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W.P.No.11126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2023

Pronounced on : 19.09.2023

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.11126 of 2023
and
W.M.P. No.10979 of 2023**

Mrs.K.Letchoumy Kanagarajan
Proprietrix
M/s. Meera Enterprises
193/A, Bharathiyar Road,
Karaikal 609 602.

... Petitioner

v.

1.The Registrar,
The Debts Recovery Appellate Tribunal,
7th Floor, No.6, II Additional Office Building, Haddows Road,
Shastri Bhawan, Chennai 600 006.

2.The Authorized Officer,
State Bank of India,
Karaikal Branch,
No.72, Bharathiar Salai,
Karaikal 609 602.

3.M.Abdul Ali

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, declaring that the guidelines issued by the 1st



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respondent in F.No.E3/01/2022/DRAT dated 07.02.2023 as being contrary to law and principles of justice and to consequently direct the 1st respondent to entertain the petitioner's urgent petitions for hearing interim petitions ex parte without insisting for pre-notice on the respondent.

For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mr.M.L.Ganesh for R2
Mr.R.Jayaprakash for R3
R1- Tribunal

ORDER

MOHAMMED SHAFFIQ, J.

The present writ petition is filed challenging the guidelines dated 07.02.2023 issued by the 1st respondent herein in F.No.E-3/01/2022/DRAT insofar as it disables the petitioner from moving the Debt Recovery Appellate Tribunal, Chennai for *ex parte* interim orders.

2. Before we proceed to examine the challenge to the impugned guidelines, it may be relevant to set out very briefly the facts, which read as follows:

a. The petitioner approached the 2nd respondent Bank for financial assistance in the year 2013 and was sanctioned an overdraft facility to the extent of Rs.60 lakhs. She again approached the 2nd respondent in the year 2015 for enhancement of the limit of the said facility by another Rs.30 lakhs, which was



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sanctioned on 30.12.2015. Resultantly, the petitioner was sanctioned an overdraft facility to the extent of Rs.90 lakhs.

b. The petitioner offered her property at Karaikal as security. The valuation of the said property was carried out by the 2nd respondent initially in 2013 and again in 2015. A valuation certificate was issued in respect of the said property certifying that the market value was Rs.2,17,00,000/-. The second Valuation Report was made on 15.08.2015, wherein the market value was fixed at Rs.2,60,42,000/- and the realizable value was at Rs.2,40,00,000/-, while the distress sale value was fixed at Rs.2,20,00,000/-

c. It is stated that though the petitioner initially made repayments regularly, however, due to set back in the business, she fell in default of repaying the loan.

d. The respondent Bank issued a notice on 29.08.2019 demanding payment of a sum of Rs.81,75,071/-. The petitioner requested to re-schedule the loan and to furnish details / list of the documents pledged so as to enable her to take steps for mobilizing the funds to settle the loan.

e. The 2nd respondent Bank issued possession notice on 06.11.2019. The petitioner requested three months time for settling the loan account. However, the 2nd respondent issued a sale notice dated 31.12.2019 for conducting e-auction sale



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of the secured asset for recovery of the alleged dues of Rs.84,47,094/-. The upset price was fixed at Rs.1,15,80,000/-.

f. The auction sale was scheduled to be conducted on 30.01.2020. On 29.01.2020, the petitioner approached the Bank and paid a sum of Rs.4,99,000/-, while requesting the 2nd respondent Bank to postpone the e-auction by a week assuring that she would settle the entire dues by then.

g. Despite the above request, the e-auction was conducted on 30.01.2020. Pursuant to a request made by the petitioner on 31.01.2020 to furnish the details of e-auction sale, she was provided with the details on 06.02.2020, indicating that the 3rd respondent was the highest bidder at Rs.1,16,05,000/-. It was also informed that the said sum had been remitted by the 3rd respondent and the sale certificate was also issued to him. Immediately, the petitioner approached the 2nd respondent Bank on 12.02.2020 with ready payment of Rs.82,00,000/- and requested to cancel the sale certificate. The said request was not acceded to by the 2nd respondent Bank. Subsequently, the petitioner sent a letter dated 13.02.2020 enclosing a copy of the cheque for Rs.82,00,000/-. However, there was no response from the 2nd respondent Bank.



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h. Thereafter, the petitioner approached the Debt Recovery Tribunal – III (hereinafter referred to as “DRT-III”) by filing S.A.No.32 of 2020 with a prayer to set aside the auction conducted on 30.01.2020 and to cancel the sale certificate, if any, issued by the 2nd respondent Bank in favour of the 3rd respondent. The DRT-III *vide* order dated 20.02.2020 in I.A.No.103 of 2020 recording the assurance of the petitioner to discharge the entire liability due to the 2nd respondent Bank, directed her to deposit a sum of Rs.84,50,000/- on or before 22.02.2020, and restrained registration of the sale certificate. The said direction / condition was complied with and the interim order was extended.

i. In the meanwhile, the auction purchaser i.e., the 3rd respondent herein filed an application in S.I.A.No.434 of 2021 praying for a direction to the 2nd respondent Bank to return the auction sale amount of Rs.1,16,05,000/- with interest at 18% p.a. In view of the said application, the DRT-III, directed each of the parties to file a memo indicating their willingness to set aside the e-auction sale and return of the sale amount to the 3rd respondent.

j. Accordingly, a memo was filed by the petitioner. The 2nd respondent Bank filed a memo confirming that the petitioner had deposited a sum of Rs.84,50,000/- on 21.02.2020 in addition to Rs.4,99,000/- paid on 29.01.2020. It was however



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stated that the demand draft for Rs.84,50,000/- was not encashed as the loan account was already cleared / closed. The 3rd respondent / auction purchaser also filed a memo on 22.07.2021 stating that he is ready and willing to surrender the original documents on payment being made by the 2nd respondent Bank of Rs.1,16,05,000/- representing the sale amount along with interest at 18% p.a.

k. Apparently, there were other dues from the petitioner in respect of the other loan accounts and the surplus sum out of the sale proceeds, was adjusted towards the said dues in respect of two other loan accounts. After adjusting the excess amount towards other dues of the petitioner and her husband, a sum of Rs.11,79,960/- was paid/returned to the petitioner on 15.02.2020.

l. The DRT-III reserved the order in S.A.No.32 of 2020 on 22.07.2021 and the order was pronounced on 03.03.2023 i.e., after 18 months from the date of reserving the same. The DRT-III dismissed the securitization application in S.A.No.32 of 2020, observing that the sale notice, wherein the sale price had been fixed, was not challenged and therefore, the said application fails.

m. Aggrieved by the above order, the petitioner approached the 1st respondent viz., Debt Recovery Appellate Tribunal by way of an appeal in A.I.R.No.219 of 2023 on 10.03.2023 along with interim application/ interim



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petition for an order of injunction restraining the 2nd and 3rd respondents in any manner acting in furtherance of the auction sale conducted on 30.01.2020. The petitioner also filed urgent petition, stay petition and waiver petition.

n. The petitioner moved the registry for listing of the appeal on an urgent basis stating that though she continued to remain in physical possession of the property, the 2nd and 3rd respondents were taking steps for registration of the sale certificate and there was an imminent threat of her possession being disturbed and property deprived.

o. Though the appeal is stated to be in order, the Registry insisted on complying with the requirement of the condition of deposit of 50% in terms of 2nd proviso to Section 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act). According to the petitioner, the said condition was not justified inasmuch as the entire liability had already been discharged and there was no amount due from the petitioner and further, a waiver petition in I.A.No.135 of 2023 has also been filed. The Registry also insisted on complying with the impugned guidelines issued by the first respondent dated 07.02.2023 which *inter alia* included service of notice on the respondent as a condition precedent for



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listing the urgent applications before the Appellate Tribunal.

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p. It is stated that only on moving the application in I.A.No.134 of 2023 for urgent hearing of the waiver application and injunction restraining the 2nd and 3rd respondents herein from acting in furtherance of the auction sale conducted on 30.01.2020, the petitioner was informed about the guidelines dated 07.02.2023 issued by the 1st respondent for moving urgent applications before the Appellate Tribunal, which *inter alia* required filing of Affidavit of Service (AoS), on the respondents of the intended urgent hearing. The petitioner served the advance notice to the 2nd and 3rd respondents *vide* notice dated 23.03.2023 for the intended hearing on 28.03.2023. The 3rd respondent herein evaded service and the petitioner also filed an affidavit on service on 27.02.2023 indicating the same. Despite the same, the 1st respondent refused to list the urgent hearing petition stating that the guidelines dated 07.02.2023 were not complied with.

q. The petitioner's counsel once again took service on the respondents for the intended hearing on 30.03.2023 by issuing notice through RPAD on 27.03.2023. The 3rd respondent herein evaded to receive notice till the morning of 31.03.2023. An affidavit of Service with postal receipts was submitted on 29.03.2023, but the office of the 1st respondent refused to receive the same and declined the petitioner's



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request to list the matter before the Chairperson of the DRAT. The learned counsel for the petitioner thereafter, was permitted to file Affidavit of Service, but was informed that the matter would not be listed unless notice is served on the 2nd respondent therein. The petitioner was advised to withdraw the urgent hearing application and to take steps for issuance of regular notice and a separate urgent petition be filed afresh. It is stated that the petitioner had withdrawn the urgent petition in view of the alleged compulsion by the Registry. The waiver application was listed in the usual course before the Registrar on 03.04.2023 and notice was ordered returnable by 04.05.2023 without appreciating the urgency and the repeated request made for early hearing, was not considered. It is relevant to note that mentioning seeking urgent listing is not permitted before the Chairperson of the DRAT.

3. It is against the above backdrop that the petitioner has filed the present writ, challenging the guidelines issued by the 1st respondent dated 07.02.2023 as being contrary to law and consequently directing the 1st respondent to entertain the petitioner's urgent hearing application ex-parte without insisting on service of notice on the respondents, since there is a real and eminent threat of the petitioner being deprived of her property.



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4. Case of the Petitioner:

i. That the impugned guidelines violate the fundamental right of the petitioner to seek recourse to justice.

ii. That any guideline regulating the procedure ought to be in conformity with the constitutional guarantees. The requirement of filing proof of service on the respondents 24 hours before the intended date of hearing fails to take into account that there could be circumstances/instances, where urgent orders are required and cannot brook any delay or the respondents may evade service, which would cause grave hardship resulting in denial of access to justice.

iii. That the impugned guidelines are arbitrary and discriminatory and thus, liable to be set aside.

5. Case of the Respondents:

To the contrary, it is submitted by the learned counsel for the respondents that the guideline are issued in valid exercise of power under Section 22 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as “the RDB Act”) and the requirement of service of notice on the respondents before hearing, is consistent with the scheme of the RDB Act and cannot be stated to suffer from



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arbitrariness nor is it discriminatory. The 2nd Respondent filed his counter, wherein the above position is reiterated.

6. Heard the learned counsel for the petitioner and the respondents. Perused the materials available on record.

7. Though contentions were raised as to various infirmities in complying with the requirements under the SARFAESI Act before the property was brought to sale by way of e-auction and also calculation of the amounts that are due and set off the surplus amount towards other loan accounts of the petitioner, we do not propose to examine the merits or otherwise of the same. Similarly, we do not intend to examine the averments made by the second respondent in his counter relating to facts nor the conduct of the petitioner. Accordingly, we confine ourselves only to examine the question as to whether the impugned guidelines are valid and sustainable in law.

8. We find that the impugned guidelines are liable to be set aside for the following reasons:



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a. Precedent on the issue - Power to grant stay / injunction inheres power to grant ex-parte orders:

8.1. The question as to whether the Debt Recovery Tribunal/Appellate Tribunal will have the authority / power to grant ex-parte interim orders, is no longer *res integra*. The said question had come up for consideration on more than one occasions before the Hon'ble Supreme Court as well as this Court wherein it has been consistently held, on considering Section 22 of the RDB Act that the Tribunal is not bound by the procedure laid down by the Code of Civil Procedure however, its power is much wider than that conferred on a Court under the Code of Civil Procedure, with the only fetter being to observe the principles of natural justice. It has also been held that once power is found to be vested with the Tribunal to grant interim orders, the power to grant orders ex-parte inheres in such grant. In this regard, it may be useful to refer to the following judgments:

i. Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd., (1999) 4 SCC 710:

“11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure. Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.



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“We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers of a civil court while trying a money suit. Further, when power is given to the Tribunal to make an interim order by way of an injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of this Court in Morgan case [(1994) 4 SCC 225] which has been quoted above.”

ii. The Hon'ble Supreme Court in *Allahabad Bank v. Radha Krishna Maity* (1999) 6 SCC 755 followed the above decision in *Grapco Industries Ltd.* and held as under:

“7. In a recent decision of this Court under this Act in Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd. [(1999) 4 SCC 710] this Court considered the provisions of the Act and the powers of the Tribunal. The question that arose in that case was whether the Tribunal could pass an order granting ex parte injunction. In that context, reference was made to Section 22 of the Act. This Court observed that the Tribunal's powers were [except as stated in sub-section (2)], wider than the powers of a civil court and the only limitation was that it should observe the principles of natural justice. Wadhwa, J. stated as follows: (SCC p. 716, para 11)

“11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a court as contained in the Code of Civil Procedure. Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.”

After contrasting the provisions of the Act with the restrictions imposed upon certain other tribunals under other statutes, this Court observed: (SCC pp. 717-18, para 12)

“It will, thus, be seen that while there are no limitations on the powers of the Tribunal under the Act, the legislature has thought fit to restrict the powers of the authorities under various enactments while exercising certain powers under those enactments.... Further, when power is given.



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to the Tribunal to make an interim order by way of an injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice....”

iii. Prasanthi Cashew Company Pvt. Ltd. v. A. Abdul Salam, 2015 SCC OnLine Mad 125 : AIR 2015 Mad 71:

“12. Further, when power is given to the Tribunal to make an interim order by way of an injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of this Court in Morgan case, which has been quoted above.”

iv. Ranjith Impex and Ors. vs. State Bank of India, (2009) 5 LW 328:

"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 v. Kartick Das (1994) 4 SCC 225. 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."

Thus, it is clear that Section 22 of the RDB Act has been held to vest the Tribunal with the power to grant ex-parte orders.

8.2. Circumstance warranting further deliberation

We shall now proceed to examine the validity of the impugned guidelines keeping the above decisions in mind and determine whether the impugned



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guidelines issued in purported exercise of power under Section 22 of the RDB Act can be sustained.

8.3. In the light of the above judgments, there would not have been necessity for any further discussion on, whether the Tribunal would have the power to grant ex-parte interim orders, but for the impugned guidelines issued in purported exercise of its powers under Section 22(1) of the RDB Act, insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal, despite the above orders of the Supreme Court and this Court holding that any Tribunal/Appellate Tribunal under Section 22 of the RDB Act is vested with power to grant stay, power to grant *ex-parte* orders inheres in it.

9.1. Before proceeding further, it may be relevant to extract the impugned guidelines, which read as follows:

“In order to regulate and streamline the processing of urgent / advance hearing petitions filed in Appeal cases, the following guidelines are issued in terms of Section 22(1) of the Recovery of Debts and Bankruptcy Act, 1993 with immediate effect:

Urgent hearing petitions (in fresh Appeal cases)

1. Urgent hearing petition (Interlocutory Application) filed by the Appellant(s) along with fresh Appeal shall explain clear grounds of urgency together with relevant supporting material/documents.

2. Such urgent petitions as indicated in Para 1 above, would be listed before Appellate Tribunal by the Registry after due registration/numbering on priority basis subject to:



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- a. Compliance of all office objections/curing of defects in the Appeal by the Appellant, including pre-deposit as mandated in terms of the relevant act to entertain the Appeal or filing of IA seeking waiver of pre-deposit and payment of deficit court fee, if any, within a period of 7 working days;
- b. After compliance of office objections (a) above,

(i) Filing an Affidavit of service (AoS), of having taken written notice on the Respondents regarding filing of urgent hearing petition intimating the intended date on which the urgent petition is sought to be moved, with the Registry of the Tribunal before 2.00 p.m. on the day prior to the intended date on which the urgent petition is sought to be moved so as to enable the Registry to list the case on the intended date

or

(ii) furnishing an undertaking to take 24 hours written notice on the Respondents regarding the urgent petition before the Appellate Tribunal mentioning the intended date on which motion is proposed and produce an affidavit of service to that effect before 2.00 p.m. on the day prior to the intended date on which the urgent petition is sought to be moved.

c. If the Affidavit of Service is filed after 2.00 p.m. on the preceding day to the intended date on which the urgent petition is sought to be moved, then the matter would be listed only on the succeeding day of the intended date on which listing is sought for. The onus of informing the Respondents in writing regarding the change in the listing date would be on the Appellant/Petitioner.

d. Appellant/Petitioner to ensure that copy of Appeal and IAs are duly served on the Respondents together with the written notice.”

II. Advance hearing petitions (in existing / running Appeal cases)

In existing /running Appeal cases, if the Appellant seeks to have early hearing, the Appellant may make out an interlocutory Application for advance hearing which may be considered for listing, after receiving suitable instructions thereon, provided that the other side is put on notice (together with copy of the advance hearing petition) by the petitioner regarding the intended date of moving the petition before the Appellate Tribunal and an Affidavit of Service (AoS) is submitted to that effect by the petitioner well in advance and in any case before 2.00 p.m. on the preceding day to the intended date of hearing.



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This is issued with the approval of Hon'ble Chairperson."

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9.2. A reading of the above guidelines would reveal that the same are purportedly made under Section 22(1) of the RDB Act. The urgent hearing applications should explain clear grounds of urgency for being listed before the Appellate Tribunal. Importantly, the impugned guidelines require compliance with the condition that the respondents are served prior to the intended hearing and an affidavit of service is filed with the Registry (or) an undertaking is furnished to take 24 hours written notice on the respondents and production of affidavit of service before 2.00 p.m. on the date prior to the intended date of hearing, regarding the urgent hearing petitions as well as the advance hearing petitions.

(b) Impugned guidelines contrary to the binding judgments of the Supreme Court – Judicial Propriety - Amity and Comity:

10. The clause in the impugned guidelines insofar as it mandates service on the respondents as a condition precedent for the urgent hearing petitions as well as advance hearing petitions even to be placed before the Tribunal, is contrary to the judgments of the Hon'ble Supreme Court in *Grapco Industries* and *Allahabad Bank* cases referred supra. The Hon'ble Supreme Court in *Grapco Industries and*



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Allahabad Bank and this Court in *Prasanthi Cashew Company Pvt.*, had held that

the power of the Tribunal to grant stay inheres in it the power to grant ex-parte interim orders. The law declared by the Hon'ble Supreme Court being binding on all Courts/Tribunals in terms of Article 141 of the Constitution of India, any order/direction contrary thereto is illegal and bad. A close reading of the Recovery of Debts and Bankruptcy Act, 1993, along with Debts Recovery Appellate Tribunal Procedure Rules, 1994, would show that the guidelines which are administrative in character / nature, in effect overreaches / nullifies the above orders of the Hon'ble Supreme Court and this Court holding that the power of the Tribunal to grant stay inheres in it the power to grant to ex-parte interim orders, by insisting on service on the respondents even for urgent matters to be listed before the Appellate Tribunal. The impugned guidelines issued by the Tribunal, in effect circumvent the law declared by the Hon'ble Supreme Court in *Allahabad Bank v. Radha Krishna Maity [(1999) 6 SCC 755]* and followed by this Court. Judicial propriety demands that any action/order of the Tribunal, be it judicial or administrative, ought to be in conformity with the orders of the Hon'ble Supreme Court. It cannot directly nor indirectly circumvent nor overreach the orders of the Hon'ble Supreme Court. Hence, the effect of the impugned guidelines being to



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overreach the order of the Hon'ble Supreme Court is impermissible. In this regard,

it may be useful to refer to the following judgments:

i. *Shreedharan Kallat v. Union of India*, (1995) 4 SCC 207 : 1995 SCC (L&S) 960: (1995) 30 ATC 214 at page 208:

1. This appeal directed against the order of the Central Administrative Tribunal does not raise any intricate question of law but it exposes a very disturbing feature as the Tribunal not only commented upon the judgments rendered by the Kerala High Court in favour of the appellant which had been affirmed by this Court, but went on to hold that they had no binding effect as they appeared to be inconsistent with the Rules. This was against judicial comity and propriety. We do not approve of it.

ii. *Hombe Gowda Educational Trust v. State of Karnataka*, (2006) 1 SCC 430:

30. ... The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.

(c) Impugned guidelines in excess of the power under Section 22(2) of the RDB Act and Debts Recovery Appellate Tribunal Procedure Rules, 1994:

11. The impugned guidelines are contrary to the scheme of the Act and the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 (hereinafter referred to as “the Rules”). To appreciate the same, it may be necessary to refer to the following provisions of the Act and the Rules:

The Recovery of Debts and Bankruptcy Act, 1993:

"21. Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate



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Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent. of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due to be deposited under this section.

22. (1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed"

The Debts Recovery Appellate Tribunal (Procedure) Rules, 1994

"5. (5) The appeal under sub-rule (1) shall be presented in four sets in a paper book along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, the



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sufficient number of extra paper books together with empty file size envelopes bearing full address of each respondent shall be furnished by the appellants.

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13. Endorsing copy of appeal to the respondents. – A copy of the memorandum of appeal and the paper book shall be served on each of the respondents, as soon as they are filed, by the Registrar by registered post.
.....

22. Orders and directions in certain cases. – The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. "

11.1. A reading of the above provisions of the RDB Act and Rules in tandem would indicate that the Appellate Tribunal is not bound by the procedure laid down by the Code of Civil Procedure. The Tribunal shall have powers to regulate its own procedure. In other words, Section 22 of the RDB Act enables the Tribunal to frame guidelines, which would regulate its procedure. Section 22(2) of the RDB Act, while dealing with the powers of the Tribunal after enumerating various matters in sub clauses (a) to (g), contains a residuary clause (h) which provides that the Appellate Tribunal shall have for the purposes of discharging its functions, the same powers as available to a Civil Court under the Code of Civil Procedure in respect of any matter other than the matter enumerated under clauses (a) to (g) “which may be prescribed”. The expression “prescribed” is defined under Section 2 (s) to mean prescribed by rules made under the Act. Importantly, Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994



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provides that the Tribunal may make such orders or give directions necessary or expedient to get effect to its orders or prevent abuse of its process or to secure the ends of justice. The relevant rule reads as under:

22. Orders and directions in certain cases. – The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. "

11.2. Section 22(1) of the RDB Act under which the guidelines are purported to be made, only enables regulating the procedure to be followed by the Tribunal. Importantly, the width and extent of the power of the Tribunal are governed by sub section 22 (2) of the RDB Act read with Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 which *inter alia* includes as seen earlier, the power to make such orders or directions necessary to secure the ends of justice.

11.3. The effect of the guidelines is to result in taking away the power of the Tribunal to grant ex-parte interim orders even though circumstances demand exercise of discretion by the Tribunal. The impugned guidelines insisting service of notice on the respondents under all circumstances result in denuding the power of



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the Tribunal to grant ex-parte interim order though statutorily vested with it. In other words, the guidelines framed purportedly in exercise of the power under Section 22(1) of the RDB Act, which are meant to regulate the procedure, transgress into the domain/zone of the power of the Appellate Tribunal and impose fetters rather emasculate / denude the same insofar as the power to grant ex-parte interim order. The 1st respondent under the garb of issuing guidelines purportedly to regulate the procedure, has emasculated/ denuded the power to grant ex-parte interim order, a power which is substantive in nature. The impugned guidelines issued by the 1st Respondent are in excess of its authority/power under Section 22(1) of the RBD Act.

11.4. Importantly, while Section 21 of the RDB Act mandates a pre-deposit of 50% of the amount due as determined by the Tribunal under Section 19 of the Act, the proviso to Section 21 of the RDB Act confers the Tribunal with discretion to reduce the amount of 50% by such amount which shall not be less than 25% of the amount of such debt. The power to waive the pre-deposit is governed by the provision of Section 21 of the RDB Act, while the power of the Tribunal to pass any interim order, would be governed by Section 22(h) of the RDB Act read with



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Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994.

WEB COP(d) Doctrine of implied power – incident power:

12. Yet another reason as to why the impugned guidelines cannot be sustained is in view of the fact that the power to grant stay having been found to vest with the Tribunal, the impugned guidelines which have the effect of emasculating/ denuding the power to grant ex-parte interim orders also run contrary to the well established principle that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. It is well settled that the power given to an authority to do something would include incidental or implied powers to ensure that the grant itself is not rendered ineffective when power is expressly granted by the statute, it is impliedly included in the grant even without special mention every power and control, the denial of which would render the grant ineffective. In this regard, it may be useful to refer to the following judgments:

i. ITO v. M.K. Mohd. Kunhi, AIR 1969 SC 430

The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery the entire



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purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income Tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, 3rd Edn., Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law Cushing's Edn., Vol. 1at p. 88, it has been stated: "It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

....
It has further been observed that "where the legislature invests an Appellate Tribunal with powers to prevent an injustice, it impliedly empowers it to stay the proceedings which may result in causing further mischief".

ii. Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 :

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

23. In *Savitri v. Govind Singh Rawat* [(1985) 4 SCC 337] this Court held that the power conferred on the Magistrate under Section 125 CrPC to grant maintenance to the wife implies the power to grant interim maintenance during the pendency of the proceeding, otherwise she may starve during this period.



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iii. CIT v. Pepsi Foods Ltd., (2021) 7 SCC 413 :

It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.

(e) The impugned guidelines impose fetters on access to justice:

13. Access to justice is so basic and inalienable that no system of governance can ignore its significance leave alone afford to deny the same. The impugned guidelines in the garb of regulating the procedure instead curtail / whittle down / emasculate / denude the power of the Tribunal to grant ex-parte interim order. The effect of the impugned guidelines is that an aggrieved party is disabled from even entering the portals of the Tribunal to have his/her grievances which is possibly an eminent threat of losing his/her property being redressed. Access to justice is a facet governed by Articles 14 and 21 of the Constitution of India and is not limited to absence of mechanism, but also inadequacy of mechanism to render justice and to protect the rights of the citizens. The impugned guidelines apart from being bad for all the reasons stated above, also fall foul of making justice inaccessible by imposing procedural restrictions, which have the effect of rendering the access to obtain ex-parte interim orders unreasonably difficult rather nugatory. In other words, it has the effect of the Tribunal denuding



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itself of the power to grant ex-parte interim orders through self-imposed restrictions in the form of the impugned guidelines. It results in impairing the constitutional value of access to justice by rendering the remedy inefficacious. It may be useful to refer to the decision of the Hon'ble Supreme Court in *Anita Kushwaha vs. Pushap Sudan*, [(2016) 8 SCC 509], wherein it was held as under:

(i) The need for adjudicatory mechanism

34. One of the most fundamental requirements for providing to the citizens access to justice is to set up an adjudicatory mechanism whether described as a court, tribunal, commission or authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, tribunal or authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well-recognised principles of natural justice.

(ii) The mechanism must be conveniently accessible in terms of distance

...

(iii) The process of adjudication must be speedy

*36. "Access to justice" as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, it is famously said, is justice denied. If the process of administration of justice is so time-consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only access to justice but justice itself. In *Sheela Barse case* [*Sheela Barse v. Union of India*, (1988) 4 SCC 226] this Court declared speedy trial as a facet of right to life, for if the trial of a citizen goes on endlessly his right to life itself is violated. There is jurisprudentially no qualitative difference between denial of speedy trial in a criminal case, on the one hand, and civil suit, appeal or other proceedings, on the other, for ought we to know that civil disputes can at times have an equally, if not more, severe impact on a citizen's life or the quality of it.*



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Access to justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to access to justice is no more than a hollow slogan of no use or inspiration for the citizen."

(emphasis supplied)

14. We thus find that the impugned guidelines are invalid and liable to be set aside insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal which has the effect of denuding the tribunal of its power to grant ex-parte interim order. Before parting, we intend to utter a word of caution, though the Tribunal has power to grant ex-parte injunction, such power ought not to be exercised in a routine fashion, but ought to be used sparingly bearing in mind the principle which governs grant of ex-parte injunction. In this regard, it may be useful to refer to the following judgment of the Hon'ble Supreme Court:

Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225

"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

- (a) whether irreparable or serious mischief will ensue to the plaintiff;*
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;*
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a parte in his absence is prevented;*
- (d) the court will consider whether the plaintiff had acquiesced for sometime and*



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in such circumstances it will not grant ex parte injunction;

(e) the court would expect a parte applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

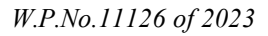
(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

15. As a result, we hold:

a. That the impugned guidelines dated 07.02.2023 issued by the first respondent insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal are contrary to binding judgments of the Hon'ble Supreme Court in the cases *Grapco* and *Allahabad Bank* and this Court in *Prasanthi Cashew Company* case.

b. That the impugned guidelines insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal is in excess of power under Section 22 (2) (h) of the RDB Act read with Rule 22 of Debt Recovery Appellate Tribunal Procedure Rules, 1994 inasmuch as under the garb of regulating the procedure it denudes the power of the Tribunal to grant ex-parte injunction which is otherwise vested with it.

c. That the impugned guidelines insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal are contrary to the settled principle that an express grant of statutory power carries



d. The impugned guidelines insofar as it mandates service of notice on the respondents even for the appeal/application to be placed before the Tribunal by imposing procedural restrictions, have the effect of rendering Appellate Tribunal inaccessible to obtain ex-parte interim orders thereby falling foul of Articles 14 and 21 of the Constitution of India.

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[R.M.D.,J.] [M.S.Q.,J.]

19.09.2023

Index: Yes/No

Speaking order/Non speaking order

shk

To

1.The Registrar,

The Debts Recovery Appellate Tribunal,
7th Floor, No.6, II Additional Office Building, Haddows Road,
Shastri Bhawan, Chennai 600 006.

2.The Authorized Officer,

State Bank of India,Karaikal Branch,
No.72, Bharathiar Salai, Karaikal 609 602.



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R.MAHADEVAN, J.

AND

MOHAMMED SHAFFIQ, J.

shk/rk

W.P. No.11126 of 2023

and

W.M.P. No.10979 of 2023

19.09.2023