AD. 72.
June 29, 2021.
MNS.

C. O. No. 1203 of 2021
(**Via video conference**)

M/s Pat International and others
Vs.
Indian Overseas Bank and another

Mr. Sabyasachi Chaudhuri,
Mr. Chanchal Kumar Dutta,
Mr. Probhat Sil,
Ms. Krishna Mukherjee

… for the petitioners.

Mr. Debajyoti Basu,
Ms. Reshmi Mukherjee

…for the opposite parties.

Affidavit-of-service filed in Court today be taken on record.

Both the contesting parties are represented through counsel.

The present application under Article 227 of the Constitution of India has been preferred against a judgement passed by the Debts Recovery Tribunal 1, Kolkata, thereby dismissing the main matter itself, that is, SA No. 232 of 2017.

Learned counsel for the petitioners contends that the relevant date, on which the impugned order dated June 9, 2021 was passed, was merely fixed for passing orders on the connected interlocutory applications in the SA.

Counsel places reliance on a photocopy of the certified copy of the order of the Tribunal dated April 1, 2021, where it is specifically recorded by the Tribunal that the learned advocates for the parties were present. It is not even clear whether there was any hearing given to learned counsel appearing for the parties, at least from the order dated April 1, 2021 itself.

Be that as it may, the tribunal reserved the "matter" for order. Evidently, since the "matter", which was taken up on that date, was an interlocutory application, which was yet to be decided, although one of the other interlocutory applications being IA 992 of 2021 had been disposed of. Since judgment was reserved specifically in IA 993 of 2021, the tribunal had no business on June 9, 2021 to dispose of the SA itself, without even hearing the same on merits.

Surprisingly, the tribunal itself, in the impugned order, records at the outset that the 'I.A's were taken into consideration and connected pleadings as well. However, the presiding officer of the Debts Recovery Tribunal realized, in the course of adjudication (passing orders) on the interlocutory application, that there was a previous order of the appellate tribunal for expeditious hearing and disposal of the main matter. Such observation is reflected in paragraph no. 7 of the impugned order.

Thereafter, all on a sudden, the tribunal attributed certain arguments to learned senior counsel for the applicant in paragraph no. 8 of the impugned order, which *ex facie* were in favour of the respondent-bank and, as such, could not have been contended by the present petitioner. This gives a wrong picture that the applicant was heard, although only counsel for the bank had argued. Such “typographical” errors are found galore in the order. Even in paragraph no. 5, the tribunal records that learned senior counsel appearing for the respondent, that is, the bank, had assailed the SARFAESI actions on numerous grounds, which was also evidently an error, since the petitioners, and not the bank, had assailed such actions. In view of the previous error, seen in conjunction with the subsequent observation that learned counsel for the applicant was heard, made in paragraph no. 8, there cannot be any shade of doubt that the present petitioners were not even heard on the merits of the main matter.

That apart, as mentioned earlier, there is substance in the submission of learned counsel for the petitioners that the date was fixed only for passing orders on the interlocutory application, as also borne out by the narrative recorded in the impugned order itself.

As such, barely touching on the merits of the case, learned counsel for the petitioners submits that there was palpable jurisdictional error on the part of the tribunal.

To such contention, learned counsel for the respondent-bank contends that the application under Article 227 of the Constitution ought not to be entertained in view of an equally efficacious alternative remedy being available in the form of an appeal and relies on the relevant sections of the SARFAESI Act for such purpose. It is contended that the grievances raised in the present application under Article 227 of the Constitution could very well have been agitated before the appellate forum.

That apart, learned counsel for the opposite parties relies on paragraph no. 7 of the impugned order to indicate that the SA itself had been taken up for hearing and disposal.

However, such contentions of the opposite parties pale into insignificance in view of the prior observations made in the impugned order itself as regards the scope of the adjudication being restricted to the interlocutory application. Even the previous order dated April 1, 2021 corroborates the same proposition and shows that the interlocutory application was the “matter”, which was reserved for order (although surprisingly there is no reflection of learned counsel being heard on the interlocutory application on such date as well).

As far as the observation made in paragraph no. 7 of the impugned order is concerned, it is incredible for any judicial or quasi-judicial authority and/or tribunal constituted under any law to have committed such a patent error in following blindly the direction of the appellate tribunal, which was, by nature, only in terrorem, by disposing of the main SA itself without giving any opportunity to the parties to contend on the merits of the same and/or even taking care to fix a specific date for such hearing.

Hence, on the face of the impugned order, the same was passed palpably without jurisdiction, thereby causing a gross miscarriage of justice in so far as the main matter, that is the SA 232 of 2017 itself, was dismissed on merits, while passing orders on the interlocutory applications, on a flagrant violation of a cardinal principle of natural justice, that is, *audi alterem partem.*

That apart, such orders ought to be deprecated for the mere carelessness involved and should be set aside at the first blush. The presiding officer-in-question ought to be more cautious in disposing of matters, merely due to existence of a previous direction for expeditious hearing, on their merits, without fixing any date for hearing learned counsel of parties and/or actually hearing counsel on merits.

Such a modus operandi is stringently deprecated and it is expected that the presiding officer concerned shall not repeat the same in future.

In view of the observations made above, C. O. No. 1203 of 2021 is allowed on contest, thereby setting aside the impugned order dated June 9, 2021 passed in SA 232 of 2017 under the superintending power conferred by Article 227 of the Constitution on the High Courts, with a caution to the presiding officer, who passed the impugned order, to be careful in future.

In view of the conduct of SA 232 of 2017, this court cannot repose any faith on the presiding officer-in-question, at least as far as the hearing of SA 232 of 2017 is concerned.

Accordingly, the said matter,that is SA 232 of 2017 now ought to be heard and disposed of, along with the interlocutory applications in connection therewith which were pending on the date of the impugned order, which revive due to reversal of the impugned order, before a different presiding officer, that is the only other available bench at present functioning in the Debts Recovery Tribunal, Kolkata. The presiding officer of the said other bench, where SA 232 of 2017 along with connected interlocutory applications are being remanded, shall endeavour to dispose of the matter as expeditiously as the business of the said bench permits.

Liberty is granted to the parties to apply for appropriate interim orders before the remandee tribunal. If any such application is taken out on urgent basis, the said presiding officer shall dispose of such interlocutory application as expeditiously as possible, preferably within a month from the date of communication of this order as well as transmission of the records to the said bench.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)