
(1997) 12 DEL CK 0025

In the Delhi High Court

Case No : Interim Application No. 2217 of 1997 and Suit No. 1207 of 1996

Anant Raj Industries Ltd.

APPELLANT

Vs

IFCI Ltd.

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Banks and Financial Institutions Act, 1993 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (1998) 2 AD 396 : (1998) 71 DLT 12 : (1998) 44 DRJ 138 : (1998) 118 PLR 26

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : Harish Malhotra, B.M. Rao and S.R. Krishnamurty, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) This order shall govern the disposal of defendant's application (I.A.2217/97), filed under Order VII Rule 11 (d) read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code of Civil Procedure'). The facts relevant for the disposal of the above mentioned application, briefly stated, are that M/s Anant Raj Industries Ltd. (hereinafter referred to as 'the plaintiff') have filed a suit for declaration, mandatory and permanent injunction against the defendants, named above, with the prayer that a decree for declaration in favor of the plaintiff and against the defendants, declaring that the plaintiff has paid the entire dues of the defendants in terms of one time settlement dated the 31st March, 1995 and that nothing remains due to be paid to any of the defendants except the uncrystallised portion of foreign currency loan to defendant No.1, be passed in favor of the plaintiff and against the defendants. It is also prayed that a decree for mandatory injunction be also passed in favor of the plaintiff and against the defendants thereby directing the defendants to release their respective charges on the assets of the plaintiff and also to release the personal guarantees of the Directors given in terms of the respective loan agreements

with the defendants. The plaintiff in the above said suit has also prayed for a decree for permanent injunction to be passed in favor of the plaintiff and against the defendants thereby restraining the defendants, their agents, employees, officers etc., from, in any manner, revoking the one time settlement, made between the parties, vide defendant No.1's letter dated 31st March, 1995 and from in any manner interfering in the working of the plaintiff. The plaintiff has also prayed for the costs of the proceedings.

1.2 In the above mentioned suit, the defendants have filed the present application (I.A.2217/97) under Order VII Rule 11 (d) read with Section 151 CPC stating therein that the defendants are "financial institutions" within the meaning of Section 2(h) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act") and that the present suit filed by the plaintiff is not maintainable in view of the bar of jurisdiction contained in Section 18 of the Act. It is further stated in the application that after the coming into force of the Act, it is only the Debt Recovery Tribunal (in short "the Tribunal"), constituted under the Act, which is invested with the authority and jurisdiction (to the exclusion of all Courts including this Court) to entertain matters concerning recovery of debts due to financial institutions and other related matters. It is stated that this Court is not the proper forum to adjudicate on the question as to whether or not the debts due to the defendants have been discharged by the plaintiff or whether certain sums are due or outstanding to the defendants from the plaintiff which is squarely a matter falling within the ambit and scope of the Section 17 of the Act, being a debt due to a financial institution. It is stated that in the light of provisions of Section 18 of the Act, which expressly bars the jurisdiction of this Court to entertain the present suit, the present suit filed by the plaintiff deserves to be rejected in accordance with the provisions of Order VII Rule 11 Code of Civil Procedure. It has been prayed by the defendants that the present suit, filed by the plaintiff, be rejected.

(2) Notice of the above mentioned application was given to the plaintiff who has filed a detailed reply taking preliminary objection with regard to the maintainability of the application. On merits it is stated that the provisions of the Act are not applicable to the present case as the present suit is not a suit filed by a bank or a financial institution against its debtors but a suit filed against the bank/financial institutions. It has been stated in the reply filed on behalf of the plaintiff that the application, filed by the defendants, be dismissed with costs.

(3) I have heard the learned counsel for the parties at length and have also carefully gone through the documents/material on record. The only question, requiring consideration, in so far as the present application is concerned, is as to whether the jurisdiction of this Court to entertain the present suit stands ousted in view of the legal bar contained in section 18 of the Act. In other words, the entire controversy in the present proceedings relate to the interpretation, intent, meaning and scope of section 18 and section 17 of the Act. Section 18 of the Act reads as under:-

"Bar of Jurisdiction: On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

SECTION 17 of the Act which deals with the jurisdiction, powers and authority of the Tribunals provides -

"JURISDICTION, powers and authority of Tribunals: (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

On a bare reading of the provisions of Section 18 of the Act, it is apparent that the above section of the Act creates an express bar stating that on and from the appointed day, no court or other authority shall have or be entitled to have any jurisdiction, powers or authority, except the Supreme Court and a High Court, exercising jurisdiction under Article 226 and 227 of the Constitution of India, in relation to the matters specified in Section 17. Thus the jurisdiction of other Courts in terms of the provisions of section 18 has been ousted in relation to matters specified in section 17 of the Act. Coming to section 17 of the Act, the position is that this section has two parts couched respectively in sub-section (1) and sub-section (2) thereof. Sub-section (1) relates to jurisdiction, powers and authority of the Tribunal, stating that such Tribunal shall, on and from the appointed day exercise the jurisdiction, powers and authority to entertain and decide the applications from the banks and financial institutions for the recovery of debts. Sub-section (2) relates to jurisdiction, powers and authority of the Debt Recovery Appellate Tribunal. Thus, in terms of the provisions contained in section 18 read with section 17(1) of the Act a Tribunal, constituted under the Act, alone shall, on and from the appointed day exercise the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for the recovery of debts due to such banks and financial institutions and the jurisdiction of other forums including that of the civil courts, other than excepted matters, stands expressly ousted.

THE term `bank" has been defined in Section 2(d) of the Act which reads as under:- "Bank means - (i) a banking company; (ii) a corresponding new bank; (iii) State Bank of India; (iv) a subsidiary bank; or (v) a Regional Rural Bank."

The term `financial institution" has been defined in Section 2(h) of the Act which runs as under:- "Financial institution means - (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956); (ii) such other institution as the Central Government may, having regard

to its business activity and the area of its operation in India by notification, specify."

The term `debt' has been defined in section 2(g) of the Act as under:- "Debt means any liability (inclusive of interest) which is alleged 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 institutions or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on, and legally recoverable on, the date of the application."

In *Stowel Vs Lord Zouch* (1959) 1 Plow 353 Dyer J observed that the preamble is a `key to open the mind of the makers of the Act and the mischiefs which the intend to redress." The preamble of the Act reads as under:-

"An Act to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto."

The question regarding the Objects and Reasons, leading to the enactment of the Act, came up for consideration before Brother R.C. Lahoti, J. in case *State Bank of India Vs. Samneel Engineering Company and Others*, and the Hon"ble Judge observed:-

"The Statement of Objects and Reasons in the Act reveals the experience of the Parliament to considerable difficulties being faced by the banks and financial institutions in recovering loans and enforcement of Securities. In spite of the banks and financial institutions trying to play as safe as possible, the outstanding recoverable to them had mounted to more than Rs. 5622 crores in the field of public sector banks alone. This was virtually causing an economic crises preventing economic development of the country by blocking the funds. The Act was enacted with the object of ameliorating banks and financial institutions from such crises. It is also a judicially noticeable fact that process for recovery initiated by banks and financial institutions before the civil courts is a time consuming process. Unscrupulous borrowers resort to false and technical pleas in their defense resulting in protracting of trial caught in the procedural odds before the civil courts and providing another argument in the mouth of critics speaking of legendary delay in disposal of court cases. The establishment of the Tribunal and vesting it with summary jurisdiction and providing for procedure consistent with the principles of natural justice only is sure to accelerate the recovery of debts. Provisions of the Act must, Therefore, receive an object oriented interpretation."

In another case entitled *Cofex Exports Ltd. Vs Canara Bank* 1997 4 Ad DEL 321, the Division Bench of this Court held:- "For reasons more than one, we are of the opinion that a set-off or a counter claim cannot be entertained by a Debt Recovery Tribunal. A Debt Recovery Tribunal is a tribunal and not a court. It is a

creature of statute vested with a special jurisdiction to try only applications by banks or financial institutions to recover any debt from any person. It does not exercise any common law jurisdiction or a consortium of the two which can enter the Tribunal for enforcement of its claim for recovery. Any one other than those cannot be entertained invoking jurisdiction of the Tribunal for enforcement of its claim as a claimant. What cannot be done directly can also not be allowed to be done indirectly. If claim by a person other than bank or financial institution is not entertainable before Tribunal it does not become entertainable merely because it is set out in the written statement or preferred by way of set off or counter claim. An obligation to comply with the principles of natural justice obliges the Tribunal to entertain such pleas (e.g. denial, payment, adjustment) as would have the effect of abating, mitigating or extinguishing the claim itself, denying the Tribunal an opportunity of issuing a certificate while disposing of the application. The Tribunal is not a civil Court; it has been vested with the powers of the civil court in respect of limited matters only such a summoning and enforcing attendance of witnesses, requiring discovery and production of documents, proceeding ex-parte and setting aside ex-parte orders etc. [see clauses (a) to (h) to sub-section (2) of S. 22 of the Act]. It has not been conferred with jurisdiction to entertain counter-claim or plea of set-off by reference to the provisions of Order 8 of the Code of Civil Procedure. Entertaining a counter-claim or a cross suit or a plea of set-off would not only be without jurisdiction but also an exercise in futility inasmuch as the Tribunal would not adjudicate thereupon nor pass a decree in favor of the defendant against the plaintiff. The law creating Tribunal and conferring jurisdiction on it has not provided for set-off or counter claim being entertained by it just as the CPC does it for civil courts. If a counter claim was to be tried by Tribunal it may have to go in disputes arising between the parties though not filing the same character. There may be disputes which by no stretch of imagination can be tried by Tribunal. Claims preferred by bank or financial institutions are capable of being disposed of by summary enquiry while claims preferred by other persons would not be capable of being so disposed of. The principle of convenience and the mechanics of litigation before Tribunal (as set out in the Act) - both exclude set-off or counter-claim being placed before the Tribunal. If set-off, counter claims and cross suits were allowed to be raised before the Tribunal the very object behind its creation will be lost. There is a remedy for every wrong. Every legal claim or right must be enforced. However, nobody has a right to have his claims being tried by a particular forum. There is nothing wrong if the claim and cross claims whether by way of set-off or by way of counter-claim allegedly existing between a person and a bank or a financial institution are left to be enforced before two different forums - before Debt Recovery Tribunal by bank or financial institution and before civil court by any person other than the two. The person at whose instance the cross suit was filed or the cross claim, counter-claim or plea of set-off was preferred cannot complain of prejudice inasmuch as he can always approach the civil court decree in respect of the claims forming subject-matter of set-off or counter claims. The law has provided separate forums for the

adjudication of claims by banks and financial institutions and by persons other than these. Each has a right to invoke the jurisdiction of the forum meant for it and each forum shall try the claim within its jurisdictional competence. Finality shall attach to the findings arrived at and reached by each of the two within its respective jurisdictional competence. Issues heard and decided by the Tribunal shall operate as res judicata and shall bind the parties in the suit before the civil court by virtue of Explanation VIII to S. 11 Code of Civil Procedure. However, the civil court shall be free to decide such issues as lie within its jurisdictional competence. If the civil court must decide an issue seized by it and within its competence and if there be an unavoidable conflict between the findings recorded by the civil court and by the Tribunal, the finding of Civil Court would obviously override and supersede the findings recorded by the Tribunal for a court is a court and tribunal is a tribunal; the primer adjudicate on trial, the later holds only a summary inquiry guided by principles of natural justice as the Act provides. A Civil Court while transferring a suit to the Tribunal for the purpose of being heard as an application u/s 3 of the Drt Act, shall transfer the suit but shall not transfer a counter claim cross-claim or a cross suit not even a plea of set-off. Before transferring as it filed by a bank or a financial institution to the Tribunal, the Civil Court shall direct the defendant to take steps for separating the plea of set-off and counter- claim from the written statement. Of that being done the plea shall be registered as a suit filed by the defendant designating the defendant as plaintiff and the bank or the financial institutions as the defendant. A cross suit presents no difficulty; in spite of the suit having been transferred to the Tribunal a cross suit would remain pending before the civil court for the very obvious reason that law does not contemplate a cross suit being transferred to Tribunal." In view of the position explained above it is clear that the Tribunal, constituted under the Act, has been vested, u/s 17 of the Act to exercise the jurisdiction, powers and authority to entertain and decide the applications from the banks and financial institutions for the recovery of debt due to such banks and financial institutions. The existence of the facts on which the exercise of jurisdiction by the Tribunal depends, Therefore, are:

- (1) that the `application" has been made by a Bank or by a `Financial Institution";
- (2) that the relief sought in such `application" is the recovery of a `Debt";
- (3) that the amount sought to be recovered is `debt"; and
- (4) that the `debt" sought to be so recovered is due to the `bank" or the `financial institution" making such an `application".

If the above criterion is applied to the present case then it is noticed that the plaintiff in the present case, who has filed the present suit, is neither a `bank" nor a `financial institution" within the meaning of Act nor the relief sought for is recovery of a `debt". In the presence of the above facts, no relief can be granted to the applicants/defendants in so far as the above mentioned application

(I.A.No.2217/97) is concerned which is liable to be dismissed with costs.

(4) The learned counsel for the defendants/applicants, during the course of arguments, has placed reliance on decisions in cases Mansukhlal Dhanraj Jain and Others Vs. Eknath Vithal Ogale, and State Bank of India and etc. Vs. Vijay Kr. Tayal and Others, etc., . In my opinion, the above said decisions, relied upon by the learned counsel for the applicants/defendants in no way helps the cause of the applicants/defendants. In the decision of the Supreme Court in Mansukhlal's case the question for consideration before the Supreme Court was relating to the interpretation of Section 41(1) of the Presidency Small Causes Courts Act, 1882 which has no relevance to the point in issue in the present application . As regards the other case relied upon by the learned counsel for the defendants/applicants, the position is that the same instead of supporting the cause of the applicants/defendants lends support to the cause of non applicant/plaintiff.

For the foregoing reasons the application (IA 2217/97), filed by the defendants under Order VII Rule 11 (d) read with Section 151 Code of Civil Procedure, is dismissed with costs. Costs quantified at Rs. 2500.00 awarded to the plaintiff.

Nothing stated hereinabove shall amount to expression of any opinion on the merits of the case by this Court at this stage which shall be decided at the appropriate stage by this Court.

(5) I.A. stands disposed of in above terms.