IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA
Appeal No. 09 of 2020
(Arising out of O.A. 475 of 2019 in DRT-1, Kolkata)

THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

1. Sri Bivas De, son of late Netai Chand De, residing at 4/27, Mukherjee Para Road, Charakdanga, 1st Lane, Kolkata – 700 124;

2. Smt. Piyali De, wife of Sri Bivas De, residing at 4/27, Mukherjee Para Road, Charakdanga, 1st Lane, Kolkata – 700 124.

… Appellants

-Versus-

1. HDFC Bank Limited, incorporated under the Companies Act, 1956 carrying on business under the licence granted by Reserve Bank of India under Banking Regulation Act having its Regional Office at Gillander House, 1st Floor, Block-A, 8, N.S. Road, Police Station – Hare Street, Kolkata – 700 001;

2. The Chief Manager (Contracts) ERD, Indian Oil Corporation Limited (IOC Limited), Indian Oil Bhavan, 2, Gariahat Road (South), Kolkata – 700 068.

… Respondents

Counsel for the Appellants	…	Mr. K. J. Tiwari with Mr. Prantick Ghosh, Mr. Prasad Bhattacharya and Mr. Bitan Das
Counsel for Respondent Bank	…	Mr. Ashok Kumar Dhandhania, Learned Senior Advocate with Ms. Mehala Kanji

JUDGMENT : 9th February, 2023

THE APPELLATE TRIBUNAL :

Instant Appeal has arisen against judgment and order dated 6th December, 2019 passed by Learned Debts Recovery Tribunal-1, Kolkata (hereinafter referred to as 'Tribunal') in O.A. 475 of 2019 (HDFC Bank Limited -vs- Sri Bivas De) whereby Receiver was appointed by the Learned Tribunal.

2. As per the pleadings of the parties, the facts of the matter are that the Respondent Bank filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the Appellant seeking issuance of Certificate for Recovery of a

sum of Rs.2,09,21,772.01p and interest upto 11th October, 2011 at the rate of 8.85% per annum in respect of 22 number of independent loan accounts. After filing of the O.A., an application for appointment of receiver was filed whereby the Learned Tribunal passed an ex parte order dated 6th December, 2019 thereby appointing two Legal Managers of the Respondent as Receivers to inspect the vehicles and seize the vehicles and if necessary, seek assistance of the concerned police station.

3. On 26th June, 2018, Respondent No. 2, Indian Oil Corporation, floated a tender process for transportation of LPG Gas Cylinders from Bottling Plant to the Distributors throughout West Bengal and, if necessary, to other neighbouring States.

4. Appellant purchased twenty two vehicles with the financial help of the Respondent No. 1 wherein the Appellant No. 2 is the Guarantor. Respondent Bank filed the O.A. for issuance of Recovery Certificate.

I have heard the Learned Counsel for the parties and perused the record.

5. Learned Counsel for the Appellant vehemently argued that the impugned order is against law. No reasons have been assigned in the impugned order to pass the ex parte order of appointment of Receiver. An order de hors of reasoning is nothing but a nullity; hence the impugned order could not stand the test of law.

6. Learned Counsel places reliance upon the following judgments:

1. *(2010) 13 SCC 336 - Sant Lal Gupta & Others -vs- Modern Co-operative Group Housing Society Limited and Others;*
2. *(2010) 9 SCC 496 – Kranti Associates Private Limited & Another -vs- Masood Ahmed Khan & Others*
3. *(2018) 17 SCC 203 – Samir Narain Bhojwani -vs- Aurora properties And Investments & Another.*

7. Per contra, Learned Counsel for Respondent submits that the impugned order was passed in accordance with law while the Learned Tribunal had the powers to pass an order for appointment of Receiver under Section 19 (18) of Recovery of Debts Due to Banks and

Financial Institutions Act, 1993. Learned Counsel further submits that the vehicles in question were hypothecated with the Respondent Bank and if the Receivers would not have been appointed, the vehicles could have been dissipated or removed. Learned Counsel has placed reliance upon a Full Bench judgment of the *Hon'ble Bombay High Court in the matter of State Bank of India -vs- Trade Aid Paper and Allied Products (India) Private Limited & Others, reported in AIR 1995 Bombay 268* and a judgment of the *Hon'ble Delhi High Court in FAO 42 of 2007 decided on 5th February, 2007 in the matter of ICICI Bank Limited -vs- Kaptan Singh*.

8. Learned Counsel for Appellant vehemently argues that since the impugned order does not contain any reason hence the order is bad in law. As far as case laws referred to by the Learned Counsel for Appellant are concerned, it is no doubt true that a judicial order should be a reasoned order. Apart from the case law referred to by the Learned Counsel for Appellant, in *Brijmani Devi -vs- Pappu Kumar and Another, reported in (2022) 4 SCC 497*, The Hon'ble Apex Court held as under:

> *"22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial 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:*
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> *(a) 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.*
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> *(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
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> *(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
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> *(d) 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.*

(e) 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.

(f) 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.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) 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.

(i) 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.

(j). 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.

(k) 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".

"24. 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."

9. 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."

Now it is to be seen as to whether the impugned order is a reasoned order or not and whether the Tribunal had jurisdiction to pass such order?

10. The impugned order was passed under Section 19 Sub-section 18 of the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 which reads as under:

"(18) 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;"

These provisions are akin to the provisions of Order 40 Rule 1 of C.P.C. which reads as under:

"Order 40, Rule 1 of Code of Civil Procedure provides for appointment of Receiver, where it appears to the Court to be just and convenient. The power can be exercised both before and after decree. The power conferred upon the Receiver enables the Receiver to manage, protect and preserve the property and to collect the rents and for profits thereof and of and for realisation of profits."

11. The commentary given in the words "just and convenient" under Order 40 C.P.C., a satisfaction is to be recorded by the Court after considering the facts of the matter. Admittedly, in the present case, hypothecation of goods were the twenty two trucks. The Bombay High Court, in the case of *State Bank of India -vs- Trade Aid Paper And Allied Products (India) Private Limited & Others, reported in AIR 1995 Bom 268*, has held as under:

> "*The principles to be borne in mind while exercising powers under Order 40, Rule 1 of the Code of Civil Procedure are well-settled by catena of decisions and as observed by Privy Council in AIR 1928 PC 49 (Benoy Krishna Mukerjee v. Satish Chandra Giri) the Court has to consider whether special interference with the possession of the defendant was required, there being a well-founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives its protection. A single Judge of the Madras High Court in a decision reported in AIR 1955 Mad 430 (T. Krishna-swamy Chetty v. C. Thangavelu Chetty) set out five factors which the Court must consider before concluding that it is just and convenient to appoint Receiver. The five factors are:*
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> *(i) The appointment of the Court Receiver was a matter resting in the discretion of the Court;*
> *(ii) The appointment should not be made unless plaintiff had prima facie excellent chance of succeeding in the suit;*
> *(iii) The plaintiff establishes some emergency or danger or loss demanding immediate action;*
> *(iv) The order would not be made if it had the effect of depriving the defendants of a 'de facto' possession, and;*
> *(v) The Court will look to the conduct of the party who made the application and would refuse to interfere if the conduct is not free from blame."*

12. *In AIR 1928 PC 49 (Benoy Krishna Mukerjee v. Satish Chandra Giri)* it was held as the Privy Council that the Court has to consider whether special interference with the possession of the defendant was

required, there being a well-founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives its protection. In the case of *State Bank of India -vs- Trade Aid Paper & Allied Products (India) Private Limited & Others* (supra) the Full Bench of the Bombay High Court has placed reliance upon the judgment passed in the matter of *The Podar Mills Limited -vs- State Bank of India & Others reported in A.I.R. 1992 Bom 277* and held as under:

> **"***In this case, the State Bank of India had filed suit for recovery of sum of Rs. 13,59,49,986.59 and pending the suit, the trial Judge appointed Court Receiver to take charge of the secured properties. It was contended before the Division Bench that though Receiver can be appointed in a suit for enforcement of equitable mortgage, it could be done in extra-ordinary cases and where there are allegations of waste. The Division Bench examined the judgment of the Privy Council and the Madras High Court referred hereinabove as well as the Full Bench of Allahabad High Court reported in AIR 1936 All 495 (Anandi Lal v. Ram Sarup) and Division Bench of this Court in AIR 1939 Bom 54 (Damodar v. Radhabai) and thereafter came to the conclusion that Receiver should be appointed to protect the mortgaged property pending the disposal of the suit if circumstances so warrant. The Division Bench further held that the Court must bear in mind that the claim made by the Company is in respect of public monies.*
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> *The Division Bench, which spoke through Mr. Justice Bharucha, as he then was, was fully conscious of large number of suits filed by Banks and financial institutions on the Original Side of this Court and which involved huge stakes. The Division Bench was also conscious of the fact that suits filed by Banks and financial institutions do not reach hearing for over several years for reasons which are beyond the control of the Courts and the litigants. The experience clearly indicates that in almost all the suits instituted by Banks and financial institutions, there is hardly any defence. The usual defences are that the documents are signed in blank, that interest charged is excessive and the fact that the amount was secured from the Bank is never seriously disputed. Indeed, the suits are resisted with the knowledge that the date of the judgment will be postponed by few years and the monies secured from the Bank and which are really the monies of the depositors can be profitably used for some more years. The Division Bench was fully conscious of all these aspects and, therefore, observed that when the claim is in respect of public monies and the amount involved is large, then*

the Receiver should be appointed to protect the mortgaged property pending disposal of the suit. The view taken by the Division Bench is correct and is consistently followed in this Court."

It was further held by the Full Bench that :

"*In case of movable property and which is hypothecated with the Bank or the financial institution, Receiver should be normally appointed*. *In the documents executed by the defendant while securing loans from the Banks, the defendant often agrees that Receiver can be appointed, in respect of hypothecated goods, if defaults are committed. The appointment of the Court Receiver is de-hors the agreement but to refuse to appoint the Receiver in respect of hypothecated goods virtually amounts to denial of relief in respect of hypothecated goods. The hypothecated goods either will not be available on the date of the judgment or would lose its value and, therefore, appointment of Receiver is necessary in respect of movable properties. In case, the defendant is willing to work as agent of the Court Receiver, then moveables can be handed over to the defendants on such terms and conditions as the Receiver can settle."* (Emphasis supplied)

13. Learned Tribunal had considered the submissions made by the Learned Counsel for Appellant. An amount of Rs.2,09,21,772.00 was outstanding as on 27th November, 2019. Vehicle Loan was sanctioned for purchase of twenty two Oil Tankers. After considering the factual aspects, Learned Tribunal passed the impugned order appointing Receivers. It is noteworthy that nowhere liability to pay the loan is challenged or denied rather as per the record vehicles are hired by the Respondent No. 2 and the Appellant enjoyed the fruits but the amount is not being paid. Accordingly, I do not find any illegality or impropriety in the impugned order. Learned Tribunal has passed the order strictly in accordance with law. Appeal lacks merit and is liable to be dismissed.

14. Since the impugned order was passed on 6th December, 2019 and two officers, namely, Mr. Santanu Maity, Senior Manager (Legal) and Mr. Anirban Sur, Manager (Legal), were appointed as Receivers, it may be possible that due to lapse of time, they might have either been transferred or may not be available, in that event, Learned Tribunal will be at liberty to appoint some other officers as Receivers.

O R D E R

The Appeal is dismissed. However, Learned Tribunal would be at liberty to change the Receivers in case Mr. Santanu Maity, Senior Manager (Legal) and Mr. Anirban Sur, Manager (Legal) have either been transferred or are not available.

Copy of the order be supplied to Appellants and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

File be consigned to Record room.

Order dictated, signed, dated and pronounced in open Court on the 9th day of February, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 09th February, 2023
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