IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.11320 of 2019
Date of Decision: 19.09.2019

S.P. Goyal and another

.....Petitioners

Versus

Debts Recovery Appellate Tribunal, New Delhi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Shikhar Sarin, Advocate for the petitioners.

Mr. C.S. Pasricha, Advocate for respondent No.2.

Mr. Vipul Joshi, Advocate for
Ms. Saumya Ahluwalia, Advocate for respondent No.3.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are the Ex-Directors and the Guarantors of respondent No.3 who have challenged the orders dated 20.07.2018 and 19.02.2019 passed by respondent No.1.

In brief, respondent No.2 filed an OA No.2533 of 2017 (Old No.694 of 2014) before the Debt Recovery Tribunal-II, Chandigarh (for short, "the Tribunal") in which the petitioners had filed a miscellaneous application i.e. IA No.1200 of 2016 for seeking deletion of their names from the array of the respondents on the ground that the main guarantor-Smt. Sudesh Goyal had already been discharged by respondent No.2 whereas the petitioners are her legal representatives. In the said OA, respondent No.2 also filed IA No.527 of 2016 for seeking an order to restrain the present petitioners from leaving the country and also for surrendering their passports before the

Tribunal. The application was partly allowed vide order dated 25.05.2017 by the Tribunal with the following order:

> *"This is an application for restraining from leaving India and to surrender their passports.*
>
> *This court has no jurisdiction to either impound or direct the defendants to surrender their passports.*
>
> *As such that prayer is declined.*
>
> *However, defendant nos.5 and 6 are ex parte so no order can be passed restraining them since it would reopen the entire proceedings for defendant nos.5 and 6.*
>
> *However, defendant nos.2 and 4 are restrained from leaving the country without permission of this Tribunal.*
>
> *In view of the above, IA 527 of 2016 is partly allowed."*

The petitioners then challenged the order dated 25.05.2017 by way of a miscellaneous appeal No.293 of 2017 filed under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (for short, "the Act") before the Debts Recovery Appellate Tribunal, New Delhi/respondent No.1 in which the impugned order dated 20.07.2018 was passed by the Appellate Tribunal wherein it observed as under:

> *"Considering the fact that a huge amount of public money is involved, I deem it appropriate to give a show cause notice to the appellants as well as respondents no.3 to 6, who are being sued as guarantors/mortgagors to show cause as to why they be not called upon to furnish security sufficient enough to satisfy the bank's claim in the event of it succeeding in its OA and as to why Receiver be also not appointed to take over all their assets movable and immovable including the moveable items lying in their houses where they are staying as per the memo of parties and be sold also. Before the next date, they shall also file an affidavit of their bank accounts and from today*

> *onwards they will stand restrained from withdrawing any money from any bank accounts being maintained by them anywhere. On the next date both the appellants as well as respondents no.3 to 6 shall appear in person also. It is clarified that giving this show cause notice will not be considered as expression of any opinion on the case of either of the parties and these directions are being given in exercise of the powers under section 19(13)(A), 19(18) and 19(25) of the Recovery of Debts and Bankruptcy Act, 1993 and in public interest.*
>
> *The authorised officer of the respondent bank shall collect dasti notices for being served upon the respondents 3 to 6 and he will place on record service report and will appear also in person on the next date along with the original loan file/documents.*
>
> *As far as appellants are concerned, learned counsel for the appellants submitted that he would today itself convey aforesaid direction to the appellants at least that operation of their bank accounts has been stalled.*
>
> *Re notify on 20.08.2018."*

Thereafter, the petitioners filed a CWP No.20119 of 2018 titled as 'S.P. Goyal and another Vs. Debts Recovery Appellate Tribunal, New Delhi and others' in this Court against the order dated 20.07.2018. The writ petition was dismissed by this Court on 20.08.2018 on the ground of being premature as it was observed that the Appellate Tribunal has only issued a show cause notice which cannot be considered to be an expression of any opinion on the merits of the case of either party, however, the petitioners were allowed to file reply to the show cause notice but the petitioners did not file any reply to the show cause notice. However, on 19.02.2019, while passing the impugned order, the appeal was dismissed by the Appellate Tribunal, maintaining the order of the Tribunal that the petitioners are required to seek permission before going abroad and the registry was directed to prepare a separate file in respect of show cause proceedings, which has a reference in the earlier order and the matter was ordered to be taken up on the adjourned date.

Aggrieved against the orders dated 20.07.2018 and 19.02.2019, the present petition has been filed.

Counsel for the petitioners has submitted that the Appellate Tribunal has committed a jurisdictional error in passing the impugned order as it does not enjoy the jurisdiction to issue a show cause notice in the appeal of the petitioners to call upon them to furnish security sufficient enough to satisfy the bank's claim and also as to why a receiver be also not appointed to take over all their assets, movable and immovable, including the items lying in their houses. In this regard, besides referring to a provision of Section 19 of the Act reference has also been made to a Division Bench Judgment of Delhi High Court rendered in the case of **'Padam Singhee and another Vs. M/s SVOGL Oil Gas and Energy Ltd. and others', WP(C) No.9616 of 2018, decided on 18.09.2018**, to contend that the appellate authority does not have the jurisdiction, after the dismissal of appeal, to continue any proceedings. He has also submitted that as per Section 20 (4) of the Act, the appellate authority has the power only to confirm, modify or set aside the order appealed against and not to create a new case out of the case of the appellant who had challenged the order passed by the Tribunal, for the purposes of protecting the property of the secured creditor.

Counsel for respondent No.2 has not cited any judgment to the contrary but it is submitted that the order for seeking permission for going abroad may be protected and also permission may be given to file an appropriate application for the appointment of a receiver.

After hearing both the counsel and taking into consideration the aforesaid facts and circumstances, we are of the considered opinion that the impugned orders (**Annexure P-11 and P-12**) are patently illegal because after the dismissal of the appeal, separate proceedings could not have been initiated.

Thus, in view of the aforesaid, the present petition is hereby allowed and the orders dated 20.07.2018 and 19.02.2019 are hereby set aside except for the order that the petitioners have to seek permission of the Tribunal before going abroad.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

19.09.2019
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No