

**(1997) 06 AP CK 0032**

**In the Andhra Pradesh High Court**

**Case No : Appeal Against Order No. 622 of 1997**

State Bank of India

APPELLANT

Vs

Sarathi Engineering Enterprises

RESPONDENT

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**Date of Decision :** 23-06-1997

**Acts Referred:**

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

**Citation :** (1997) 4 ALT 392 : (1997) 2 APLJ 428 : (1998) 93 CompCas 529

**Hon'ble Judges :** Lingaraja Rath, J; Krishna Saran Shrivastav, J

**Bench :** Division Bench

**Advocate :** M. Shankar Narayan, for the Appellant;

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## **Judgement**

Lingaraja Rath, J.—The appellant-the State Bank of India-has approached against the order of the First Additional Subordinate Judge, Ranga Reddy District at Saroornagar, Hyderabad, assailing the order directing injunction against it to permit the respondent to withdraw 85 per cent. of the amount credited into the account of the petitioner and not to withhold the amount without due process of law. The respondent brought the suit O.S. No. 599 of 1995, against the appellant for a decree to direct the appellant to grant, necessary and needful loan facilities and other banking limits, i.e., cash, credit limit, bank guarantee limit and letter of credit limits after making the necessary estimates by the appellant or by the Advocate-Commissioner appointed by the court and permit the respondent to continue to operate the account cash credit No. 5/18 and use or withdraw the deposits. The suit is being resisted by the appellant on the ground of no entertainability in view of the circular of this court in ROC. No. 98/SO of 1995, dated March 13, 1995. The learned subordinate judge allowed the application for injunction against the appellant that the bank has not obtained the necessary attachment order from the Debt Recovery Tribunal and hence cannot withhold the amounts due to the petitioner without due process of law.

2. No doubt, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Debt Recovery Tribunal has exclusive jurisdiction to deal with any

application by the bank for recovery of a debt when the debt exceeds Rs. 10,00,000. Under the circular in question, upon which reliance is placed by the appellant, what was clarified was that the civil court in Andhra Pradesh will cease to have any jurisdiction, power or authority in relation to matters specified in section 17 of the said Act. Section 17 is the provision which so far as it is relevant for the present purpose, vests power in the Tribunal to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. Thus, when the bank has the cause of action to proceed for recovery of a debt, the exclusive jurisdiction to entertain such application lies with the Tribunal only. The respondent has filed the suit to compel the bank to comply with its obligations as a banker.

3. It is, however, submitted by learned counsel for the appellant that the bank has already instituted an application before the Debt Recovery Tribunal registered as O.A. No. 15 of 1996, in which interim orders have been passed for attachment of the immovable properties of the respondent and an Advocate-Commissioner has also been appointed. It is his submission that if the present order of injunction passed by the learned subordinate judge is allowed to stand, it would in effect mean that whatever money deposited into the accounts of the respondent, he will be entitled to withdraw and avail of loan facilities of the bank without in any way paying off the money and that the debt recovery proceedings shall become frustrated.

4. Section 19 of the Act vests power in the Tribunal to pass interim orders either by way of 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. Hence, the appellant can undoubtedly approach the Tribunal for an order restraining the respondent from in any way dealing with the account in the bank including alienating the amounts from the bank in favour of anybody else. It is conceded by learned counsel for the appellant that such an application before the Tribunal has got to be made. Since the Tribunal is the competent authority to pass an order in favour of the appellant precisely in the same matter in which the injunction is being resisted, we feel that the appellant can obtain appropriate relief from the Tribunal. If an order of the Tribunal is passed, it will have undoubtedly precedence over an order passed by the civil court as whatever cannot be directly done cannot be indirectly done through court process. If the bank has the right to approach the Tribunal for recovery of its debt and the Tribunal has got powers to pass interim orders, it cannot be thought of that there can be parallel injunction proceedings against the bank in another forum so as to frustrate the proceedings before the Tribunal. But, until such orders have been passed by the Tribunal, the civil court's jurisdiction would not be ousted in the matter of grant of injunction.

5. Considering such fact, we dispose of this case with a direction that the appellant may approach the Tribunal within ten days from today and obtain

necessary orders. Until July 3, 1997, the orders of the civil court shall remain stayed.