

CASE NO.:
Appeal (civil) 4728 of 2006

PETITIONER:
Industrial Investment Bank of India Ltd

RESPONDENT:
Marshal's Power & Telecom (I) Ltd.& Anr

DATE OF JUDGMENT: 08/11/2006

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.2962 of 2005)

P.K. BALASUBRAMANYAN, J.

Leave granted.
Heard both sides.

1. Defendant No.1 in C.S. No. 644 of 2003 filed on the Original Side of the High Court of Madras is the appellant. The appeal challenges the grant of an interim injunction by the Division Bench of the High Court in favour of the plaintiff, respondent No.1 herein, pending the suit. The suit was filed by the plaintiff for a mandatory injunction restraining defendants 1 and 2 jointly or severally from taking possession of or interfering with the use of or exercising any right of lien, charge or from issuing notice in any form or from creating any kind of disturbance or from attaching otherwise or raising a claim in respect of certain capacitor banks systems allegedly supplied by the plaintiff and installed at various substations of Transmission Corporation for Andhra Pradesh (for short, 'APTRANSCO') and for award of the costs of the suit. In that suit, the plaintiff filed O.A. No. 806 of 2003 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking an interim injunction along the same lines to enure during the suit. The suit was filed when defendant No. 1 issued a notice to the plaintiff and defendant No. 2 in the suit seeking repayment of the amounts advanced by the first defendant to the second defendant, the repayment of which was secured by hypothecation and charge created by the plaintiff.

2. According to the plaint, no valid charge or hypothecation was created in favour of the first defendant and the first defendant was not entitled to claim any amount as against the plaintiff and was not entitled to enforce the charge or hypothecation as against the plaintiff.

3. The trial court granted an ad interim ex parte order of injunction after entertaining the suit. Meanwhile, the first defendant filed its claim for recovery of the amounts allegedly due to it from defendants 1 and 2 before the Debts Recovery Tribunal. The first defendant also appeared in the suit filed by the plaintiff and in addition to filing an objection to the interim application for injunction also filed Application No. 4726 of 2003 praying for vacating the interim order of injunction granted by the court. The first defendant pleaded that substantial

amounts were due to it; that certain assets had been hypothecated to it and a charge created for securing the loan by the plaintiff and that the charge and the hypothecation were legally enforceable and there was no ground for granting an interim order of injunction as sought for. It was also submitted that the plaintiff had no cause of action for filing such a suit and it was for the plaintiff to put forward its case or its defence before the Debts Recovery Tribunal.

4. The learned single judge after hearing both sides vacated the interim order of injunction earlier granted. Thus, he allowed the application filed by the first defendant for vacating the injunction and dismissed the application filed by the plaintiff for interim injunction. The learned single judge essentially took the view that since the first defendant had initiated a proper proceeding for enforcement of its rights before a Tribunal exclusively competent to deal with such a claim, it was not for the Civil Court to intervene with an interim order of injunction as sought for by the plaintiff. The plaintiff filed an appeal before the Division Bench. The Division Bench of the High Court allowed the appeal taking the view that the suit in the Civil Court was maintainable and since the suit was filed earlier, the court was competent to entertain the suit and grant an interim order of injunction. Without properly considering whether on the facts and in the circumstances of the case and the nature of the suit filed by the plaintiff an interim order of injunction was warranted or justified, it granted an order of injunction presumably as prayed for by the plaintiff but clarifying that the deed of hypothecation executed on the subject matter in question shall be in force and the proceedings before the Debts Recovery Tribunal may go on, but restraining the execution of any order that may be passed by the Debts Recovery Tribunal. Feeling aggrieved, the first defendant has filed this appeal.

5. We think that the Division Bench has not properly adverted to or considered the question whether in the nature of the pleadings in the case and the nature of the relief claimed in the suit, an order of injunction as the one granted by it should be granted. Prima facie, it appears that the plaintiff had executed a hypothecation and created a charge to secure the loan advanced by the first defendant to the second defendant. The loan was advanced to enable the second defendant to fulfil the terms of a contract it had entered into with APTRANSCO. The second defendant had sub-contracted a part of the work to the plaintiff. The first defendant had advanced monies to the second defendant for the work and the plaintiff had prima facie secured the loan by hypothecation and a charge. An order has been claimed against the plaintiff before the Debts Recovery Tribunal in enforcement of its rights by the first defendant. The Division Bench did not ask itself the question whether it was open to it on the facts and in the circumstances of the case, to issue an order of injunction restraining one of the contracting parties from enforcing as against the other contracting party, the obligations arising out of that contract. The Division Bench also did not ask itself the question whether the plaintiff had made out a prima facie case for the grant of what it called an interim mandatory injunction --- though it appears to us to be a case of prohibitory injunction --- and whether the balance of

convenience is in favour of the grant of an interim order of injunction. On the facts and in the circumstances of the case, we are prima facie satisfied that this is not a fit case for exercise of discretion by the court to grant any interim injunction as sought for by the plaintiff.

6. We also find that the Division Bench has clearly acted illegally in purporting to pass an interim order of injunction restraining the enforcement of any order that may be passed by the Debts Recovery Tribunal. The Debts Recovery Tribunal is a special forum created by a special enactment for the purpose of enforcement of special types of claims arising in favour of financial institutions. Thus, competent proceedings are instituted before such a Tribunal by a financial institution seeking to enforce its claimed rights. Whatever defences the plaintiff herein may have against the claims of the first defendant before the Debts Recovery Tribunal, have to be put forward by the plaintiff before the Debts Recovery Tribunal. The mere fact that the plaintiff chose to rush to the Civil Court on receipt of a notice from the first defendant in an attempt to thwart the enforcement of the obligations it has allegedly incurred, does not justify the grant of an interim order of injunction restraining the enforcement of the rights arising out of an alleged hypothecation and a charge created by the plaintiff in favour of the first defendant. That apart, to grant an injunction restraining the enforcement of orders passed by the Tribunal having jurisdiction to pass such orders cannot normally be granted unless it is a case of fraud or the existence of some such vitiating factor is established or prima facie made out. Even then, the order of injunction as now granted could be granted only in exceptional cases.

7. We had recently occasion to consider the scope of the raising of a counter claim before the Debts Recovery Tribunal in State Bank of India Vs. M/s Ranjan Chemicals Ltd. & Anr. [2006 (10) SCALE 150]. It appears to us that the claims sought to be put forward by the plaintiff in the present suit is something that is really in the nature of a defence to the action initiated by the first defendant before the Debts Recovery Tribunal or which could be put forward by way of a counter claim, if necessary. This aspect also had to be borne in mind before deciding whether a case for passing of an interim order of injunction has been made out or not. This aspect has also been ignored by the Division Bench.

8. In the result, we allow the appeal and setting aside the order of the Division Bench, restore the order of the learned single judge dismissing the application for interim injunction. We make it clear that it is open to the plaintiff to put forward all its contentions before the Debts Recovery Tribunal and if it is thought appropriate, to get the suit filed by it transferred to the Debts Recovery Tribunal to be tried as a cross suit or counter claim against the claim of the first defendant before the Debts Recovery Tribunal. The first defendant & appellant, would be entitled to its costs in this Court.