(2018) 04 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No 3613 , 3614 , 3615 of 2018

STATE BANK OF INDIA — APPELLANT

Vs

ERICSSON INDIA PRIVATE LIMITED & ORS — RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 38 Rule 5, Order 38 Rule 10
Arbitration And Conciliation Act, 1996 &mdas;h Sec 37, Sec 17

Citation : (2018) 16 SCC 617 : (2018) 5 Scale 421

Hon'ble Judges : Adarsh Kumar Goel, Rohinton Fali Nariman

Bench : Full Bench

Advocate : Kapil Sibal, Mukul Rohatgi, Mahesh Agarwal, Ameet Naik, Abhishek Kale, Shally Bhasin

Final Decision : Disposed Of

Judgement

[1] Leave granted.

[2] We have heard learned counsel for the parties. An arbitration dispute is pending between the unsecured creditors and the debtors. The Arbitral

Tribunal passed an order under Section 17 of the Arbitration And Conciliation Act, 1996 restraining the claimants and its heirs from alienating,

encumbering, transferring any of its assets without permission of the Arbitral Tribunal. The reason given for passing the order is balance of

convenience and irreparable injury. The said order has been confirmed by the High Court under Section 37 of the Arbitration and Conciliation Act,

1996.

[3] Order XXXVIII Rule 5 of the Civil Procedure Code has been passed by complying with the conditions under Order XXXVIII Rules 5 and 10

CPC. It is also submitted that the secured creditors cannot be deprived of their statutory rights against the assets by the Arbitral Tribunal.

[4] Learned counsel for the respondents have supported the impugned orders by submitting that the sale by the secured creditors is to be in

accordance with law.

[5] There can be no dispute that the Arbitral Tribunal has no jurisdiction to affect the rights and remedies of the third party-secured creditors in the

course of determining disputes pending before it. Moreover, the impugned order does not comply with the mandate of Rules 5 and 10 of Order

XXXVIII CPC. Thus, the impugned orders cannot be sustained and are accordingly set aside.

[6] It is, however, made clear that the secured creditors will proceed against the asset(s) of the debtor(s) in accordance with law.

[7] This order will not affect any of the remedies of either of the parties.

[8] We have not gone into any other issue except the validity of the impugned order.

[9] The appeals are disposed of as above.

