(2006) 12 MAD CK 0247

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1028 of 2005 and C.M.P. (MD) No''s. 8102 of 2005 and 110 of 2006

Bank of Baroda APPELLANT

Vs

M/s. Mars Overseas Textiles RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(8)

Citation : (2006) 12 MAD CK 0247

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; M. Senthil Kumar, for the Respondent

Judgement

K. Venkataraman, J.—The present Civil Revision Petition is directed against the order of the learned Additional District and Sessions Judge (Fast Track Court No. III), Madurai dated 26.9.2005 made in I.A. No. 12 of 2005 in O.S. No. 128 of 2004. The respondent herein filed the suit against the petitioner and one Ram Anand in O.S. No. 128 of 2004 on the of the Additional District and Sessions Judge (Fast Track Court No. III), Madurai for recovery of amounts, for directing the petitioner herein to pay amount towards damages, and for costs. In the said suit, the petitioner being the first defendant has filed an application in I.A. No. 12 of 2005 praying for a direction to return the plaint in O.S. No. 128 of 2004 to the respondent herein for presenting it to the Debt Recovery Tribunal, Coimbatore. The said application has been dismissed by the Court below and the present revision is directed against the said order.

2. In the affidavit filed in support of the said application, the petitioner has averred that there is already a claim pending before the Debt Recovery Tribunal, Coimbatore and hence, the suit that has been filed by the respondent herein can be tried by the Debt Recovery Tribunal, Coimbatore. Further, it has been averred that the Debt Recovery Tribunal alone has got jurisdiction to try the suit and the

Civil Court has no jurisdiction to try the suit. The said application has been resisted by the respondent herein stating that the said claim is made not only against the petitioner-bank, but also against a third party and therefore, the third party claim cannot be adjudicated by the Debt Recovery Tribunal. Hence, it has been prayed in the counter that the petition tiled by the petitioner herein may be dismissed.

3. I have heard Mr. R. Subramanian, the learned counsel for the petitioner and Mr. M. Scnthil Kumar, the learned counsel for the respondent.

4. It is the case of the respondent, who is the plaintiff in O.S. No. 128 of 2004, that it is an export oriented unit since 1989 and it was exporting its products to reputed stores in U.S.A. and South Africa. It is maintaining current Account with the petitioner herein. Since the petitioner has not extended credit facilities, as requested by the respondent herein, it has sought financial assistance from other sources and at that point of time, the second defendant has offered to pay loan of Rs. 11 lakhs. The demand drafts drawn on Union Hank of India in favour of the second defendant''s daughter Varsha Anand for Rs. 3 lakhs, Ritu Anand for Rs. 3 lakhs, Megha Anand for Rs. 3 lakhs and Megha for Rs. 2 lakhs were handed over to the respondent. Those demand drafts were taken by closing the fixed deposits prematurely. In order to avoid the delay in encashment, the respondent took the second defendant to the petitioner-bank on 31.5.1996, where the respondent was having Current Account, for opening a Saving Bank account in the name of the second defendant''s daughters and demand drafts were deposited in the respective accounts for collection. The second defendant gave a letter to the petitioner-bank to transfer the cumulative amount of drafts to the current account of the respondent. The demand drafts were encashed and the amount was credited to the respondent''s account on 31.5.1996. The said loans were repaid to the second defendant in July 1996. While so, on the complaint given by the second defendant, the petitioner and the second defendant colluded together and on 6.6.1998 debited in the current account of the respondent a sum of Rs. 12,10,000/- without any information or authorisation. Hence, the suit has been filed by the respondent for recovery of damages. Thus, the said suit has been levied against the petitioner herein and the second defendant, who has not been made a party in the above referred application. A detailed written statement has been filed at the instance of the petitioner herein repudiating the contentions raised in the plaint. Further, an additional written statement has been filed in December 2004.

5. The submission of the learned counsel for the petitioner is that as per Section 19(8) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called as "the Act") stipulates that in the case of counter claim, the Debt Recovery Tribunal has jurisdiction to make an enquiry and the Civil Court''s jurisdiction is barred. Thus, according to the learned counsel for the petitioner, the Civil Court has no jurisdiction to decide the matter and the matter has to be decided by the Debt Recovery Tribunal, Coimbatore where the proceedings have

already been initiated by the petitioner.

6. Per contra, the learned counsel for the respondent has contended that the claim of the respondent cannot be urged before the Debt Recovery Tribunal and it is in no way connected with the claim already pending before the Debt Recovery Tribunal. Further, the suit has been laid not only against the petitioner being the first defendant, but also laid against one Ram Anand as second defendant claiming damages and hence, the suit that has been instituted before the Civil Court is perfectly valid in law.

7. The learned counsel for the petitioner has relied upon a decision reported in State Bank of India, Vizianagaram Branch Vs. Siri Poultry Complex, Padmanabham Revenue Mandal and Others, and submitted that the suit that has been instituted by the respondent has to be transferred to the Debt Recovery Tribunal, Coimbatore. In the said decision, it has been held as follows:-

A plain reading of sub-section (8) of Section 19 of the Act makes it clear that the Tribunal is clothed with the exclusive jurisdiction not only to make an enquiry into the application filed by a Bank or financial institution to recover the debts due to such bank or financial institution, but is also clothed with the jurisdiction to make an enquiry into the counter claim that may be set up by a defendant in the application filed by such bank or financial institution. The nature of the suit filed by the respondents herein is, practically and in substance, in a nature of a counter claim. Thus, the Tribunal has jurisdiction to try the same.

The said decision will not be applicable to the present case for the simple reason that the respondent''s claim in the suit is not a counter claim, but is based on an unauthorised deduction of Rs. 12,10,000/- from his account on the basis of the complaint given by the second defendant. Further, the claim against the second respondent cannot be urged before the Debt Recovery Tribunal.

8. The other judgment relied upon by the learned counsel for the petitioner is reported in United Bank of India Vs. The Debts Recovery Tribunal and Others, The said judgment will not be of any use to the petitioner, since, as stated already, the claim of the respondent is not a counter claim, but it is based on an unauthorised deduction of certain amount from the account of the respondent and the suit has been levied against the petitioner-bank as well as the second defendant.

9. The learned counsel for the respondent has drawn my attention to the decision reported in 2006 (4) S.B.R. 390 = 2006-4-L.W. 924 (Indian Bank v. A. B.S. Marine Products Pvt. Ltd), wherein it has been held as follows:-

The effect of sub-sections (6) to (11) of Section 19 of the amended Act is that any defendant in a suit or proceeding initiated by a bank or financial institution can: (a) claim set off against the demand of a bank/financial institution, any ascertained sum of money legally recoverable by him from such bank/financial institution; and (b) set-up by way of counter-claim against the claim of a bank/

financial institution, any right or claim in respect of a cause of action accruing to such defendant against the bank/financial institution, either before or after filing of the application, but before the defendant has delivered his defence or before the time for delivering the defence has expired, whether such a counter claim is in the nature of a claim for damages or not. What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings.

10. On a perusal of the averments made in the plaint coupled with the decision referred to above and also on the discussion made above, it is clear that the cause of action alleged against the second defendant can be decided only in the suit that has been laid by the respondent herein and it cannot be urged before the Debt Recovery Tribunal. The claim against the second defendant has to be decided by the Civil Court and it cannot, at any stretch of imagination, be proceeded before the Debt Recovery Tribunal. Hence, 1 hold that the suit filed by the respondent herein against the petitioner-bank as well as the second defendant is perfectly in order. The Court below has considered the entire aspects of the matter and has dismissed the said application. The said order of the learned Additional District and Sessions Judge (Fast Track Court No. III), Madurai dated 26.9.2005 made in I.A. No. 12 of 2005 in O.S. No. 128 of 2004 cannot be said to be erroneous or illegal and therefore, the same is confirmed. The Civil Revision Petition stands dismissed. Consequently, the connected C.M.Ps, are closed. However, there is no order as to costs.