Interim order restraining bank from registering sale certificate without assigning reasons: DRAT KOLKATA

Central Bank of India

…Appellant

Mr. K. Prasanna Kumar Reddy

…Respondent

Case No: Appeal No. 35 of 2021

Date of Judgement: 24th March, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. S.K. Senapati, Advocate.

For Respondent: None.

Facts:

Central Bank of India sanctioned various cash credit limits totaling Rs. 103.5 crores to the respondents between March 2014 to April 2018. Respondents executed necessary security documents. Loan account was classified as NPA. Bank initiated SARFAESI proceedings and published sale notice on 19th September 2020. Sale was conducted on 20th October 2020. Respondents filed SARFAESI Application 262/2020 before DRT Vishakhapatnam challenging the sale. DRT passed impugned interim order on 06.11.2020 in SA 262/2020 directing the bank not to register sale certificate in favour of auction purchaser. The order was passed to facilitate impleadment of auction purchaser as party.

Court's Opinions:

Impugned order suffers from material illegality as no reasons were assigned while passing the restraint order against bank. As per SC decision in Brijmani Devi case, recording of reasons is indispensable requirement to demonstrate objective consideration of relevant factors. Reasons reassure discretion exercised on relevant grounds. Reasons make judges/authorities less prone to errors and subject to broader scrutiny, ensuring judicial accountability and transparency. As per Grapco Industries case, ex-parte interim orders can also affect reputation and may be difficult to undo damage. Reasons, even if brief, must be recorded. Interim order cannot continue indefinitely, has to be decided quickly when other side appears. Accordingly, impugned order set aside. DRT directed to decide SARFAESI application expeditiously after hearing parties.

Arguments:

Appellant Bank:

DRT passed blanket order without assigning any reasons, restraining bank from registering sale certificate. Bare perusal of order shows it was passed without any reason. Auction purchaser was to be impleaded but order passed without impleadment, affecting rights. Impugned order suffers from material illegality and liable to be set aside.

Respondents:

(Not represented, ex-parte)

Sections:

Section 17 of SARFAESI Act: Application challenging bank action.
Section 19(1) of RDDBFI Act: Disposal of recovery application within 6 months.

Cases Cited:

Brijmani Devi v. Pappu Kumar (2022): On importance of assigning reasons for any decision/order.
Grapco Industries v. IDBI (1999): On granting ex-parte ad-interim order and continuance.

Referred Laws:

SARFAESI Act, 2002

RDDBFI Act, 1993

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Full Text of Judgment:

1.Instant appeal has arisen against an interim order dated 6th November, 2020 passed by Learned DRT, Vishakhapatnam in S.A. 612 of 2020 restraining the Appellant Bank from registering the Sale Certificate in favour of the Auction Purchaser.

2. A SARFAESI Application No. 262 of 2020 was filed by the Respondents against the Bank under Section 17 of the SARFAESI Act. Applicant Bank sanctioned a Cash Credit Limit to the tune of Rs. 15.00 crores on 3rd March 2014 to the Respondents. Security documents were executed on 5th March, 2014, Equitable mortgage was created on 12th March, 2014. Further Cash Credit Limit of Rs.24.00 crore was sanctioned on 5th April, 2014 and the security documents were executed on 22nd April, 2014 and Equitable mortgage was created. Further Cash Credit Limit of Rs.64.00 crore was sanctioned on10th April, 2017. Further Cash Credit Limit of Rs.64.00 crore was sanctioned on 10th April, 2017, equitable mortgage was created. Rs. 1.5 crore Cash Credit Limit was availed by the Respondents on 12th February, 2018, 28th March, 2018, 12th April, 2018 and 13th April, 2018 and necessary documents were executed. Loan Account was classified as N.P.A. Appellant Bank initiated proceedings under the SARFAESI Act. Sale Notice was published in newspapers on 19th September, 2020; date of sale was fixed on 20th October, 2020 and was conducted. S.A. 262 of 2020 was filed by the Respondents which was pending before the Learned DRT wherein the impugned order was passed.

3. Notices were issued to the Respondents which were served but Respondents did not appear in the appeal. I have heard the Learned Counsel for the Appellant and perused the record.

4. As far as the impugned order is concerned, it is a short order which is reproduced below:
“DEBTS RECOVERY TRIBUNAL VISHAKHAPATNAM
Dated: 06/11/2020

SA/262/2020
DAILY ORDER
BY ORDER OF HON’BLE PO THROUGH VC ON 06.11.2020
HELD AT 11:00 HRS
Details of the auction purchaser furnished. For filing implead petition to implead the auction purchaser posted to 11.11.2020. I.A. 1638/20 counter filed. In the meantime Respondent Bank is directed not to register the sale certificate in favour of the auction purchaser. S.A. for hearing posted to 11.11.2020. HON’BLE PO (DUPPALA VASUDEVA RAO)”

5. Learned Counsel for the Appellant submits that Learned DRT passed a blanket order, restraining the Bank from registering the Sale Certificate in favour has of the Auction Purchaser, without assigning any reason. Bare perusal of the impugned order will show that this order was passed without assigning any reason. Auction Purchaser was to be impleaded as a party. Without impleadment of the Auction Purchaser, impugned order was passed. Rights of the Auction Purchaser, as well as the Borrower, are affected by the impugned order.

6. In Brijmani Devi -vs- Pappu Kumar and Another, reported in (2022) 4 SCC 497, The Hon’ble Apex Court held as under:
“32. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasijudicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates (P) Ltd., v. Masood Ahmed Khan, (2010) 9 SCC 496 wherein after referring to a number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are
extracted as under:
32.1. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
32.2. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
32.3 Reasons reassure that discretion has been exercised by the

decision-maker on relevant grounds and by disregarding extraneous considerations.

32.4. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

32.5. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the
lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

32.6. Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

32.7. Insistence on reason is a requirement for both judicial accountability and transparency.

32.8. If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

32.9. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

32.10. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

32.11. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

"34. The Latin maxim "cessante ratione legiscessat lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself, is also apposite."

7. Further in Industrial Credit and Investment Corporation of India Limited -vs- Grapco Industries Limited & Others, reported in AIR 1999 SC 1975, The Hon'ble Apex Court held as under:

"13. An ex parte order is only of short duration and it is granted to safeguard the interest of the applicant, but, at the same time, such an order cannot be granted as a matter of course. A Court or Tribunal has also to consider the consequences of such an order if ultimately the order evoked after hearing the defendant. In such circumstances, the Tribunal must put the applicant on terms while granting an ex parte order and compensate the defendant in case the ex parte order was obtained without any justification and harm has been caused to the defendant. It must be remembered that an ex parte order can also affect the reputation of the person against whom it is issued and sometimes it may be difficult to undo the damage caused by an interim order. A Tribunal while granting ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereo-typed order in terms of the prayer made. Then an ex parte order cannot be allowed to continue indefinitely and the continuance of interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to hear long drawn arguments. Principles on which an interim order can be granted are well settled. Sub-section (a) of Section 19 requires that application for recovery of debt itself is to be disposed of finally within a period of six months from the date of receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted ex parte is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an ex parte order of injunction or stay."

8. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it but must also appear to be done as well. Insistence of reasons is a requirement for both judicial accountability and transparency. Transparency in decision making not only makes the Judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

9. Impugned order suffers from material illegality. No reasons are

assigned by the Learned DRT, Accordingly, the appeal is liable to be allowed.

Appeal is allowed. The impugned order dated 6th November, 2020, is set aside. Learned DRT is directed to decide the SARFAESI Application expeditiously after affording opportunity of hearing to the parties. No order as to costs. File be consigned to Record room.
Copy of the order be supplied to Appellant and the Respondentand a copy be also forwarded to the concerned DRT.
Copy of the Judgment/Final Order be uploaded in the Tribunal’s Website.
Order dictated, signed and pronounced by me in the open Court on this the 24th day of March, 2023.