
(2013) 06 KAR CK 0194

In the Karnataka High Court

Case No : Writ Petition No. 12904 of 2013 (GM-DRT)

A. Abdul Hameed

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 31A

Citation : (2013) ILR (Kar) 4687 : (2013) 4 KarLJ 383 : (2013) 4 KCCR 3154

Hon'ble Judges : Mohan M. Shantanagoudar, J

Bench : Single Bench

Advocate : G.K Bhat, for the Appellant; R.K. Prabhu, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J.—With the consent of the parties, the matter is taken up for final hearing. The petitioner is the borrower of certain sums of money from respondent 1-Bank. Respondents 3 and 4 herein had mortgaged their properties in favour of the bank as security for the loan obtained by the petitioner from the Bank. The principle amount was Rs. 5.00 lakhs. The Bank filed suit in O.S. No. 167 of 1993 for recovery before the Civil Court (Senior Division), Mangalore for recovery of Rs. 9,77,380/- which included principal amount, interest, cost and other expenses. Said suit came to be decreed by the Civil Court on 29th July, 1995, Said decree has attained finality. It is needless to observe that the decree has attained finality not only against the petitioner, but also against the mortgagers of the properties. In the meanwhile, the enactment viz., Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "Act") came into force with effect from 24-6-1993. The bank filed application before the Debts Recovery Tribunal u/s 19 of the Act on 31-3-1999 for recovery of debts. However, said application was kept pending in the Registry of Debts Recovery Tribunal till 14-3-2000, on which day, impugned order came to be passed by the Debts Recovery Tribunal. By the impugned order, the Debts

Recovery Tribunal has issued the recovery certificate as per the decree passed by the Principal Civil Court, Mangalore in O.S. No. 167 of 1993, dated 29-7-1995. Pursuant to such recovery certificate, the property owned by respondent 3 was put to auction. Sale proclamation was issued on 21-11-2012 as per Annexure-H by the Debts Recovery Tribunal in DCP No. 1642 in O.A. No. 264 of 1999. Sale proclamation is questioned in this writ petition. The petitioner has also sought for a declaration that the Debts Recovery Tribunal, Bangalore, did not have jurisdiction to entertain O.S. No. 264 of 1999 as on 31-3-1999.

Sri G.K. Bhat, learned Counsel for the petitioner submits that the application for recovery of money based on the decree passed by the Civil Court before the Debts Recovery Tribunal on 31-3-1999 is not maintainable, inasmuch as, on that day, Section 31-A was not in the statute; Section 31-A was introduced with effect from 17-1-2000 and therefore all earlier proceedings thereto for recovery of money based on the decree are nullity in the eye of law. He further submits that the impugned recovery certificate issued by the Debts Recovery Tribunal as per the decree is without notice to the petitioner and hence the same is liable to be quashed. Writ petition is opposed by R.K. Prabhu, learned Counsel appearing on behalf of respondent 1-Bank. He submits that as on the date of filing of the application dated 31-3-1999 before the Debts Recovery Tribunal, the Act was in existence and consequently, the Debts Recovery Tribunal was constituted; it was open for the bank to file application u/s 19 of the Act for recovery of debts and consequently, the bank has filed application for recovery of the debts; u/s 31 of the Act, every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under the Act stood transferred to the jurisdictional Tribunal with effect from the date of establishment of the Tribunal under the Act; since the Tribunal was constituted at Bangalore for recovery of debts of more than Rs. 10.00 lakhs, the application came to be filed by the bank for recovery of debts on 31-3-1999 and therefore, the same is maintainable; though Section 31-A was introduced on 17-1-2000, the application could have been filed for recovery of debts immediately after constitution of the Tribunal under the Act invoking Section 19 of the Act; in addition to the same, the order issuing recovery certificate was passed only after introduction of Section 31-A of the Act and not prior thereto. He further draws the attention of the Court that the petitioner is not the owner of the property which is being sold, but it is the respondent 3, who is the owner/mortgagor of the property. Respondent 3 herein was defendant 3 before the Debts Recovery Tribunal and he was served with notice before issuing recovery certificate and therefore, the order is not in violation of principles of natural justice insofar as petitioner is concerned.

2. The impugned order was passed as back as on 14-3-2000. Already 13 years have elapsed. Recovery certificate was ordered to be issued about 13 years prior to this day. Writ petition is filed after lapse of 13 years, that too, without any reasonable cause. Therefore, writ petition is liable to be dismissed on the ground of delay and laches on the part of the petitioner.

3. Petitioner is not the owner of the property in question. Petitioner is the borrower of the loan. The owner/mortgagor of the property is respondent 3. He had also not approached this Court since 13 years. Respondent 3-mortgagor was served before the Debt Recovery Tribunal, but, he chose to remain absent, having no other alternative, impugned order is passed issuing recovery certificate in exercise of power u/s 31-A of the Act. Therefore, it is not open for the petitioner to contend that the order is passed in violation of principles of natural justice, inasmuch as, principle party who is affected i.e., owner of the property/mortgagor of the property is notified and he has remained absent, though was served.

4. Undisputedly, the Act came into force with effect from 24-6-1993. Section 31 of the Act makes it clear that proceedings pending before any Court immediately prior to the date of establishment of the Tribunal under the Act stand transferred on that day to the jurisdictional Tribunal. Thus, even if the execution petition were to be filed before the Civil Court by the petitioner, the same could have been transferred to the Tribunal in view of Section 31 of the Act. In the matter on hand, petitioner has chosen to file application u/s 19 of the Act before the Tribunal itself on 31-3-1999. In the absence of Section 31-A in the statute, the only provision for recovery of money was Section 19. Therefore, it was open for the decree-holders/creditors to get the orders relating to recovery of money u/s 19 of the Act. This Court does not find any illegality in the action of respondent 1-Bank in moving the Debts Recovery Tribunal on 31-3-1999. Even though the application came to be filed u/s 19 of the Act by the Bank on 31-3-1999, the same was kept pending before the Debts Recovery Tribunal till Section 31-A was inserted in the statute. Section 31-A was inserted on 17-1-2000, only thereafter i.e., on 14-3-2000, impugned order came to be passed by the Debts Recovery Tribunal, by which, recovery certificate is issued. In other words, the impugned order is passed exercising jurisdiction u/s 31-A of the Act (though provision is not specifically stated in the impugned order).

5. It is nextly contended by Sri G.K Bhat that the decree was only for Rs. 9,77,380/- i.e., less than Rs. 10.00 Lakhs and therefore, the Debts Recovery Tribunal did not have jurisdiction to commence the present proceedings at all. Said submission also cannot be accepted. The decree was not only for Rs. 9,77,380/-, but also for interest and cost on Rs. 9,77,380/-. Thus, the total amount to be recovered is more than Rs. 10.00 lakhs. In this context, it is relevant to note the definition of "debt" as contained in Section 2(g) of the Act, which reads thus:

"Debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any Civil Court or any arbitration

award or otherwise or under a mortgage and subsisting on. and legally recoverable on, the date of the application.

6. From the above, it is clear that "debt" means any liability inclusive of interest which is claimed by respondent 1-Bank as due from any person by the bank or a financial institution. Therefore, it is clear that debt is nothing but entire decretal amount, which includes interest also. As the entire amount claimed by the bank was more than Rs. 10.00 lakhs, it was open for the bank to move the Debts Recovery Tribunal under the Act. In view of the above, no interference is called for. Petition fails and the same stands dismissed.