

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

W.P.No.10352 of 2015

Between:

State Bank of India, Hyderabad Main Branch,

Rep. by its Assistant General Manager.

... Petitioner.

and

The Debts Recovery Appellate Tribunal, Kolkata,

rep. by its Registrar & others.

... Respondents

JUDGMENT PRONOUNCED ON : 07.10.2015

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HON'BLE SRI JUSTICE : R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE : A. SHANKAR NARAYANA

1. Whether Reporters of : Yes/No

Local newspapers

may be allowed to see

the Judgment ?

2. Whether the copies of : Yes/No

judgment may be
marked to

Law Reporters/Journals ?

3. Whether Their Ladyship/ : Yes/No

Lordship wish to see the
fair copy of the judgment ?

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.10352 of 2015

DATE: 07.10.2015

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Between :

State Bank of India, Hyderabad Main Branch,

Rep. by its Assistant General Manager.

.....Petitioner

And

The Debts Recovery Appellate Tribunal, Kolkata,
rep. by its Registrar & others.

.....Respondents.

For petitioner : Sri M.Narender Reddy, Senior Counsel.

For Respondents 3 & 4 : Sri Vedula Venkat Ramana, Senior Counsel

For Respondents 5 & 6 : Sri Koka Raghava Rao, Senior Counsel

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> Head Note:

? CITATIONS:

1. AIR 1984 SC 1826

2. AIR 1985 SC 1726

3. (2015) 4 SCC 609

4. AIR 1963 SC 1124

C/15

HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.10352 of 2015

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ORDER : (Per Justice R.Subhash Reddy)

This writ petition is filed by State Bank of India, Main Branch, Hyderabad, seeking Writ of Certiorary, to quash the order, dated 18.02.2015 (wrongly mentioned as 11.03.2015 in the prayer portion) and the order, dated 11.03.2015 (wrongly mentioned as 15.03.2015 in the prayer portion), passed by the 1st respondent-Debts Recovery Appellate Tribunal, Kolkata, in Appeal No.177 of 2013, by declaring the same as illegal, and consequently allow Application No.311 of 2013 (Old I.A.No.935 of 2012).

2. Respondent No.3 is a Company and respondents 4 to 6 are its Directors and guarantors. They have committed default in repaying the debt due to the petitioner-Bank for the loan facilities granted under "Metal Gold Scheme". The petitioner-Bank has filed O.A.No.556 of 2011 before the 2nd respondent-Tribunal on 14.11.2011 for recovery of a sum of Rs.18,06,07,335-44 p.s. together with future interest. The petitioner-Bank has also filed another O.A. in O.A.No.490 of 2011 for recovery of a sum of Rs.7,82,39,368/- due under the "Metal Gold Scheme" from another Company, namely, M/s.MBS Impex Pvt. Ltd. of respondents 4 to 6. Along with the said O.As., the petitioner-Bank has also moved interlocutory applications in I.A.Nos.916 to 919 of 2011, 1029 and 1071 of 2011 in O.A.No.556 of 2011 and I.A.No.1004 of 2011 in O.A.No.490 of 2011 etc., praying for attachment of the gold and jewelry of respondent-Companies and also for appointment of Advocate-Commissioner to seize and sell the same for realization of the debt due to the petitioner-bank.

3. As the 3rd respondent-Company did not furnish security for the application claim amount in terms of the order, dated 20.01.2012, the 2nd respondent-Tribunal has passed orders after hearing the parties on 29.06.2012 in I.A.No.1004 of 2011 in O.A.No.490 of 2011 and in I.A.No.916 of 2011 in O.A.No.556 of 2011, appointing Advocate-Commissioner Sri P.S.N.Ravindra to take necessary inventory of movables and gold articles available with the 3rd respondent-Company, along with the approved valuer, and seize the articles to the tune of Rs.37 Crores to be kept in his custody. Against the said order, dated 29.06.2012, passed by the 2nd respondent-Tribunal, the 3rd respondent-Company and its sister-Company M/s.MBS Impex Pvt. Ltd., have carried the matter by way of appeals in M.A.Nos.74 and 75 of 2012 before the Debts Recovery Appellate Tribunal at Chennai. In the said appeals, they moved interlocutory applications seeking stay of the orders passed by the 2nd respondent-Tribunal in I.A.Nos.916 and 1004 of 2011. It appears, during the course of hearing of those applications, there was an offer by the learned counsel appearing for the 3rd respondent and the other Company M/s.MBS Impex Pvt. Ltd., to deposit an amount of Rs.13 Crores by 31.08.2012 and a further amount of Rs.13 Crores by 15.10.2012 and sought to set aside the order appointing Advocate-Commissioner. Based on such offer to deposit a total sum of Rs.26 Crores in two spells, the 1st respondent-Appellate Tribunal has passed orders on 19.07.2012, which reads as under :

“M.A.74/2012. MBS Jewellers Pvt. Ltd. V/S. SBI & Ors.

R2 to R4 are given up. Notice given to R1. Ld. Senior Counsel Shri Seshadri appearing on behalf of the Ld. Counsel Shri Girish of Chennai and M/s.Sangi Associates, Hyderabad stated that the appellant is only interested in settling the matter amicably with the bank and that to prove its bonafide the appellant will deposit a sum of Rs.13.00 crores in the form a single or multiple Fixed Deposits with the respondent bank on or before 31.8.2012 and that the appellant will file an affidavit through its officer stating what has been stated with respect to the making of fixed deposits by tomorrow i.e. 20.7.2012. Ld. Senior Counsel further stated that the

appellant will also file an affidavit by tomorrow to the effect that the appellant will deposit a further sum of Rs.13.00 crores in the form of a single or multiple fixed deposits with the respondent bank on or before 15.10.2012. Lr. Senior Counsel also took this tribunal through the impugned order and the docket order dt.29.6.2012 and attempted to demonstrate the fact that the Ld. Presiding Officer has not appreciated the facts and circumstances of the case properly and that the facts of the case do not at all warrant the appointment of a receiver. Ld. Senior Counsel added that the above deposits will be made without prejudice to any of the rights that may be established by the appellant in the counter claim before the tribunal below. Ld. Senior Counsel prayed for interim stay of all further proceedings of the order of the Ld. Presiding Officer and the docket order dt.29.6.2012.

Ld. Counsel Shri Narender Reddy appearing on behalf of the respondent bank took this tribunal through the factual matrix of the case, the type of loan availed and stated that the order of the Ld. Presiding Officer suffers from no infirmities and that the interest of public money should be protected.

Heard the Ld. Senior Counsel for the appellant and the Ld. Counsel for the respondent bank.

Call this appeal for filing of the above stated affidavits on 20.7.2012. In the meanwhile there shall be a stay of all further proceedings of the order of the Ld. Presiding Officer dt.29.6.2012 passed in IA.No.916/2011 in OA.No.556/2011 and the docket order dt.29.6.2012 passed in IA.No.916/2011 in OA.No.556/2011 till 20.7.2012.

IA 737/2012 (stay); Call with MA

M.A.75/2012. MBS Impex Pvt. Ltd. V/S. SBI & Ors.

R2 to R4 are given up. Notice given to R1.

Heard the Ld.Senior Counsel Shri Seshadri appearing on behalf of the Ld. Counsel Shri Girish of Chennai and M/s.Sangi Associates, Hyderabad and the Ld. Counsel Shri Narender Reddy appearing on behalf of the respondent bank.

Call this MA along with MA 75/2012 on 20.7.2012. In the meanwhile there shall be a stay of all further proceedings of the order of the Ld. Presiding Officer dt.29.6.2012 passed in IA.No.1004/2011 in OA.No.490/2011 and the docket order dt.29.6.2012 passed in IA.No.1004/2011 in OA.No.490/2011 till 20.7.2012.

IA 738/2012 (stay); call with MA.”

Pursuant to such submissions made on 19.07.2012 for filing an affidavit undertaking to pay the amount of Rs.26 Crores in two spells on behalf of the 3rd respondent-Company, based on the resolution passed by the Directors, affidavits were filed undertaking to pay the amount as stated in the order, dated 19.07.2012. After filing of affidavits on 20.07.2012 in M.A.No.74 of 2012, the following order is passed :

“Affidavit is filed by the appellant and the same is placed on record. In view of the averments in the affidavit which have been solemnly affirmed in the affidavit on behalf of the appellant it has become necessary to pass the following order:

1. The order of the Ld. Presiding officer dt.29.6.2012 passed in IA.No.916/2011 in OA.No.556/2011 and the docket order dt.29.6.2012 passed in IA.No.916/2011 in OA.No.556/2011 are hereby set aside.
2. The Ld.Presiding Officer, DRT, Hyderabad is directed to take up OA.No.556/2011 for disposal and dispose of the same in accordance with law within a period of 6 months from today.

This MA is disposed of accordingly.

IA 737/2012 (stay); Orders passed in the MA. Hence this IA is closed.”

4. As respondents 3 to 6 have not complied with the undertaking for depositing Rs.26 Crores as ordered in the order, dated 20.07.2012, passed in M.A.No.74 of 2012, the petitioner-Bank has filed I.A.No.935 of 2012 before the 1st respondent-Appellate Tribunal under Section 19(17) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as ‘the Act’), praying for punishing respondents 3 to 6 for their willful disobedience to the undertaking given. After taking adjournments in the said petition, the 3rd respondent at different spells, has totally deposited a sum of Rs.6 Crores in piecemeal and during the pendency of said I.A.No.935 of

2012, the 3rd respondent has once again filed an undertaking affidavit on 11.02.2013, for depositing the balance amount of Rs.20 Crores as per the undertaking dated 20.07.2012. The appellate Tribunal, in the order, dated 11.02.2013, recorded such submission made on behalf of respondents 3 to 6 to deposit the balance amount of Rs.20 Crores in four instalments and posted the matter to 15.03.2013 for verification of payment of 1st instalment. But, by 15.03.2013, respondents have failed to pay such amount and thereafter, jurisdiction is transferred from Appellate Tribunal, Chennai to the 1st respondent-Appellate Tribunal at Kolkata.

5. The application filed in I.A.No.935 of 2012 is re-numbered as I.A.No.311 of 2013 before the 1st respondent-Appellate Tribunal and thereafter, it was disposed of by order, dated 18.02.2015, by recording a finding that respondent No.4 being the Managing Director of the 3rd respondent-Company, is squarely responsible for the civil contempt and not others and has imposed costs of Rs.10 Lakhs in favour of the appellant Bank while posting the matter to 11.03.2015 for compliance. On filing further compliance memo, compliance is recorded by order dated 11.03.2015. In the Memo dated 11.03.2015, filed by the petitioner-Bank on receipt of Rs.10 Lakhs, it is clearly stated that the demand draft for Rs.10 Lakhs was delivered to the bank on 09.03.2015 and the same was received without prejudice to their rights, as the respondents have failed to deposit the balance amount of Rs.20 Crores in compliance to the undertaking and orders passed by the Appellate Tribunal, Chennai, dated 11.03.2015 in I.A.No.935 of 2012 (new number of which is I.A.No.311 of 2013).

6. In this writ petition, it is the case of the petitioner-Bank that the 1st respondent-Appellate Tribunal, having accepted that there is violation of the undertaking given by respondents 3 to 6 by not depositing the balance amount of Rs.20 Crores, has erroneously passed orders

against respondent No.4 only to pay an amount of Rs.10 Lakhs as penalty. It is their case that respondents 3 to 6 have not even disputed the undertaking, as such, the Appellate Tribunal has also committed error by confining the responsibility only to respondent No.4. It is their case that there is no order passed by the Appellate Tribunal to close the breach by ordering for deposit of Rs.20 Crores as per their undertaking given, and as respondents 3 to 6 have willfully and deliberately disobeyed the undertaking, they are liable for detention as contemplated under Section 19(17) of the Act. It is also their case that respondents 3 to 6, by taking advantage of the orders of 1st respondent-Appellate Tribunal by furnishing undertaking, have grossly abused the process of law by not depositing Rs.20 Crores as per their undertaking, and hence, the order passed by the 1st respondent-Appellate Tribunal and the consequential order accepting the memo filed by the respondents, is fit to be set aside by ordering detention of respondents 3 to 6.

7. Respondent No.4 has filed counter affidavit on his behalf as well as on behalf of respondent No.3. In the counter, respondent No.4 has disputed the jurisdiction of this Court to entertain the petition under Article 226 of the Constitution of India, as much as the impugned orders are passed by the Appellate Tribunal at Kolkata. In the counter, it is his case that there is misjoinder of parties, as there is no reason for filing petition against respondents 4 to 6. It is stated that the order dated 20.07.2012, passed by DRAT, Chennai, was merged with the order, dated 11.02.2013, as such, no petition can be maintained to enforce the earlier order. Further, allegations are made against the petitioner-Bank alleging that the scheme itself is a speculative scheme and the petitioner-Bank has successfully dragged the 3rd respondent-Company into the net by offering 1500 Kgs of gold. In the counter, it is also pleaded that the very imposition of Rs.10 Lakhs by DRAT is uncalled for and the findings recorded by the DRAT are not in accordance with law and are based on conjectures and surmises. Accordingly, he prayed for setting aside

the order in which Rs.10 Lakhs penalty was imposed on the respondents and prayed for dismissal of the writ petition.

8. A separate counter affidavit is filed on behalf of respondents 5 and 6. In the counter filed by them, while denying the various allegations made by the petitioner, it is averred that though there are no specific allegations against them, they are unnecessarily impleaded as party-respondents. It is alleged that the writ petition suffers from misjoinder of parties as they are only Directors of the 3rd respondent-Company and are not involved in the activities of the Company and particularly did not sign any affidavit, on the basis of which, orders dated 18.02.2015 and 11.03.2015 are passed. In the counter, it is pleaded that despite receiving the amount of Rs.10 Lakhs on 09.03.2015, which is paid pursuant to the order passed by the Appellate Tribunal towards penalty, the petitioner-Company has again filed a false memo on 15.03.2015. It is pleaded that in view of the compliance recorded on 11.03.2015, this writ petition is not maintainable. Accordingly, they prayed for dismissal of the writ petition.

9. Heard Sri M.Narender Reddy, learned Senior Counsel appearing for petitioner-Bank, Sri Vedula Venkat Ramana, learned Senior Counsel appearing for respondents 3 and 4 and Sri Koka Raghava Rao, learned Senior Counsel appearing for respondents 5 and 6.

10. It is contended by Sri M.Narender Reddy, learned Senior Counsel appearing for the petitioner-Bank that the 3rd respondent-Company, having availed huge loan amount, has committed default in repaying the same and when orders are passed by the primary authority appointing Commissioner to take inventory of the gold articles which were in the business premises of the 3rd respondent-Company, matter is carried to the Appellate Tribunal by way of appeal. In the interlocutory applications, clear undertaking is furnished to deposit

the amount, but having undertaken to pay the amount, the 3rd respondent and its Directors i.e. respondents 4 to 6 have violated the undertaking. It is submitted that though as per the original undertaking, an amount of Rs.26 Crores was to be deposited in two spells, only an amount of Rs.6 Crores was paid after filing of petition by the petitioner-Bank under Section 19(17) of the Act and the remaining Rs.20 Crores was not paid at all. It is contended that the respondents have breached the terms of the orders passed by the Appellate Tribunal on 20.07.2012 and have deliberately and willfully violated the said order, in which, the affidavits of undertaking to deposit, are placed on record and based on such undertaking, orders passed by the primary Tribunal were set aside. It is further contended that once breach is found by the Appellate Tribunal, it is not open to accept the mere penalty. It is contended that in view of the provision under Section 19(17) of the Act, the only option left to the Appellate Tribunal is to order for attachment of the properties of the person guilty and also order such person to be detained in civil prison for a term not exceeding 3 months, unless in the meantime, the Tribunal directs his release. It is submitted that having found that the 3rd respondent-Company and its Directors have breached the undertaking, the Tribunal ought not to have passed the order by merely imposing Rs.10 Lakhs as against the undertaking to deposit an amount of Rs.26 Crores. It is contended that such order is not in conformity with the provision under Section 19(17) of the Act. In support of his contentions, the learned counsel has placed reliance on the judgments of Hon'ble Supreme Court in the case of **Mohammad Idris & another v. Rustam Jehangir Bapuji & others** and in the case of **Balram Singh v. Bhikam Chand Jain & others**.

11. On the other hand, it is contended by the learned Senior Counsel Sri Vedula Venkat Ramana, appearing for respondents 3 and 4 that the order dated 20.07.2012, is merged with the subsequent order passed by the Appellate Tribunal on 11.02.2013, as such, the order dated 20.07.2012, cannot be enforced by way of application in

I.A.No.935 of 2012, as there is no cause of action for filing such application before the Appellate Tribunal. It is also contended by the learned counsel that the provision under Section 19(17) of the Act is not applicable to the proceedings of the Appellate Tribunal. The learned Senior Counsel, by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Sunil Bharti Mittal v. Central Bureau of Investigation**, submits that for violation of orders by the 3rd respondent-Company, its Directors i.e. respondents 4 to 6 are not at all responsible.

12. Learned Senior Counsel Sri Koka Raghava Rao appearing for respondents 5 and 6 submits that the proceedings initiated under Section 19(17) of the Act are in the nature of contempt proceedings which are quasi criminal in nature, and as respondents 5 and 6 have not signed the undertaking affidavits, they are not liable for any action in the petition filed by the petitioner-Bank. Learned counsel has also questioned the jurisdiction of this Court to entertain this petition under Article 226 of the Constitution of India, pleading that the orders complained to have been violated, are passed by the Tribunal at Kolkata which is in the State of West Bengal, as such, this Court has no jurisdiction to entertain this writ petition. The learned counsel, in support of his contentions, has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Collector of Customs, Calcutta v. East India Commercial Co. Ltd., Calcutta & others**.

13. From the material placed on record, it is clear that the petitioner-Bank has approached the 2nd respondent-Tribunal by filing O.A.No.556 of 2011, for recovery of Rs.18,06,07,335.44 p.s. from the 3rd respondent-Company, apart from the other claim in O.A.No.490 of 2011 for recovery of Rs.7,82,39,368/- from the other Company of respondents 3 to 6, namely, M/s.MBS Impex Pvt. Ltd. Initially, the Debts Recovery Tribunal, Hyderabad, has passed orders on 20.01.2012, directing the 3rd respondent-Company to furnish security

for the application amount. As respondents 3 to 6 have failed to furnish security, a common order is passed on 29.06.2012 by appointing Advocate-Commissioner to take inventory of the gold ornaments available with the 3rd respondent-Company so as to keep articles to the tune of Rs.37 Crores in his custody. As against such order, respondents 3 and 4 have carried the matter in appeal before the Debts Recovery Appellate Tribunal, Chennai. On 19.07.2012, in the interlocutory applications filed by them, respondents 3 and 4 have offered to pay a sum of Rs.13 Crores in the form of single or multiple fixed deposits on or before 31.08.2012 and a further amount of Rs.13 Crores on or before 15.10.2012. After filing affidavits to that effect, order dated 20.07.2012, was passed placing on record the undertaking furnished on behalf of the 3rd respondent-Company. It is not in dispute that respondents 4 to 6 being Directors of the 3rd respondent-Company, have not disputed filing of such undertaking. It is fairly well settled that when an undertaking is given and orders are passed by taking the same on record, if there is violation of such undertaking, it is always open for the aggrieved party to file appropriate application complaining disobedience. As per Section 19(17) of the Act, if there is disobedience to an order passed by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in civil prison for a term not exceeding three months, unless in the meanwhile the Tribunal directs his release. The contention of learned Senior Counsel Sri Vedula Venkat Ramana appearing for respondents 3 and 4 that the provision under Section 19(17) of the Act cannot be applied to the orders passed by the Appellate Tribunal, cannot be accepted. Admittedly, the matter which is carried in appeal before the Debts Recovery Appellate Tribunal is against the order passed in interlocutory application, within the meaning of Section 19 (18) (e) of the Act. It is fairly well settled that the appeal is in continuation of the original petitions, as such, the contention of

learned counsel that the provision under Section 19(17) of the Act will be applicable to only primary Tribunal and not Appellate Tribunal, cannot be acceded to. If matters are carried by way of appeals against the orders passed within the scope of Section 19(12), (13) and (18) of the Act, any orders passed by the Appellate Tribunal, would be in continuation to the orders passed by the primary Tribunal under such provisions. In the absence of any restriction under Section 19(17) of the Act to the primary Tribunal and as it is not in dispute that the order appointing Advocate-Commissioner for preparation of inventory is traceable to power under Section 19(18)(e) of the Act, the contention of learned counsel that the scope of provision under Section 19(17) of the Act is confined to the orders passed by the primary Tribunal, cannot be accepted. Coming to the other submission made by the learned Senior Counsel Sri Vedula Venkat Ramana that the order dated 20.07.2012, is merged with the order dated 11.02.2013, as such, there is no cause of action for filing the petition in I.A.No.935 of 2012 (old) and 311 of 2013 (new number after the matter is transferred to the Appellate Tribunal at Kolkata), we have perused the common order dated 11.02.2013, passed by the Debts Recovery Appellate Tribunal, Chennai, in I.A.Nos.935 of 2012, 919 of 2012 and 737 of 2012. After filing the petition in I.A.No.935 of 2012 before the DRAT, Chennai, complaining violation of the undertaking given by respondents 3 to 6, I.A.No.919 of 2012 is filed to reopen M.A.No.74 of 2012 and both the petitions are disposed of by a common order. In I.A.No.935 of 2012, in view of the further submission made on behalf of respondents 3 to 6 to deposit Rs.20 Crores in four instalments of Rs.5 Crores each, matter was posted to 15.03.2015 to verify the payments. At the same time, by allowing I.A.No.919 of 2012, which is filed for reopening M.A.No.74 of 2012, further orders are passed directing the primary Tribunal to dispose of the matter within a time frame. In view of such order passed on 11.02.2013, it cannot be said that the order, dated 20.07.2012, is merged with the final order, dated 11.02.2013. From the common order itself, it is clear that I.A.No.935 of 2012 was ordered to be listed on 15.03.2013 for verification of payment, in view of the submission

made to pay the balance amount of Rs.20 Crores in four instalments. Even then also, they have not paid such amount. As such, the contention advanced by the learned Senior Counsel appearing for respondents 3 and 4 that the effect of earlier order is merged with the subsequent order, dated 11.02.2013, as such, no petition can be filed for disobedience, cannot be accepted. Coming to the judgment relied on by the learned counsel in **Sunil Bharti Mittal's** case (3 supra), in the said judgment, the Hon'ble Supreme Court has held that if the Company is accused, its Directors can be roped in only if there is sufficient incriminating evidence against them coupled with the criminal intent. In the very same judgment, the Hon'ble Supreme Court has held that an individual, who has perpetrated the commission of offence on behalf of a Company, can be made an accused along with the Company. Having regard to the fact that the undertaking is given by respondents 4 to 6 on behalf of the 3rd respondent-Company, it cannot be said that they are unnecessarily roped-in on behalf of the Company. Only pursuant to the resolution passed by the Board of Directors of the 3rd respondent-Company, undertaking affidavit is filed on 20.07.2012, on behalf of respondent No.3, before the Appellate Tribunal at Chennai, undertaking to pay an amount of Rs.26 Crores in two spells, as such, it is not open for them to plead that they are not liable, but the 3rd respondent-Company alone is liable. In spite of the fact that the primary Tribunal has passed orders appointing Advocate-Commissioner to take inventory of the gold articles in the business premises of the 3rd respondent-Company, same was not allowed in view of the interim orders obtained by respondents 3 and 4 before the Appellate Tribunal, solely based on the undertaking affidavits filed before it. Having got set aside the orders passed by the primary Tribunal, which were passed to ensure their claim in the event of their success, it is not open for respondents 4 to 6 being the Directors of 3rd respondent-Company, to wriggle out of the claim by disobeying the undertaking given before the Appellate Tribunal. Such conduct on the part of respondents 4 to 6 is totally deplorable and they have resorted to

gross abuse of the process. Having obtained huge loan facility from the petitioner-Bank, they went to the extent of accusing the said Bank that it has played fraud on them by alluring with the “Metal Gold Scheme”.

14. Respondent No.5 is the brother of respondent No.4 and respondent No.6 is the wife of respondent No.4. It is contended by Sri Koka Raghava Rao, learned Senior Counsel appearing for respondents 5 and 6 that though they are Directors of the 3rd respondent-Company, the Company is being looked after by respondent No.4 only, as its Managing Director. It is further pleaded that the affidavits of undertaking are also not filed at their instance. The learned Senior Counsel has also argued that this Court cannot entertain this writ petition which is filed under Article 226 of the Constitution of India, as much as, the order under challenged is passed by the Appellate Tribunal in Kolkata. In this connection, he has placed reliance on the judgment of Hon'ble Supreme Court in **East India Commercial Co. Ltd.**'s case (4 supra), wherein, it is held that when the order of Appellate authority is outside the jurisdiction of the High Court, Writ cannot be issued even against the original order. A reading of the provision under Section 19(17) of the Act shows that it is in the nature of contempt proceedings and it is time and again held that such proceedings are quasi criminal in nature. In the instant case, it is to be noticed that the primary Tribunal is in Hyderabad i.e. in the composite State of Andhra Pradesh. Further, during the course of hearing, the learned Senior Counsel appearing for petitioner-Bank, Sri M.Narender Reddy has brought to the notice of this Court, a notification issued by the Central Government under Section 8(2) of the Act, specifying the jurisdiction of the Debts Recovery Appellate Tribunal in a tabular form. The aforesaid notification makes it clear that the appellate jurisdiction of Tribunal at Kolkata is extended over the Debts Recovery Tribunals of Cuttack, Guwahati, Hyderabad, Kolkata and Vishakhapatnam. In view of such notification issued by

the Government of India, it cannot be said that this Court is not having jurisdiction, and hence, the judgment relied on by the learned Senior Counsel for respondents 5 and 6 would not render any assistance in support of his case. In any event, the said judgment also would not support his case, in view of the amendment made to Article 226 of the Constitution of India subsequent to the said judgment, particularly, in view of the provision under Article 226(2) of the Constitution. Further, in the judgment relied on by the learned Senior Counsel for petitioner-Bank in **Balram Singh's** case (2 supra), which arose under the Contempt of Courts Act, the Hon'ble Supreme Court has held that when there is gross contempt of Court, adequate sentence is necessary. In the other judgment relied on by the learned counsel for petitioner-Bank in **Mohammad Idris'** case (1 supra), the Hon'ble Supreme Court has confirmed the orders passed by the High Court, directing closure of breach of undertaking given by a party by giving appropriate directions in addition to punishing the party for contempt of Court. Both these judgments, though under Contempt of Courts Act, would support the case of petitioner in the present case, in view of the language under Section 19(17) of the Act.

15. From a perusal of the order dated 18.02.2015, passed by the Appellate Tribunal, it is clear that the only defence put-forth by respondents 3 to 6 is that as they were expecting loan of Rs.231 Crores from the Punjab National Bank, undertaking was furnished before the Appellate Tribunal. To support that contention, a copy of the letter, dated 24.07.2012, appeared to have been placed before the Appellate Tribunal, wherein, Punjab National Bank has proposed to give loan subject to various conditions, is placed on record. When the same is a proposal subject to various conditions, it is not expected from respondents 3 to 6 to furnish an undertaking to pay Rs.26 Crores in two spells. From such defence put-forth by respondents 3 to 6, it is clear that they have no reason to believe that they would be able to pay the undertook amount as on the date of filing such undertaking. It is clear from the material on record and the

stand of respondents 3 to 6 that such undertaking was given only to frustrate the orders passed by the primary Tribunal to avoid inventory by the Advocate-Commissioner. By getting set aside the order passed by the primary Tribunal by furnishing the undertaking, it is a clear case where respondents 3 to 6 have intentionally and deliberately flouted the undertaking given before the Appellate Tribunal.

16. The Appellate Tribunal, in the order dated 18.02.2015, though has recorded a finding that respondent No.4 being the Managing Director of the 3rd respondent-Company, is wholly responsible for civil contempt and not others, curiously, it has disposed of the petition by merely ordering to pay a sum of Rs.10 Lakhs in favour of the petitioner-Bank. From a perusal of the provision under Section 19(17) of the Act, it is clear that there is no such power conferred on the Tribunal to close the breach by imposing such penalty only. In the event of any finding by the Primary or the Appellate Tribunal that there is violation of the orders passed under Section 19(12), (13) or (18) of the Act, or breach of any of the terms of the order passed by the Tribunal, the only option left to such Tribunal is either to order for attachment of the properties of the person guilty of such disobedience or breach and to order such person to be detained in civil prison for a term not exceeding three months. While exercising statutory power under Section 19(17) of the Act, it is not open for the Tribunals to pass any other order by traversing beyond the scope of the provision itself. In that view of the matter, the order of the Appellate Tribunal, dated 18.02.2015, to the extent of closing the breach by imposing penalty of Rs.10 Lakhs, is liable to be set aside. Consequently, the recording of memo is also fit to be set aside. As the amount of Rs.10 Lakhs deposited by the respondents pursuant to the order, dated 18.02.2015, is received by the petitioner-Bank without prejudice to their rights, it cannot be said that merely because they have accepted such amount, they cannot pursue the matter further. As we are of the considered view that the 3rd respondent-

Company and its Directors i.e. respondents 4 to 6 have grossly abused the process of law and deliberately and intentionally violated the undertaking furnished before the Appellate Tribunal on 20.07.2012, they are liable to be punished under Section 19(17) of the Act. Thus, we find that the impugned orders passed by the Appellate Tribunal are not in conformity with law as contemplated under Section 19(17) of the Act. In that view of the matter, we deem it is a fit case for reconsideration by the Appellate Tribunal. Though it is contended by the learned Senior Counsel for respondents 5 and 6 that, being the Directors of 3rd respondent-Company, they have not involved in its day-to-day business, as we propose to remit the matter, this plea also can be raised by them before the Appellate Tribunal and the same may be considered by it while disposing of the matter.

17. For the aforesaid reasons, the writ petition is allowed and the order dated 18.02.2015, passed by the Debts Recovery Appellate Tribunal, Kolkata, in Application No.311 of 2013 in Appeal No.177 of 2013 and the consequential order, dated 11.03.2015, passed by the said Tribunal in Appeal No.177 of 2013, are quashed. The matter is remitted to the 1st respondent-Appellate Tribunal for reconsideration and for passing appropriate orders in accordance with the provision under Section 19(17) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as expeditiously as possible, preferably within a period of two months from the date of receipt of this order, after giving opportunity of hearing to the parties. Further, the amount of Rs.10 Lakhs deposited by the respondents is permitted to be adjusted towards the loan account of respondent No.3. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A.

SHANKAR NARAYANA, J

7th October 2015

N.B:

1. L.R.Copy be marked.
2. Issue C.C. by 12.10.2015.

(b/o)

ajr