

State of Orissa and ors. Vs. Housing and Urban Development Corporation Ltd. and ors.

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Court : Orissa

Decided On : May-19-2006

Reported in : AIR2006Ori171; 2006(II)OLR99

Judge : B.P. Das and; A.K. Samantaray, JJ.

Acts : Orissa Development Authorities Act; [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) - Sections 19, 19(13)(A), 19(24) and 19(25); Code of Civil Procedure (CPC) - Order 38, Rule 5; Recovery of Debts Due to Banks and Financial Institutions Rules

Appeal No. : W.P.(C) No. 2110 of 2006

Appellant : State of Orissa and ors.

Respondent : Housing and Urban Development Corporation Ltd. and ors.

Advocate for Def. : Bijan Ray, Sr. Adv.,; C. Choudhury,, B. Mohanty,;

Advocate for Pet/Ap. : Bijoy Kr. Mahanti, Adv. General, and; Sisir Das, Addl. Govt. Adv. in W.P.(C) No. 2110/2006 and;

Disposition : Writ petition allowed

Judgement :

B.P. Das, J.

1. The State of Orissa represented through the Principal Secretary to Government in Housing & Urban Development Department and two other functionaries of the State have filed W.P.(C) No. 2110 of 2006 and the Bhubaneswar Development Authority represented through its Vice-Chairman has filed W.P.(C) No. 2126 of 2006 challenging the legality, validity and propriety of the order dated 6.2.2006 passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack in M.A. No. 61 of 2006 arising out of O.A. No. 105 of 2005 directing attachment of the Bank accounts of the State Government as well as of the Bhubaneswar Development Authority. As both the writ petitions arise out of the same order, they were heard together and are being disposed of by this common judgment.

2. The Bhubaneswar Development Authority ('B.D.A' shortly), which is constituted under the Orissa Development Authorities Act, availed a loan to the tune of Rs. 29.45 crores from the Housing & Urban Development Corporation Limited, a Government of India Enterprises (shortly 'HUDCO') for undertaking a project, namely, 'Naraj Water Supply Project' for supply of drinking water to the people of Bhubaneswar. The State Government in Housing & Urban Development Department stood as guarantor/co-obligant for the aforesaid loan and as a policy decision, the State Government was to repay the loan under its budgetary provision. Likewise, for construction of 1204 numbers of staff quarters for the employees of the State Government near Sainik School in Bhubaneswar, the B.D.A. had also taken a loan of Rs. 8.33 crores as against the sanctioned loan amount of Rs. 45.09 crores and the State Government in General Administration Department stood as the guarantor for the said loan. According to the State Government, against the amount of loan released for the aforesaid two projects, i.e., Rs. 37.78 crores the State Government has already repaid a sum of Rs. 43.54 crores towards principal and interest. While the matter stood thus, the HUDCO filed an application under Section 19 of the [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) ('R.D.B. Act' shortly) and the Rules framed thereunder being O.A. No. 105 of 2005 before the Debts Recovery Tribunal, Cuttack, with a prayer for recovery of the Bank dues to the tune of Rs. 69,97,53,201.00 along with interest and cost. The HUDCO also filed an application

being M.A. No. 61 of 2006 with a prayer to attach the Bank accounts of the State Government maintained by the Reserve Bank of India/Nationalised Bank/Scheduled Bank as well as the Bank account of the B.D.A. maintained by the Oriental Bank of Commerce and the B.D.A.'s. own building 'Akash Sobha' at Sachivalaya Marg in Bhubaneswar. The Tribunal allowed the aforesaid misc. application by its order dated 6.2.2006, which is under challenge in these writ petitions.

3. For better appreciation of the point involved in these writ petitions, it would be appropriate to extract hereunder the impugned order dated 6.2.2006 passed by the Tribunal in M.A. No. 61/2006:

Counsel for applicant bank present. AGA representing D-2 present. Counsel for D-1 present. Objection not filed. Requested further time to file objections on the ground that defendants No. 1 & 2 approached the applicant bank for O.T.S. and also represented that she received letter from the Govt. that the Govt. is trying for settlement. The D-1 & D-2 are at liberty to settle the matter at their convenient time. But this Tribunal cannot adjourn the matter on that ground. Since the Tribunal has to dispose of the matter within time frame as contemplated at Sec-19 (24) of DRT Act, 1993. Therefore, treated that the defendants No. 1 & 2 have no objection. Perused the petition. In the circumstances stated in the petition the petition is allowed as prayed for. Attach the Account of the defendants to the tune of Rs. 69,97,53,201.00 to the amount claimed in the application.

The copy of the aforesaid Miscellaneous Application No. 61 of 2006 filed by the HUDCO is appended to W.P.(C) No. 2126 of 2006 as Annexure-1. From Annexure-1 it appears that the said application, considering which the order dated 6.2.2006 was passed, which is impugned in both the writ petitions, was filed by the HUDCO with the affidavit of one Sanjib Kumar Panda, working as the Assistant Law Officer in the Regional Office of HUDCO at Bhubaneswar praying for passing an appropriate order under Sub-sections (13)(A) & (25) of Section 19 of the R.D.B. Act, 1993. The prayer made in the said application was for attachment of the Bank account of the B.D.A. maintained by the Oriental Bank of Commerce and the B.D.A's. own building, i.e., Akash Sobha at Sachivalaya Marg, as well as of the

Bank accounts of the State Government maintained by the Reserve Bank of India/Nationalised Bank/Scheduled Bank.

4. Before going into the merits of the case, let us first examine the scheme of the provisions of Sub-sections (13) (A) & (25) of Section 19 of the R.D.B. Act. The aforesaid provisions are extracted hereunder:

(13)(A) Where, at any stage of the proceedings the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him-

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant within a time to be fixed by it. either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal. when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show-cause why he should not furnish security.

(25) The Tribunal may make such orders and 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.

(Emphasis supplied)

5. The aforesaid provisions in Sub-section (13 (A) of Section 19 of the R.D.B. Act are similar to the provisions made under Order 38, Rule 5 of the Code of Civil Procedure, i.e., attachment before judgment. A perusal of the aforesaid provisions of Section 19(13)(A) makes it crystal clear that the Tribunal only after satisfying

itself regarding the conditions laid down therein may direct the defendant either to furnish security, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security. There is nothing in the affidavit to satisfy the pre-conditions laid down in the aforesaid provision. The power under the aforesaid provision is to be invoked when there is objective satisfaction of the Court on the materials. The object is to prevent attempt of defendant to obstruct or delay execution of decree that may ultimately be passed against him and the Court before invoking its power under the aforesaid provision must be satisfied that the defendant is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court with the intent to obstruct or delay the execution of the decree that may be passed against him. This satisfaction of the Court has to be arrived at on the basis of affidavit or otherwise. The satisfaction of the Court must be objective and not subjective, and consequently, on the materials the Court must come to a conclusion about the prima facie certainty of plaintiff's success and the existence of a grave danger or a genuine apprehension that a dishonest defendant is endeavouring to frustrate the probable fruits of the judgment. (See 1987 (I) OLR 407 : J.M. Buxi & Go. v. L.M. Hati & Co,).

All those are also academic so far as the present case is concerned, because the apprehension or presumption to dispose of whole or any part of the property, remove whole or any part of the property from the local limits of the jurisdiction of the Tribunal and the likelihood of causing any damage or mischief to the property or affecting its value is not available against the present defendants, which are the State and a statutory authority. The provisions of Section 19(13)(A) of the R.D.B. Act are not applicable to the present defendants. That too, the Tribunal has erred in law in passing the impugned order of attachment of the bank accounts of the defendants without affording reasonable opportunity to the defendants to file their show cause.

6. For the foregoing reasons, we are constrained to say that the Tribunal has passed the impugned order overlooking the statutory provisions in Section

19(13)(A) of the R.D.B. Act. The said impugned order is also the outcome of non-application of judicial mind as the defendants are the State and a statutory authority. Accordingly, the order dated 6.2.2006 passed by the Presiding Officer, Debts Recovery Tribunal, Cuttack, in M.A. No. 61 of 2006 is quashed. Both the writ petitions are accordingly allowed, No cost.

A.K. Samantaray, J.

7. I agree.

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