. On an elaborate consideration of those two questions, the Court answered by examining from four different angles, namely by interpreting the provisions of the Act and giving a purposive interpretation to the same; by examining whether the Recovery Act is a special law and the Company Act is general law by also considering even in both the laws are held to be special laws, then the Recovery Act being a later law whether would prevail over on the earlier Company Law and lastly on considering the different judgments of different High Courts, including some judgments of this Court. It was ultimately held that no leave of the company Court is necessary for initiating or continuing the proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Mr. Rohtagi contends that in the aforesaid case, the Court has not considered the impact and effect of the provisions of Section 456 and Section 10 of the Companies Act by virtue of which it is the provisional liquidator, who remains in custody of all the properties effects and actionable claim of the Company and to allow a Tribunal to usurp any jurisdiction with regard to the said custody without leave of the Court particularly when the Tribunal is headed by a sitting or retired District Judge, whereas the Company Judge is a sitting Judge of the High Court, will be anomalous. There may be some force in this contention, which may necessitate a reexamination of the judgment on this score in Allahabad Bank case. But in the case in hand, in view of the limited direction that has been issued by the Tribunal. We see no question of any confrontation or usurping the jurisdiction of the learned Company Judge or divesting the custody of the official liquidator, which custody, he has assumed by virtue of Section 456 of the Companies Act. The limited direction of the Tribunal was to appoint an Advocate Commissioner and requiring the Commissioner to have an inventory of the properties, which direction undoubtedly the Tribunal possesses u/s 19(i)(e) of the Debts Recovery Tribunal

Act. For such direction issued by the Tribunal in exercise of power u/s 19(8)(e) of the Act, no prior permission of the Company Judge u/s 446 is necessary. In fact, the official liquidator should have cooperated with the Commissioner in making an inventory of the properties of which he continues to be in custody after being appointed as provisional liquidator. We therefore, set aside the impugned judgment of the High Court and direct that the provisional liquidator shall permit the Advocate Commissioner to have an inventory of the properties of the Company. The appeal stands disposed of accordingly.