Ranjith Impex and Marlecha Bullion Vs State Bank of India

Court: Madras High Court

Date of Decision: Oct. 1, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14, 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 â€" Section 19(12), 19(13)(A), 19(6), 22(1), 22(2)
Recovery of Debts Due to Banks and Financial Institutions Rules, 1993 â€" Rule 18

Citation: (2009) 5 LW 328 : (2009) 8 MLJ 257

Hon'ble Judges: M. Venugopal, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: K. Veeraraghavan, S.C. for P. Kavitha, for the Appellant; S. Arunkumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

C.R.P. No. 2680 of 2009:

1. The revision petitioner/respondent/defendant has filed this civil revision petition praying to set aside the order dated 22.07.2009 in I.A. No. 439

of 2009 in O.A. No. 101 of 2009 passed by the Debts Recovery Tribunal-II, Chennai.

C.R.P. No. 2681 of 2009:

The revision petitioner/respondent/defendant has filed this civil revision petition praying to set aside the order dated 22.07.2009 in I.A. No. 437 of

2009 in O.A. No. 100 of 2009 passed by the Debts Recovery Tribunal-II, Chennai.

2. The Debts Recovery Tribunal-II, Chennai, while passing order in I.A. No. 439 of 2009 dated 22.07.2009, inter alia, has observed that it is

"convinced that a prima facie case is made out by the applicant bank and therefore, the respondent/defendant should be directed to furnish security

for the suit claim of Rs. 1,59,74,152/- on or before 14.8.09. Accordingly, IA.439/09 is allowed. Registry is directed to issue notice to the

respondent directing him to furnish security for the OA claim of Rs. 1,59,74,152/- on or before 14.8.09. Call on 14.8.09."

3. The Debts Recovery Tribunal-II, Chennai, while passing order in I.A. No. 437 of 2009 dated 22.07.2009, inter alia, has observed that it is

"convinced that a prima facie case is made out by the applicant bank and therefore, the respondent/defendant should be directed to furnish security

for the suit claim of Rs. 1,40,47,439/- on or before 14.8.09. Accordingly, I.A. 437/09 is allowed. Registry is directed to issue notice to the

respondent directing him to furnish security for the OA claim of Rs. 1,40,47,439/- on or before 14.8.09. Call on 14.8.09.

4. The learned Counsel for the petitioners (in both the revisions) submits that the Tribunal has passed orders dated 22.07.2009 in I.A. Nos. 439

and 437 if 2009 in O.A. Nos. 101 and 100 of 2009 without ordering notice to the petitioners in the aforesaid interlocutory applications and

thereby violated the principles of natural justice and it has also committed an error apparent on the face of record since it has not adduced cogent

reasons while coming to the conclusion that the prima facie case has been made out and moreover, the Tribunal has not followed the ingredients of

Section 22(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the ex parte ad-interim order passed by the

Tribunal without hearing the petitioners is nothing but a final order directing the petitioners to furnish security for sum of Rs. 1,59,74,152/- and Rs.

1,40,47,439/- respectively on or before 14.08.2009 and in short, the orders passed by the Tribunal are not based on any materials which has

resulted in manifest injustice and therefore, prays for allowing the civil revision petitions in the interest of justice.

5. Expatiating his arguments, the learned Counsel for the petitioners urges before this Court that the Tribunal has not passed a speaking order in

I.A. Nos. 439 and 437 of 2009 and it has also failed to consider the lawyer"s notice dated 19.07.2008 wherein everything has been explained and

if the orders passed are allowed to stand then it will cause irreparable loss and hardship to the petitioners.

6. According to the learned Counsel for the revision petitioners, the petitioners are having a good case on merits and if the Tribunal had given an

opportunity to the petitioners to explain their case then they would have explained their position clearly.

7. According to the learned Counsel, the revision petitioner/respondent in CRP. No. 2680 of 2009 is having a very good case on merits and only

the respondent Bank has to pay Rs. 25 lakhs to the petitioner and that the petitioner is not liable to pay the respondent Bank any money and in

fact, as against the petitioner"s money the Bank is giving him the gold and that he has not received even one rupee as overdraft and the petitioner

by notices dated 19.3.2008 and 07.06.2008 has requested the Bank to close the transaction and to return the money due. Added further, it is the

case of the revision petitioner in CRP. No. 2680 of 2009 that he has entered into a gold loan agreement dated 21.9.2007 with the respondent for

100 kilograms of gold with the margin of 110% on the gold value, which is repayable or to be fixed on the rates at the discretion of the borrower

within 180 days and the petitioner has an overall balance of Rs. 11 = crores with the respondent Bank in fixed deposits, including interest, as a

security for the enjoyment of the said loan including the 10% margin that they are supposed to maintain at any time and further by a letter dated

19.3.2008 the petitioner has requested the Bank to close the account in respect of 100 kilograms of gold giving the list of the rates to be cut in

U.S. Dollars on various dates and indeed, the revision petitioner denies the details of payment as well as the status of the account and he has never

asked for additional cash margin and even otherwise the same is not necessary especially when there is available Rs. 11.5 crores of fixed deposits

with accrued interest and that the Bank has not furnished the statement of accounts and it is funny to hear the claim of the respondent Bank that it

cannot adjust the amounts held in TDRs towards the payments.

8. Continuing further, the learned Counsel for the revision petitioner in CRP. No. 2681 of 2009 contends that the petitioner has entered into a gold

loan agreement sanction dated 12.9.2007 with the respondent Bank for 120 kilograms of gold with the margin of 110% on the gold value which is

repayable or to be fixed on the rates at the discretion of the borrower within 180 days and that the petitioner has with the respondent Bank an

overall balance of Rs. 15 crores in fixed deposits including interest as a security for the enjoyment of the said 10% margin that they are supposed

to maintain at any time and by letter dated 16.5.2008, the petitioner has listed various irregularities on the part of the Bank to close the account in

respect of 100 kilograms of gold out of 120 kilograms giving the list of the rates to be cut in U.S. Dollars on various dates beginning from

19.2.2008 to 10.3.2008 etc. and that the petitioner was not provided with the statement of accounts and the claim of the Bank that it could not

adjust the amounts held in TDRs towards the payments without instructions is very funny and moreover, the petitioner has never asked for

additional cash margin and even otherwise, the same is not necessary, especially when there is available Rs. 15 crores of fixed deposits with

accrued interest.

9. The learned Counsel for the revision petitioners relies on the decision of Hon"ble Supreme Court in Allahabad Bank, Calcutta Vs. Radha

Krishna Maity and Others, wherein it is inter alia observed that "...The width and amplitude of the powers are to be gathered from Section 22(1)

which says that the Tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by principles of natural justice. The

Tribunal can exercise powers contained in the CPC and can even go beyond the Code as long as it passes orders in conformity with principles of

natural justice. Section 19(6) does not in any manner limit the generality of the powers of the Tribunal u/s 22(1). 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. 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. (1998) 2 CLT

395, Reversed.''

10. He also cites the decision of Hon''ble Supreme Court in The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries

Ltd. and Others, at page 1977 wherein it is held that ''An ex parte order is only of short duration and it is granted to safeguard the interest of the

applicant, but, at the same times, 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 is to be revoked 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 and only

fetter put on its powers is to observe the principles of natural justice and there is no doubt that High Court can interfere with orders of the Courts

and Tribunals under Article 227 of the Constitution if the order is made without jurisdiction.''

11. He also presses into service the Hon''ble Supreme Court decision in Achutananda Baidya Vs. Prafullya Kumar Gayen and others, wherein it is

observed that ''if the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such

evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such

circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.''

12. The learned Counsel for the revision petitioners presses into service the decision in India Exports House Pvt. Ltd. Vs. J.R. Vohra, wherein it is

held that ''High Court can exercise its power of superintendence even where such remedy is not availed of.'' He also draws the attention of this

Court to the decision of Hon''ble Supreme Court in Gopala Genu Wagale Vs. Nageshwardeo Patas Abhishekh Anusthan Trust, wherein it is held

that ''the High Court did not exceed its powers in interfering with the judgment of the Revenue Tribunal under Article 227 of the Constitution of

India and it was justified in concluding that the finding recorded by the revenue authorities did not have ''''even an iota of evidence''''.''

13. Continuing further, the learned Counsel for the revision petitioners seeks in aid the decision of the Hon''ble Supreme Court in Trimbak

Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, wherein, it is, among other things, held that''...it is also well established

that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error

in procedure or law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the

Constitution.'' Moreover, he draws the attention of this Court to the decision in Brahmananda Sharma Vs. Gajapati Nath Dey and Others, wherein

it is held that ''the power under Article 227 of the Constitution can be used to correct an error of law which is apparent on the face of record.''

14. Apart from the above decisions, the learned Counsel for the revision petitioners cites the following decisions:

(a) In Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, at page 1321 wherein it is held that ''when Revenue Authorities refusing to give

respondent assistance then the High Court is competent to exercise jurisdiction under Article 227.''

(b) In Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, the Hon''ble Supreme Court has held that''...the

denial of opportunity to the management is not in consonance with fairness and rules of natural justice. The management need not establish a

particular prejudice for want of such opportunity. The non-observance of natural justice is itself prejudice to any man and proof of prejudice

independently of proof of denial of natural justice is unnecessary. Therefore, the denial of opportunity to the management is fatal to the

government''s order of transfer of the proceedings u/s 33-B.''

(c) In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, the Hon''ble Supreme Court has

held that ''every quasi-judicial order must be supported by reasons etc.''

(d) In H.L. Trehan and Ors. v. Union of India (1989) 1 SCC 765 and 767 it is inter alia held as follows:

The post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to

uphold it and a representation may not yield any fruitful purpose. The authority who embarks upon a post-decisional hearing will naturally proceed

with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity.

Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with

the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution.

(e) In In re: Grapco Industries Ltd. and Another, wherein it is, among other things, held that "...Even shorn of compliance of dictum of construction

of statute adherence to the principle of natural justice and other appurtenant facets of legal position, the said orders cannot withstand a moment

scrutiny because of stereo-typed pattern of passing of orders by way of rubber stamp by the said authority. The trend seems to have setting as

precedent which will also make this Court hesitant to confer such uncanalised powers on the statutory authority to go ahead with its arbitrariness

being unmindful of the fact that it is a statutory body entrusted with quasi-judicial functions and to render it in accordance with the sanction of the

statute. As such this Court is of the opinion that the orders impugned cannot withstand the test of any assessment cost. No scope nor any avenue

has been led upon to this Court to explore for assessment of the impugned orders. The impugned orders are bristled with intricate implications of

arbitrariness, non-application of mind, stereo-type pattern of functioning in all cases irrespective classification blind-folded approach to the records

of the proceeding and orders themselves are bordering themselves on the point of perversity. As such these orders are liable to be set aside for

impropriety in exercise of jurisdiction and Tribunal is required to keep within its bounds and this High Court is inclined to exercise its power of

judicial superintendence so that Tribunal can pass orders in terms of the statute and not otherwise."

15. In response, the learned Counsel for the respondent Bank submits that the Tribunal, after perusing the affidavit, records and statement of

accounts filed in the original application, has been pleased to direct the petitioners to furnish security for the suit claim and in fact, the petitioners

have sought time before the Tribunal and till date no order of attachment before judgment has been passed and therefore, no prejudice has been

caused to the petitioners and the petitioners are at liberty to file the counter statements in the original application or to invoke the relevant

provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and agitate their entire grievance and the order passed by

the Tribunal in I.A. Nos. 439 and 437 of 2009 is in accordance with the principles of natural justice, equity and good conscience and therefore,

prays for dismissal of the civil revision petitions.

16. At this stage, it is pertinent for this Court to point out that the respondent Bank in the counter filed to the C.R.P. No. 2680 of 2009 has, inter

alia, stated the following:

The petitioner, Mr. B. Nemichand Marlecha as sole proprietor of M/s. Marlecha Bullion had initially availed the Metal (Gold) Loan facility to the

limit of 100kgs of Gold amounting to Rs. 9.50 Crores. The respondent bank had clearly spelt out the terms and conditions for sanctioning the

aforesaid credit limits vide their letter No. RM/IV/AD/07-08/169 dated 12.09.2007 which was duly accepted by the petitioner herein

unconditionally as evident from the sanction letter. He has also undertaken to provide the primary security of 110% cash margin by way of term

deposits to cover the to the value of the Gold. The said deposits were made for one year with the expectation that Gold Metal Loan on closure

would be met out of their own fund for availing further Gold Metal Loan thus keeping the deposit intact. The petitioner had purchased gold on

various dates and also requested the bank for enhancement of the gold metal limit from time to time, which was accepted by the respondent bank

subject to the terms and conditions as envisaged vide their letter No. RM IV/ADV/07-08/438 dated 09.01.2008 in favour of the bank thereby

further confirming the terms and conditions for enhancement of the gold metal limit from 100kgs to 150kgs against the 110% cash margin. Since

the price of gold had increased considerably, the applicant bank had advised the petitioner to bridge the short fall in margin requirements in his gold

metal loan accounts within 10days. The petitioner deposited only a part amount to meet the short fall and undertook to top-up the margin within a

couple of days. Despite repeated demand made to top-up the margin through letters and telephonic calls the petitioner failed and neglected to

adhere to the same.

4. The respondent submits that through their legal notice dated 30.07.2008 have answered all the discrepancies alleged by the petitioner herein.

The respondent reiterates that by their letter dated 30.05.2008 have furnished the details on account and bills. Further they have categorically

explained in the said letter that they have not received the letters dated 18.03.2008 and 19.04.2008 alleged to be sent by the petitioner. In fact the

non-receipt of bills and statements were informed to the respondent only during visit by the respondent''s official to the petitioner''s office on

25.04.2008 and immediately an official was deputed to hand over the bills of statement of accounts personally. While so the allegation that bills

was sent belatedly after 75 days in unwarranted and made with an ulterior motive to cover up the default committed on the part of the petitioner.

Likewise, the discrepancies alleged towards bills raised was also clarified through letter dated 30.05.2008. Hence the allegations made in this

regard is baseless and untenable.''

17. The stand taken by the respondent Bank in the C.R.P. No. 2680 of 2009 is that as and when there was a shortfall in the cash margin, the

revision petitioner was informed and he was in the practice of remitting and the Bank was waiting for the petitioner to avail the opportunity afforded

and the petitioner failed to make use of the opportunity and therefore, the Bank was constrained to adjust the term deposit and accordingly

informed the petitioner by letter dated 17.9.2008 and later called upon the petitioner to pay the outstanding amount after adjustments, by their

letters dated 04.10.2008, 01.11.2008, 02.12.2008 and as a matter of fact, on 29.12.2008 a legal notice was issued to the petitioner intimating

that the outstanding amount in the current account as on 23.12.2008 was Rs. 4,67,68,314.98 and if the amount was not remitted with interest at

17.75% within a week the respondent would be constrained to adjust the available term deposit and also initiate appropriate legal action to

recover the dues and since the petitioner failed to respond, the respondent Bank approached the Tribunal and the loan transaction in issue was

based on cash security and not on any tangible immovable assets.

18. Likewise, the respondent Bank in its counter to the C.R.P. No. 2681 of 2009 has stated the following:

The petitioner availed the Metal (Gold) Loan facility to the limit of 100kgs. of Gold. The respondent bank had clearly spelt out the terms and

conditions for sanctioning the aforesaid credit limit. Accordingly the petitioner executed Metal (Gold) Loan Agreement dated 21.09.2007. And

also undertaken to provide the primary security of 110% cash margin by way of term deposits to cover the to the value of the Gold. The said

deposits were made for one year with the expectation that Gold Metal Loan on closure would be met out of their own fund for availing further

Gold Metal Loan thus keeping the deposit intact. Since the price of gold had increased considerably, the respondent bank had advised the

petitioner to bridge the short fall in margin requirements in his gold metal loan accounts through letters dated 07.11.2007 and 04.01.2008. The

petitioner by his letter dated 08.01.2008 deposited only a part amount to meet the short fall and undertook to top-up the margin within a couple of

days. Despite repeated demand made to top-up the margin through letters dated 20.02.2008 and 03.03.2008 and telephonic calls, the petitioner

failed and neglected to adhere to the same.

19. The stand of the respondent Bank in C.R.P. No. 2681 of 2009 is that when there was a shortfall in the cash margin the petitioner was

informed and he was in the practice of remitting and the Bank was awaiting for the petitioner to avail the opportunity afforded and the petitioner

failed to utilise the same that through letters dated 02.09.2008, 18.09.2008, 30.09.2008, the Bank called upon the petitioner to pay the

outstanding amount of Rs. 1,50,38,892.75 after adjustments and since the petitioner failed to respond, the Bank approached the Tribunal and the

aforesaid loan transaction was based on cash security and not on any tangible immovable assets.

20. According to the learned Counsel for the petitioners the orders passed by the Tribunal, in I.A. Nos. 439 and 437 of 2009 dated 22.07.2009

requiring the petitioners to furnish security for the suit claim of Rs. 1,59,74,152/- and Rs. 1,40,47,439/- respectively on or before 14.08.2009

etc., are final orders since the Tribunal has allowed both the applications and therefore, the petitioners are entitled to invoke the supervisory

jurisdiction of this Court under Article 227 of the Constitution of India in praying for necessary reliefs.

21. The learned Counsel for the respondent Bank cites the decision of Hon"ble Supreme Court in Punjab National Bank Vs. O.C. Krishnan and

Others, wherein it is observed that "The Recovery of Debts Due to Banks and Financial Institutions Act has been enacted with a view to provide a

special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely,

filing of an appeal u/s 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles

226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the

jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial

prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High

Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to

the appeal mechanism provided by the Act."

22. The learned Counsel for the respondent Bank cites the decision of Hon"ble Supreme Court in Allahabad Bank, Calcutta Vs. Radha Krishna

Maity and Others, at page 756 wherein it is held that "in view of the Section 22(1) of the Act, the Tribunal can exercise powers contained in CPC

and can even go beyond the Code as long as it passes orders in conformity with the principles of natural justice. Section 19(6) does not in any

manner limit the generality of the powers of the Tribunal u/s 22(1). Section 19(6) 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 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). In addition, Rule 18 enables the Tribunal to pass orders to secure the ends of justice.''

23. He also relies on the decision of Hon''ble Supreme Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, wherein it is

held that ''the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution is confined only to see whether an inferior

Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record much less of an error of law

and that in exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the

Tribunal and it is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence

upon which the inferior Court or Tribunal purports to have passed the order to correct errors of law in the decision.''

24. According to the learned Counsel for the revision petitioners, the Tribunal as per Section 19(13)(A) of the Recovery of Debts Due to Banks

and Financial Institutions Act, 1993 has not given show cause notice to the petitioners before passing an order directing the petitioners to furnish

security for the suit claim and as per Section 22(1) of the aforesaid Act, the Tribunal has to be guided by the principles of natural justice though it is

not bound by the procedure laid down by the CPC and in the instant case on hand, no reasonable opportunity has been given to the petitioners by

the Tribunal before passing an interim order in the applications I.A. Nos. 439 and 437 of 2009 and non-issuance of notice to the petitioners before

passing an interim order is a clear violation of principles of natural justice.

25. As a matter of fact, Section 19(12) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 enjoins as follows:

The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring,

alienating or otherwise dealing with, or deposing of, any property and assets belonging to him without the prior permission of the Tribunal.

26. Furthermore, Section 19(13)(A) of the Act reads as follows:

Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or

frustrate the execution of any order for the recovery of debt that may be passed against him,-

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to

produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be

sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

27. On a careful perusal of Section 19(12) and 19(13)(A) of the RDDBAFI Act, 1993, we are of the considered view that ''when a power is

given to the Tribunal to pass ad-interim order either by way of injunction or stay or calling upon the defendant to furnish security etc., logically it

inheres in it the power to pass that order even ex parte, if it is so in the interest of justice and as per the decision of Hon''ble Supreme Court in

Morgan Stanley Mutual Fund Vs. Kartick Das, . However, the ex parte order is generally only of a short duration and the same is granted to

protect the interest of the applicant, but at the same time, such an order cannot be passed as a matter of routine. A Tribunal has also to consider

the consequences of such an order, if finally the order is to be revoked, after hearing the defendant. It is to be noted that an ex parte order cannot

be allowed to continue indefinitely and the continuance of such an order has to be decided without unnecessary delay when the defendant enters

appearance in the proceedings before the Tribunal.

28. After going through the Tribunal''s orders in I.A. Nos. 439 and 437 of 2009 dated 22.07.2009, we are of the considered view that the order

of the Tribunal, in directing the petitioners to furnish security for the suit claim therein on or before 14.08.2009, are not final orders, notwithstanding

the fact it has mentioned that ''the applications are allowed accordingly'' and the same are only interim in nature and moreover, the Tribunal has

directed the matters to be called on 14.08.2009 and therefore, on the basis of equity, fair play and good conscience and even as a matter of

prudence, the petitioners are at liberty to approach the Tribunal for seeking modification of the order passed, by means of filing necessary

independent application or to file a counter to the I.A. Nos. 439 and 437 of 2009 and to seek redressal of their grievance and it is open to the

Tribunal to pass appropriate orders in the aforesaid applications after providing due opportunities to both parties to prevent an aberration of justice

and in that view of the matter, we opine that the Recovery of Debts Due to Banks and Financial Institutions Act which has provided inbuilt

mechanisms and adopts a fast track procedure cannot be allowed to be derailed by the petitioners by taking recourse to the proceedings under

Article 227 of the Constitution of India, more so, when disputed question of facts are involved, besides there being an effective, viable, alternative

remedy available to the petitioners in the aforesaid Act and consequently, the civil revision petitions fail.

29. In the result, the Civil Revision Petitions are dismissed, leaving the parties to bear their own costs. The petitioners are at liberty to approach the

Tribunal either by way of filing necessary independent application or to file a counter to the I.A. Nos. 439 and 437 of 2009 and to seek redressal

of their grievance in accordance with law within a period of two months from the date of receipt of a copy of this order, in which event, the

Tribunal shall pass necessary orders, within a period of two months thereafter. Consequently, connected miscellaneous petitions are closed.