

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4464 OF 2010
(Arising out of SLP(C)No.15008 OF 2009)

AGM.STATE BANK OF INDIA

.....APPELLANT

VERSUS

K.K.SOOD

.....RESPONDENT

O R D E R

Leave granted.

This appeal is directed against an unusual order passed by the learned Single Judge of Allahabad High Court who not only entertained the writ petition filed by the respondent under Article 226 of the Constitution of India against an interim order passed by the Debts Recovery Appellate Tribunal, Allahabad (for short, 'the Appellate Tribunal') but virtually dismissed the appeal filed by the appellant against the order of the Debts Recovery Tribunal (for short, 'the Tribunal') without waiting for its adjudication by the Appellate Tribunal.

The respondent availed credit facilities from the State Bank of India, Commercial Branch, Nehru Place, New Delhi (for short, "the Bank") in the name of M/s. Raghubir Hospital Pvt. Ltd. For securing repayment of the loan, etc., the respondent gave personal guarantee and also created equitable mortgage of the hospital building, machine, plant, etc. by deposit of title deeds. On account of the respondent's failure to repay the loan etc., in

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accordance with the terms of sanction, the Bank initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act").

Notice dated 11.8.2008 was issued by the Bank to M/s. Raghubir

Hospital Pvt. Ltd. requiring it to repay the outstanding dues

amounting to Rs.6,54,85,493/-.

The noticee neither paid the amount

nor made representation under Section 13(3A) of the Act

Thereafter, the Bank filed an application under Section 14 of the Act for taking possession of the mortgaged properties.

By an order

dated 1.12.2008, District Magistrate, Ghaziabad directed the

authorized advocate of the Bank to take possession of the

properties. However, instead of taking possession, the Bank sent

another notice dated 8.12.2008 to M/s. Raghubir Hospital Pvt. Ltd.

to pay Rs.6,47,03,509/- with interest and other expenses. At that

stage, the respondent filed an application under Section 17(1) of

the Act, which was registered as S.A. No.12/2009.

By an order

dated 4.2.2009, the Tribunal directed the appellant to hand over

possession of the hospital to the respondent with the rider that

the latter shall pay Rs.3 lacs per month.

That order was set aside

by the Appellate Tribunal in Appeal No.R-1075/2009 and the Tribunal

was directed to decide the application of the respondent on merits.

In compliance of the direction given by the Appellate

Tribunal, the Tribunal gave opportunity of hearing to the parties

and passed order dated 15.5.2009, the operative portion of which

reads as under:-

"That the S.A. No.12 of 2009 initiated by the applicant/
Dr. K.K. Sood against the Assistant General Manager,

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State Bank of India under Section 17(1) of the SRFAESI Act is hereby allowed. All the actions taken by the respondent bank under the SRFAESI Act are hereby set aside. The respondent bank is directed to hand over the possession of the secured assets to the applicant within 15 days from today."

The Bank challenged the order of the Tribunal in Appeal No.R-1093/2009. After hearing the counsel for the parties, the Appellate Tribunal passed order dated 26.5.2009, which reads as under:-

" Appeal No.R-1093/2009

Date:26.05.2009

State Bank of India Vs. M/s. K.K. Sood

Present: Shri D.K. Pathak, counsel for the appellant;
Shri Amit Chandra, counsel for the respondent
bank

Counsel for the parties heard on admission of this case. The appeal stands admitted. Counter affidavit

has been filed. Rejoinder be filed till 01.07.2009, immediately after the summer vacation.

Records from the lower court be requisitioned. Case be fixed for final disposal on 03.07.2009.

In the meantime, it is ordered that status-quo be maintained till 03.07.2009.

Counsel for the respondent submits that the machines which are lying in the hospital without A.C. or power is likely to get effected and the warrantee period is also going to expire. For these reasons, too, the arguments will be heard on the same date on all probabilities. The copy of the rejoinder affidavit be furnished to the counsel for the respondents by 01.07.2009 on all probabilities.

Copy of this order be given to the parties as prayed on payment of required court fee.

Sd/-
Chairperson
DRAT Allahabad."

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The respondent did not file counter affidavit to contest the appeal preferred by the Bank. Instead, he filed CMWP No.29685 (MS) of 2009 for quashing the interim order passed by the Appellate Tribunal. The learned Single Judge took cognizance of the grievance made by the respondent that he was not given copy of the appeal preferred by the appellant and the statement of his counsel that his client shall pay Rs.10 lacs to the appellant within fifteen days and passed the impugned order, the relevant portions of which are extracted below:-

"I have perused the judgment and order dated 15.5.2009 and other materials on record. Prima facie, there appears to be no infirmity in the judgment. The aforementioned two issues were decided in favour of the petitioner regarding nature of the land and infirmity in the procedure followed while taken possession of the land. The chronology of events in this case reveal that the petitioner desires to run the hospital and re-pay the loan. It has been brought to the notice of the court that as the hospital is running and costly equipments like X-Ray, CT Scan and MRI machines are installed and other facilities are also available in the hospital. The worth of hospital which is immovable property is much more than 6.5 crores along with its interest.

In view of the above the order dated 26.5.2009 appears to have been passed without assigning any reason. It is a non speaking and non reasoned order as it has not disclosed the reasons as to why the status quo was ordered to be maintained till 3.7.2009 only.

In view of the above, the effect and operation implementation of the order dated 26.5.2009 shall remain stayed till the next of listing. The order dated

15.5.2009 shall continue
consequences."

to operate now with all

Feeling aggrieved by the order of the High Court, the
petitioner invoked jurisdiction of this Court under Article 136 of

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the Constitution. Notice of the special leave petition was issued
on 21.7.2009, on which date, the Court directed that status quo in
relation to possession of hospital and the land in question, as it
exists today, shall be maintained. On the next date of hearing i.e.
8.1.2010, learned senior counsel appearing for the respondent made
a statement that his client would pay a sum of Rs.60 lacs within a
period of three months and furnish a schedule of dates for payment
of the balance amount. However, the respondent did not pay the
amount in terms of the undertaking given by the learned senior
counsel and the case was again adjourned on 9.4.2010 to enable the
respondent to pay the amount in terms of order dated 8.1.2010.

Shri Gopal Subramaniam, learned Solicitor General appearing
for the appellant stated that the respondent has not paid the
amount in terms of order dated 08.01.2010 except a sum of Rs.5
lacs. Shri Nagendra Rai, learned senior counsel representing the
respondent conceded that his client has failed to abide by the
undertaking given before this Court but submitted that this was due
due to financial constraints. Shri Rai then requested that his
client may be permitted to dispose of some of the mortgaged
properties so that he may be able to repay the loan amount and
interest.

In our view, the respondent cannot be permitted to sell the
mortgaged properties because after giving an assurance to this
Court that he would pay Rs.60 lacs within a period of three months
from 8.1.2010, he failed to pay even 1/10th of the promised amount
and did not furnish the schedule for payment of the balance amount.

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We may now advert to the impugned order, perusal of which
unmistakably shows that the learned Single Judge has done three
things. In the first place, he entertained the writ petition filed

by the respondent against an interlocutory order. Secondly, in the guise of expressing prima facie opinion on the merits of the order which is subject matter of challenge before the Appellate Tribunal, the learned Single Judge virtually declared that the said order is just and proper and finally, he issued direction which has the effect of restoration of the order passed by the Tribunal and virtual dismissal of the appeal pending before the Appellate Tribunal.

In our view, the learned Single Judge was not at all justified in entertaining the writ petition filed against the interim order passed by the Appellate Tribunal ignoring that the respondent had failed to pay the amount due to the Bank. It is true that the width and scope of the jurisdiction of the High Court under Article 226 is very wide but it is equally true that while exercising that jurisdiction the High Court must use restraint and ordinarily refrain from interfering with an interim order passed by a quasi-judicial authority or tribunal or subordinate court in the proceedings instituted for recovery of the public money or the dues of banks and financial institutions. The High Court should entertain challenge to an interim order passed in such matters only if the petitioner is able to positively demonstrate that the action taken by the public authority or the financial institution for recovery of its dues is ex facie contrary to the provisions of the

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Constitution or the law enacted by the competent legislature and such contravention has resulted in manifest injustice.

In the present case, there was no extraordinary reason which could justify invoking of jurisdiction by the High Court under Article 226. The Appellate Tribunal had merely admitted the appeal and passed an interim order for maintaining status quo till the date of hearing i.e., 3.7.2009. In the writ petition filed by him, the respondent has not pleaded that the action taken by the Bank for recovery of the loan amount was contrary to the provisions of the constitution or any law enacted by the legislature. Therefore, the learned Single should have, instead of entertaining the writ

petition and passing an order which has the effect of rendering the appeal preferred by the appellant infructuous, allowed the Appellate Tribunal to hear the parties and finally decide the appeal on merits. In any case, the learned Single Judge was not justified in pronouncing upon the merits of order dated 15.05.2009 passed by the Tribunal by camouflaging his observations with the expression "prima facie". The mere fact that the order passed by the Appellate Tribunal does not contain detailed reasons did not justify entertaining of the writ petition filed by the respondent or passing of the impugned order which has resulted in virtual disposal of the appeal pending before the Appellate Tribunal. The learned Single Judge should not have overlooked the fact that the respondent had not paid the amount of loan taken from the Bank and as per the notice issued in 2008, a sum of almost 6.5 crores was payable by him. The learned Single Judge should also have kept in

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view the object of the Act i.e., to create a mechanism for expeditious recovery of the dues of banks and other financial institutions. We have no doubt that if the learned Single Judge had bothered to notice the judgments of this Court in Maradia Chemicals Ltd. v. Union of India (2004) 4 SCC 311 and Central Bank of India v. State of Kerala (2009) 4 SCC 94, in all probability, he would not have passed the order under challenge.

For the reasons stated above, the appeal is allowed. The impugned order is set aside. The Appellate Tribunal is directed to hear the parties and dispose of the appeal at the earliest in accordance with law.

.....J.
(G.S.SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
MAY 13, 2010.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15008/2009

(From the judgement and order dated 10/06/2009 in CMWP No.
29685/2009 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

AGM.STATE BANK OF INDIA Petitioner(s)

VERSUS

K.K.SOOD Respondent(s)

(With appln(s) for directions and with prayer for interim relief
and office report)

Date: 13/05/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULYFor Petitioner(s) Mr.Gopal Subramaniam, SG
Mr.Rajiv Kapur, Adv.
Mr. Sanjay Kapur,A.O.R.For Respondent(s) Mr.Nagendra Rai, Sr.Adv.
Mr.Yunus Malik, Adv.
Mr.Ravi Kishore, Adv.
Mr. Prashant Chaudhary,Adv.UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master(Phoolan Wati Arora)
Court Master

[Signed order is placed in the file]