

Allahabad Bank, Calcutta vs Radha Krishna Maity And Ors on 10 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3426, 1999 (6) SCC 755, 1999 AIR SCW 3407, (2000) 1 MAD LJ 52, (2000) 1 BLJ 449, (2000) 2 SCJ 210, (1999) 7 SUPREME 669, (1999) 5 SCALE 433, (1999) 37 ALL LR 438, (2000) BANKJ 147, (1999) 98 COMCAS 264, (2000) 1 COMLJ 14, (2000) 1 MAD LW 763, 1999 ADSC 8 27, (2000) 1 CIVLJ 311, (1999) 2 BANKCAS 600, (1999) 4 RECCIVR 436, (2000) 1 BANKCLR 1, (1999) 6 JT 527 (SC)

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Bench: A.P.Misra, M.J.Rao

PETITIONER:
ALLAHABAD BANK, CALCUTTA

Vs.

RESPONDENT:
RADHA KRISHNA MAITY AND ORS.

DATE OF JUDGMENT: 10/09/1999

BENCH:
A.P.Misra, M.J.Rao

JUDGMENT:

M. JAGANNADHA RAO,J.

Leave granted.

The Allahabad Bank, Calcutta has filed this appeal against the order of the Calcutta High Court dated 19.6.98 in C.O. 1238/98. By that order passed under Article 227 of the Constitution of India, the High Court set aside the order dated 30.4.98 passed by the Presiding Officer, Debts Recovery Tribunal, Calcutta (under the Recovery of Debts due to Banks and Financial Institutions Act, (Act No.51 of 1993) (hereinafter called the 'Act'). .pa The facts of the case are that the Bank filed a suit under Section 19(1) of the Act before the Tribunal on 27.3.97 for recovery of monies in a sum of Rs.46.54 lakhs and odd from respondents 1 to 3 and for other reliefs. Pending the case, the Bank applied on 29.3.97 seeking temporary injunction restraining the respondents from taking any monies or sums from M/s. Braitewaite and Co. When the advance copy of the IA was sought to be

served on the learned counsel for respondents, the same was refused. The Tribunal then passed an interim order of injunction on 30.4.98 as follows:

"In the meantime, the respondents 1, 2 and 3 are restrained from recovering any money from M/s Braitewaite and Co. Ltd., till disposal of the interim matter".

The respondents moved the High Court, in an application under Article 227 of the Constitution of India. The High Court in its order dated 19.6.98 held that under Section 19(6) the Tribunal had only limited powers to pass interim orders of certain types but that the injunction granted was not of the type enumerated in Section 19(6). The High Court, therefore, set aside the Tribunal's order. The Bank has filed this appeal. We have heard learned counsel on both sides. We shall first refer to the relevant statutory provisions.

The provisions of Sub-clause (6) of Section 19 of the Act read as follows:

"Section 19(6): The Tribunal may make an interim order (whether 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 any prior permission of the Tribunal".

It will be noticed that the above provision in Section 19(6) refers to certain types of injunction or stay orders and the injunction order passed in this case is no doubt not one of the types mentioned in Section 19(6). It is next necessary to refer to the important provisions in Sub-clause (1) and (2) of Section 22 of the Act and Rule 18 of the Debt Recovery Tribunal (Procedure) Rules, 1993. Section 22 reads as follows:

"Section 22: Procedure and Powers of the Tribunal and the Appellate Tribunal-

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings;

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

Rule 18 of the Rules states as follows:

"Rule 18: Orders and directions in certain cases- The Tribunal may make such orders to give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

It will be noticed that Section 22(1) deals with the powers of the Tribunal and Section 22(2) deals with certain specified powers. Rule 18 also deals with the power of the Tribunal to pass orders.

In a recent decision of this Court under this Act in Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Ors. (1994(4) SCC 710), this Court considered the provisions of the Act and the powers of the Tribunal. The question that arose in that case was whether the Tribunal could pass an order granting ex- parte injunction. In that context, reference was made to Section 22 of the Act. This Court observed that the Tribunal's powers were (except as stated in sub-clause (2)), wider than the powers of a Civil Court and the only limitation was that it should observe principles of natural justice. Wadhwa,J. stated as follows: (P.716, para 11)-

"We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a Court as contained in the Code of Civil Procedure. Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice."

After contrasting the provisions of the Act with the restrictions imposed upon certain other Tribunals under other statutes, this Court observed: (P.717)-

"It will, thus, be seen that while there are no limitations on the powers of the Tribunal under the Act, the Legislature has thought fit to restrict the powers of the authorities under various enactments while exercising certain powers under those enactments... Further, when power is given to the Tribunal to make an interim order by way of injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice...."

It is true that in the above case this Court was not concerned with the power of the Tribunal to pass an order of injunction or stay (or an ex-parte interim order or stay) other than the type of injunction or stay enumerated in Sub-clause (6) of Section 19 of the Act. But that in our opinion makes no difference, for the following reasons.

The scope and the extent of the powers of the Tribunal are mainly referred to in Sub-clause (1) of Section 22 of the Act which says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by principles of natural justice. As stated in *Grapco* by this Court, the Tribunal can exercise powers contained in the Code of Civil Procedure and can even go beyond the Code as long as it passes orders in conformity with principles of natural justice. We may add that Section 19(6) does not in any manner limit the generality of the powers of the Tribunal under Section 22(1). It merely states that certain types of injunction or stay orders may be passed by the Tribunal. It is to be noticed that Sub-clause (6) of Section 19 starts with the words - "The Tribunal may make an interim order..." The provision is an enabling provision and merely states that certain types of injunction or stay orders mentioned therein can be passed by the Tribunal but such an enumeration cannot, in our opinion, be deemed to be exhaustive nor restricting the Tribunal's powers only to those types of injunction or stay orders. The width and amplitude of the powers are to be gathered from Section 22(1) as stated in *Grapco*. In addition, Rule 18 enables the Tribunal to pass orders to secure the ends of justice. Thus, we are of the view that the Tribunal certainly has powers to pass other types of injunction orders or stay orders apart from what is stated in Section 19(6). It may issue notice and after hearing the opposite side, pass orders. Or, it may pass ad interim orders without hearing the opposite side and then give a subsequent hearing to the opposite party and pass final orders. We may also point out that Section 22(2) too does not limit the general powers referred to in Section 22(1). All that Section 22(2) states is that in respect of the type of applications falling under (a) to (h), the Tribunal has only powers as are vested in a Civil Court. On the facts of the case before us, we have already stated that the counsel for the respondents refused to accept notice and that therefore the Tribunal proceeded to pass the impugned order. Thus, the Tribunal had conformed to principles of natural justice. The Tribunal was, therefore, very much within its powers in passing the order in question. The High Court, therefore, erred in holding that the Tribunal had exceeded its jurisdiction and its order is, therefore, liable to be set aside. A point was raised before us that a notice was given to the Bank about the death of one of the debtors and no steps were taken by the Bank in that behalf. This point does not arise in this appeal. It will be for the parties to raise it before the Tribunal and for the Tribunal to deal with the same, in accordance with law. In the result, the appeal is allowed and the order of the High Court is set aside and the order of the Tribunal is restored. We should not be understood as having stated anything on the merits of the interlocutory application or in regard to the main case. There will be no order as to costs.