

M/S. OPTIEMUS INFRACOM LTD. ETC.

v.

M/S. ISHAN SYSTEMS PVT. LTD. & ANR.

(Civil Appeal No(s). 5696 of 2012 etc.)

AUGUST 1, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

CONSTITUTION OF INDIA, 1950:

Art.226 – Writ petition before Allahabad High Court against order of debt Recovery Tribunal Delhi – Maintainability of – Held: In the subsequent writ petition filed by the appellant the said High Court has held that it had no jurisdiction to entertain the writ petition and dismissed the same accordingly – Jurisdiction.

Art.226– Writ petition challenging the order of Debt Recovery Tribunal by which the application challenging the auction of property was rejected– High Court found “no good ground to interfere with the order of the appellate authority”, however, it gave direction to Debt Recovery Tribunal to decide the application and also restrained the auction purchaser for making any further transfer of the property – Held: It is true that the impugned order has more or less worked itself out, but the practice which was adopted by the High Court, is not only arbitrary, but also contrary to the concept of the principles of natural justice – Since the writ petition was to be dismissed without issuing notice, it should have been dismissed without giving any further directions in the matter – If there was any intention on the part of the high court to protect the properties in question during the pendency of the matter before the Debts Recovery Tribunal, the proper course of action would have been to issue notice, and, if necessary, pass interim orders and after hearing the parties to pass final orders in the

A *matter – The impugned judgment to the extent it restrains the appellants from alienating or encumbering the property, is set aside – Natural Justice – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.17-A.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5696 of 2012.

From the Judgment & Order dated 14.2.2012 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. C 8409 of 2012.

WITH

C.A. No. 5697 of 2012

D Mukul Rohtagi, Nageshwar Rao, K.K. Venugopal, Ranjeet Kumar, Subramonium Prasad, Varun Tandon, Suresh Dobhar, Rahul Tyagi, Ruchi Kohli for the Appellant.

E Chetan Sharma, Sameer Vashisht, Kanika Singh, Ashok Mathur for the Respondents.

The Order of the Court was delivered

ORDER

F 1. Two Special Leave Petitions have been filed against the judgment and order dated 14th February, 2012, passed by the Allahabad High Court, in Civil Miscellaneous Writ Petition No.8409/2012.

G 2. The first Special Leave Petition has been filed by M/S. OPTIEMUS INFRACOM LTD., being SLP(C).....CC 12128/12. the second Special Leave Petition has been filed by M/S. PHOENIX ARC PVT.LTD., being SLP(C).....CC 12468/12.

3. Delay condoned.

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4. Leave granted in both the Special Leave Petitions. A

5. Writ Petition No.8409 of 2012, was filed by the respondent, M/S. ISHAN SYSTEMS PVT.LTD.& ANR., against the judgment and order dated 11th April, 2011, whereunder the property of the respondent/judgment-debtor Co. was put to auction. An application had been filed by the respondent-company before the Debts Recovery Tribunal complaining of violation of the statutory rules which regulate the auction of property. Other grounds were also taken, but the same were rejected by the High Court. In fact, the High Court, after examining the records of the writ petition, had found no good ground to interfere with the order of the Appellate Authority. Instead of stopping there, the High Court went on further to give various directions to the Debts Recovery Tribunal, to proceed and decide the application, which had been filed by the respondent No.1/petitioner, being S.A.No.714/2011. By another direction the auction purchaser was restrained from making any further transfer of the property in question and any construction raised would abide by the orders to be passed in the pending application before the Debts Recovery Tribunal. With the aforesaid directions, the High Court disposed of the writ petition finally. B
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6. The said judgment and order of the High Court had been questioned on the ground that having found no ground to interfere with the order of the Appellate Authority, the learned Judge of the High Court should not have passed other orders, and, in particular, an order of injunction, which was to the prejudice of the appellant before us, without issuing notice or giving the appellant an opportunity of hearing. F

7. Since the writ petition was disposed of on the very first date, without notice to the respondents, there was no occasion to consider the competence of the Allahabad High Court to entertain the writ petition. Subsequently, another writ petition was filed by the respondents herein, being No.35215 of 2012, before the Allahabad High Court, for quashing the order dated G
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A 10th July, 2012, which had been passed by the D.R.T.-III, Delhi, by which the application filed by the respondents herein under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act), was rejected. In the said petition, the question of jurisdiction was raised and was heard and decided against the respondents herein. In fact, reference was made in the judgment delivered on 30th July, 2012, to the earlier writ petition and it had been observed that although, the earlier writ petition had been entertained by the Allahabad High Court, the issue relating to jurisdiction had not been gone into, since the writ petition had been disposed of on the first date, without hearing the respondents.

8. Ultimately, the learned Judge accepted the preliminary objections raised on behalf of the appellants herein and held that the Allahabad High Court had no jurisdiction to entertain the writ petition and dismissed the same accordingly.

9. Both, S/Shri Venugopal and Ranjit Kumar, learned senior advocates appearing for the appellants in these two appeals, submitted that, although, the order of the High Court has to some extent been worked out and the sale which had been effected has been confirmed, the only question which remained to be considered was the competence of the Allahabad High Court to entertain a writ petition from an order passed by the Debts Recovery Tribunal, Delhi, and the fact that the same was disposed of on the very first day, without notice, by issuing orders and directions which prejudiced the appellants.

10. Mr. Chetan Sharma, learned senior advocate appearing for the respondents, has tried to impress upon us that the order of injunction which was passed by the Allahabad High Court was innocuous and that it did not prejudice or adversely affect the appellants in any way and since the sale has been confirmed, nothing further remained to be decided, as far as the said question is concerned.

11. It is true that the impugned order has more or less worked itself out, but it needs to be indicated that the practice which was adopted by the Allahabad High Court, is not only arbitrary, but also contrary to the concept of the principles of natural justice. Since the writ petition was to be dismissed without issuing notice, it should have been dismissed without giving any further directions in the matter. Instead, certain positive instructions were given to the respondents and one of the respondents was restrained from dealing with the property, without any notice to him/them. If there was any intention on the part of the learned Judge to protect the properties in question during the pendency of the matter before the Debts Recovery Tribunal, the proper course of action would have been to issue notice, and, if necessary, pass interim orders and, thereafter, after hearing the parties to pass final orders in the matter.

12. We hope that in future, this kind of order will be avoided in the interest of justice and also having regard to the principles of natural justice.

13. The appeals are allowed. The impugned judgment to the extent that it restrains the appellants from alienating or encumbering the property, is hereby set aside.

14. The appeals are disposed of, accordingly.

R.P.

Appeals disposed of.