

(2003) 11 AP CK 0054
In the Andhra Pradesh High Court
Case No : CRP No. 4429 of 2002

Super Shine Abrasives Pvt. Ltd. and Others	APPELLANT
Vs	
Debts Recovery Tribunal and Another	RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(18), 20

Citation : (2004) 3 ALD 183 : (2004) 3 BC 209 : (2004) 52 SCL 512

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Jagadish, for the Appellant; K. Simhadri, for the Respondent

Judgement

P.S. Narayana, J.—The order impugned in the present civil revision petition under Article 227 of the Constitution of India, reads as hereunder:

"Counsel for the applicant petitioner present. He states that R-1, R-2, R-3 are not reported today and pray for an order. No representation for R-1, R-2, R-3. R-1, R-2, R-3 called absent set ex parte. R-4, R-5 have already reported no counter on 4-12-2001.

The Counsel for the petitioner states that an advocate Commissioner had been already appointed and an inventory had been taken and too press that a fresh advocate Commissioner may be appointed to sell the same and remit the proceeds into the account of the applicant Bank. Accordingly Sh. Md. Moinuden, Advocate is appointed as Receiver to seize and sell the petition schedule property by way of a public auction and remit the proceeds into this Tribunal to the credit of the O.A. The Receiver's remuneration is fixed at Rs. 2,500/- and the same may be paid to the receiver directly by the applicant Bank. Call on 14-5-2002."

It is needless to say that by virtue of the impugned order, one Sri Moinuden, Advocate was appointed as receiver to seize and sell the petition schedule

property by way of auction and remit the proceeds into the Debts Recovery Tribunal, Hyderabad, hereinafter referred to as "Tribunal" for the purpose of convenience, to the credit of the pending O.A.

2. Sri T. Jagadish, the learned Counsel representing the petitioners submitted that ordering sale by appointment of Commissioner or Receiver is an extreme step and in such a case whether the petitioners had contested the matter or not, the Tribunal is duty bound to record reasons and in this view of the matter, definitely the impugned order is in violation of the principles of natural justice and the same is liable to be set aside. The learned Counsel also no doubt made certain submissions relating to the power of the Tribunal in appointing a Receiver or a Commissioner for seizure and sale of properties. Strong reliance was placed on a decision of Full Bench of Bombay High Court in *State Bank of India Vs. Trade Aid Paper and Allied Products (India) Pvt. Ltd. and others*, .

3. Per contra, Sri Simhadri, the learned Counsel representing the 2nd respondent - State Bank of Hyderabad, made the following submissions. The learned Counsel would contend that the events which happened in the present case clearly go to show that the attempt on the part of the revision petitioners is only to delay the proceedings and ultimately it would benefit nobody. The learned Counsel also submitted that this is a case where the 2nd respondent is interested in realizing the amount and to safeguard its own interest when the jurisdiction of the Tribunal was invoked on being satisfied that circumstances do exist to appoint a Receiver to seize and sell the petition schedule property, the impugned order was made. The learned Counsel while making elaborate submission had taken me through the different provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as "Act" for the purpose of convenience, and the learned Counsel also submitted that in the light of Section 19(18) of the Act, as amended by Amending Act is 2000, the power to appoint either a Commissioner or a Receiver to sell the property in question pending disposal of the main O.A. cannot be in doubt at all. The learned Counsel further submitted that the powers of the Tribunal in the case of appointment of a Commissioner or a Receiver are definitely wider than the powers of ordinary Courts conferred by the provisions of the Code of Civil Procedure. In this view of the matter, the impugned order is well justified. The learned Counsel also further submitted that when a specific remedy by way of Appeal is provided for, the remedy under Article 227 of the Constitution of India cannot be invoked. The learned Counsel also had explained in detail that these are all pledged articles or hypothecated goods which can be sold even without the intervention of the Court and when that being so, the question of applying the principles of natural justice may not arise in such a case. The Counsel also had explained the ambit and object of the Act aforesaid in detail and also had placed strong reliance on *Allahabad Bank, Calcutta Vs. Radha Krishna Maity and Others*, , *S.K. Nagulu Coal Depot v. Syndicate Bank* 1995(2) ALD 49, *Punjab National Bank Vs. O.C. Krishnan and Others*, , and *State Bank of India Vs. S.B. Shah Ali (Died) and others*, .

Heard both the Counsel.

4. Section 19 of the Act deals with application to the Tribunal. The relevant provision for the present purpose is Section 19(18), which reads as hereunder:

"Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the Courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal think fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

In the decision referred *State Bank of India v. T.A. Paper and Allied Products (India) Private Limited*, (supra), it was held by the Bombay High Court as hereunder:

"The suits instituted by Bank and financial institutions for realization of loans advanced to borrowers form a class by itself. The amounts advanced by the Nationalised Bank or the financial institutions are out of the funds deposited by common citizens and the loans are advanced with a view to generate more employment and creation of additional wealth. To hold that the Receiver should not be appointed unless it appears that sale proceeds of the properties secured or other securities are insufficient to satisfy the claim or Receiver should be appointed only in extreme cases and where the interest of the creditor is exposed to manifest peril would lead to serious prejudice. The experience indicates that huge amounts are secured from Banks and financial institutions and repayment is refused for no valid reason. The institution of the suit and the pendency of the suit enables the defendants to create more encumbrances on the properties and some of the encumbrances are like failure to pay Income Tax, property taxes, provident fund dues of the employees etc. All these liabilities though subsequent to the date of the institution of the suit have a preferential claim of recovery and that leaves the Bank without any real relief after obtaining the judgment."

In the present case, the proposed sale of movables of the 1st petitioner Company by way of publication by the Receiver appointed in I.A. No. 880/2002 fixing the date of sale as 28-9-2002 fixing the upset price had been questioned.

The existence of power is definitely something different from the exercise of such power. It is not in controversy that the Tribunal has power to order seizure and also sale by appointment of a Commissioner or a Receiver as the case may be, depending upon the facts and circumstances of the case. It is needless to say that the appointment of Receiver itself normally is taken as a harsh remedy. But, if the circumstances warrant, definitely Courts may resort to the appointment of Receiver. Strong reliance was placed on the decision referred *Allahabad Bank v. Radha Krishna Murthy* (supra) for the proposition that the powers of the Tribunal are independent powers and the Tribunal has much wider powers in this regard when compared to the powers of the ordinary Civil Courts governed by the provisions of the Code of Civil Procedure. It is no doubt true that in view of the object of enacting the aforesaid Act, the Tribunal is definitely vested with such a power to order the seizure and also sale of the properties, provided the Tribunal is satisfied that in the facts and circumstances of the case, such step may have to be taken in the interest of safeguarding or securing the maximum possible price to be recovered from such assets. In this view of the matter, I am of the considered opinion that when the Tribunal is appointing either a Receiver or a Commissioner to seize and sell the properties, an extreme step, reasons for ordering the same may have to be recorded. Reliance also was placed on the decisions referred *S.K. Nagulu Coal Depot v. Syndicate Bank and State Bank of India, Represented by its Manger, Main Branch, Hyderabad v. S.B. Shah Ali*, (supra) to convince the Court that the hypothecated properties may be sold even without the intervention of the Court and under what circumstances such sale can be proceeded with.

5. Strong reliance was placed on the decision referred *Punjab National Bank v. O.C. Krishnan and Ors.*, (supra) and a contention was advanced that in view of Section 20 of the Act providing for a remedy by way of Appeal, the present civil revision petition under Article 227 of the Constitution of India cannot be maintained. It is no doubt true that when an effective alternative remedy is available, normally the extraordinary Constitutional remedies under Articles 226 and 227 of the Constitution of India cannot be resorted to. But, however, here is a case where the Tribunal made the impugned order, as already stated supra the extreme step, appointing a Receiver to seize and sell the properties pending adjudication of the main O.A. without recording reasons. It is no doubt true that there was no contest by the petitioners. But, that will not alter the situation in any way in my considered opinion since the Tribunal is duty bound to make a reasoned order while taking such an extreme step. Inasmuch as the impugned order is in violation of the principles of natural justice, the contention raised by the learned Counsel representing the 2nd respondent that the effective alternative remedy available u/s 20 of the Act is operative, cannot be accepted since it is well settled that when an order is made in violation of principles of natural justice, the effective alternative remedy will not operate as a bar while exercising the jurisdiction under Article 227 of the Constitution of India.

6. In the light of the views expressed above, the impugned order is

unsustainable for want of reasons and accordingly the same is hereby set aside and the matter is remitted to the Tribunal below to give opportunity to both the parties and pass appropriate orders recording reasons for making such an order within a period of four weeks from today.

7. The civil revision petition is allowed to the extent indicated above. No order as to costs.