

(2000) 12 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Revision Petition No. 4835 of 2000

Bank of Rajasthan Ltd.

APPELLANT

Vs

Rajasthan Breweries Ltd. and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19(25), 20

Citation : (2004) 120 CompCas 793

Hon'ble Judges : A.R. Lakshmanan, C.J.;Asok Parihar, J

Bench : Division Bench

Advocate : Paras Kuhad, for the Appellant; R.K. Anand K.K. Sharma, Shivani and Chandra Shekhar, for the Respondent

Judgement

AR. Lakshmanan C. J.

1. The Bank of Rajasthan Ltd. is the petitioner in this writ petition. The writ petition was filed with the following prayers ;

(i) to quash the order dated October 13, 2000, passed by the learned Debts Recovery Appellate Tribunal, New Delhi, whereby the appeal has been entertained by the learned Debts Recovery Appellate Tribunal, Delhi, and notices have been issued for summoning the parties ;

(ii) to declare that the learned Debts Recovery Appellate Tribunal, New Delhi, has no jurisdiction to entertain the appeal against the order's dated July 5, 2000, and September 6, 2000, passed by the learned Debts Recovery Tribunal, Jaipur ;

(iii) to quash the entire proceedings of Appeals Nos. 191 of 2000 and 192 of 2000 by holding that no appeal was maintainable against the orders dated July 5, 2000, and September 6, 2000, passed by the learned Debts Recovery Tribunal, Jaipur, and to restrain the Debts Recovery Appellate Tribunal, New Delhi, from proceeding further in the matter of hearing of the appeal;

(iv) and may pass any other appropriate order or direction which this honourable court consider just and proper in the facts and circumstances of the case in favour of the petitioner.

2. The short facts of the case which are relevant for the disposal of this writ petition are as under :

The petitioner-bank sanctioned certain credit facilities to the first respondent herein pursuant to the application of respondent No. 1. According to the bank, the loan application was considered in the meeting of the board of directors of the bank held on January 6, 1995, within the territorial limits of jurisdiction of the Debts Recovery Tribunal (for short DRT), Jaipur. The bank sanctioned the credit facilities as per the terms and conditions mentioned in the sanction letter dated January 20, 1995. In consideration of the bank's granting credit facilities, respondent No. 1 executed various documents. As respondent No. 1 failed to make the payment and committed breach of the agreement, the bank was constrained to institute proceedings before the DRT, Jaipur, for recovery of a sum of Rs. 11,34,83,080 and claimed various reliefs ; such as :

(a) a decree for the amount claimed against respondents Nos. 1 to 7 jointly or severally ;

(b) auction the movable goods, plant and machinery, etc.;

(c) and other incidental and ancillary prayers including the appointment of receiver to take actual physical possession of all the movable and immovable properties of the respondents ;

(d) a further prayer restraining the respondents from transferring, alienating or otherwise disposing of or parting with possession of any of its movable and immovable properties till the realization of all outstanding dues was also made.

3. The above application was filed u/s 19 of the Act of 1993 before the DRT, Jaipur. The respondents, pursuant to the receipt of the summons appeared before the DRT on July 5, 2000 and moved an application seeking seven days' time to file objections with regard to the jurisdiction of the DRT, Jaipur. On the said date, the DRT, Jaipur, passed a detailed order wherein it had observed that regarding the territorial jurisdiction, it can only be decided after hearing both the parties on the pleas taken by them and, therefore, directed respondents Nos. 1 to 8 to file their replies to the original application as well as to the miscellaneous applications. A copy of the said order has been marked as annexure 3.

4. Respondents Nos 1 to 7 filed an application for vacation of the interim order dated June 26, 2000 on July 21, 2000. On the same day, they also filed an application for extension of time for filing the reply. According to the petitioner-bank, on July 25, 2000, detailed arguments were heard by DRT, Jaipur, on the application of the defendants for vacation/modification of the order dated June 26, 2000 and the DRT, Jaipur, passed an order on July 26, 2000 (annexure 6).

5. Respondents Nos. 1 and 2 also filed an application u/s 19(25) of the Act of 1993 raising the ground that the DRT, Jaipur, has no jurisdiction to entertain and decide the application filed by the applicant-bank. The said objection has been raised on the basis of agreement dated January 26, 1995, wherein it has been stated that all disputes shall be subject to the jurisdiction of the Delhi court. The DRT, Jaipur, passed an order on September 6, 2000, whereby the question of interim injunction passed by the DRT was decided. As regards the jurisdiction of the Tribunal, the DRT, Jaipur, specially mentioned in its order dated September 6, 2000, that such jurisdiction question will be determined after framing the issues on these points. The DRT, as already noticed, passed orders on various dates and listed the case on various dates. During the course of the proceedings before the DRT, the defendant by giving application on October 17, 2000, sought an adjournment on the ground that against the order dated July 5, 2000 and September 6, 2000 passed by the DRT, Jaipur, respondents No. 1 to 7 filed two appeals before the Debts Recovery Appellate Tribunal, New Delhi, which have been registered as Miscellaneous Appeals Nos. 191 of 2000 and 192 of 2000, respectively. It was also contended on behalf of the respondents that since the Appellate Tribunal is now seized of the matter specially where the question of jurisdiction has been challenged and notices have been issued with regard to the jurisdiction for October 25, 2000, the DRT, Jaipur, should adjourn the proceedings pending before it. Being aggrieved by the proceedings pending before the Appellate Tribunal, New Delhi, the bank has filed this writ petition under articles 226 and 227 of the Constitution of India before this court by contending that:

(a) No appeal lies against the order passed on miscellaneous application when such an application was neither entertainable by the Tribunal nor was it covered u/s 19(25). The respondents had also challenged the jurisdiction of the Tribunal, which objection could have been taken only in their reply and further an appeal is provided u/s 20 of the Act against the final order passed by the Tribunal u/s 19 of the Act. The present appeals filed before the Appellate Tribunal, New Delhi, are not competent.

(b) The Tribunal, Jaipur, has not committed any error by holding that the objections can be raised by the respondent herein in the written statement and the question of jurisdiction will be determined after framing a point of issue on this point. Since the recovery Tribunal has exercised its jurisdiction vested in it by law, there is no material illegality in the exercise of jurisdiction.

(c) Though Section 20 of the Act of 1993 provides that any person aggrieved by an order made or deemed to have been made by a Tribunal may prefer an appeal to the Appellate Tribunal, that does not mean that every order, whether it is an executive or administrative order or judicial or non-judicial, is appealable before the Tribunal. According to Mr. Kuhad, learned counsel for the petitioner-bank, the order herein means the final order passed by the Tribunal on the original application and a reading of the provisions of Section 17 read with Sections 19

and 20 of the Act would clearly demonstrate that orders which are passed on the applications u/s 19 are then only appealable orders. In this view, Mr. Kuhad submitted that the orders passed by the DRT, Jaipur, dated July 5, 2000 and September 6, 2000, are not covered under any order passed u/s 19 of the Act.

(d) It is also submitted by Mr. Kuhad, that if there is no provision in the Act for filing an appeal, no appeal shall lie and an appeal in essence enables the review of the decision of the lower court by a high forum and it means for an appeal there should be a decision of the lower court. Certain other grounds have also been raised in regard to the maintainability of the appeal, with which we are not presently inclined to consider the merits of the submissions.

6. A reply on behalf of respondents Nos. 1 and 2 to the stay application was also filed. In addition to the reply, an application for adjournment was also filed by the respondents/defendants before the Tribunal, In the application for adjournment, it has been specifically raised that the question of jurisdiction does not lie with the DRT, Jaipur, as the parties themselves have entered into agreement whereby they have conferred jurisdiction to Delhi courts only. According to the respondents, the question of jurisdiction has to be decided first and specially when there is a specific agreement to this effect and, therefore, no evidence is required. Therefore, the direction issued by the DRT with regard to the jurisdiction that the question of jurisdiction would be decided after obtaining pleadings of both the parties is not legal and correct. Since the Appellate Tribunal is now seized of with the matter and specially when the question of jurisdiction has been challenged and a notice had been issued with regard to the jurisdiction, it is submitted by Shri R. K. Anand, senior advocate, that it would be appropriate if the Tribunal is directed to adjourn the matter and take up the same after the Appellate Tribunal would hear and decide the matter.

7. In the reply, it is also submitted by Shri R. K. Anand, that since the agreements were executed at New Delhi and banking facilities were extended to the respondents from the South Extension, New Delhi Branch, the Tribunal at Jaipur has no jurisdiction to entertain and decide the case.

8. We have given our anxious consideration to the questions at issue, the arguments advanced by Shri Paras Kuhad, reply by Shri R. K. Anand and other learned counsel appearing for the other parties.

9. While issuing a show-cause notice on October 24, 2000, as to why the writ petition should not be admitted and disposed of at the stage, a Division Bench of this court stayed the proceedings before the Debts Recovery Appellate Tribunal, New Delhi, in Appeal No. 191 of 2000 till the disposal of the stay application and also permitted the Debt Recovery Tribunal, Jaipur, to proceed with the case. Since the appeals filed by the respondents herein are stayed by this court and are pending final adjudication, it is not proper for us to express any opinion on the question raised by the Bank of Rajasthan in regard to the maintainability of the appeal pending before the Appellate Tribunal at New Delhi. We, therefore, are

not inclined to express any opinion on the contentions raised at this stage, which would ultimately depend upon the orders that may be passed by the Debt Recovery Tribunal, Jaipur, in regard to its jurisdiction to decide the original application filed by the Bank of Rajasthan before it for recovery of loan amount and other consequential reliefs.

10. Pending the writ petition, an application under Article 226(3) of the Constitution of India was also filed on behalf of respondents Nos. 1 and 2. The said application was filed to vacate the ex parte stay order dated October 24, 2000, whereby the proceedings before the DRAT, New Delhi, in Appeal No. 191 of 2000 was stayed. A reply to the said application was also filed by the Bank of Rajasthan.

11. As already noticed, the original application filed by the Bank of Rajasthan is pending before the DRT, Jaipur. Pending the original application, an application u/s 19(25) of the Act was also filed on behalf of respondents Nos. 1 and 2 for rejection of original application wherein it is stated that under the relevant clause of the agreement, the parties have agreed that all the disputes shall be subject to the jurisdiction of Delhi courts and that the loan agreement was entered into at New Delhi and loan facilities were also availed of from New Delhi branch of the bank only and hence, the Tribunal at Jaipur has no jurisdiction to entertain and decide the application filed by the bank. It was prayed that the Tribunal should pass an order rejecting the plaint/application for want of jurisdiction and vacate interim order passed by the Tribunal on June 26, 2000 and pass appropriate further orders.

12. We have perused the order passed by the Debt Recovery Tribunal, dated September 6, 2000. The Tribunal, for the reasons recorded, has opined that no case is made out to vacate the order passed by the Tribunal on June 26, 2000, under which the Tribunal had restrained the defendants only regarding defendant No. 1's movable and immovable properties which were mortgaged/hypothecated to the bank. By order dated July 5, 2000, the Tribunal has ordered that the order of jurisdiction will be decided after obtaining pleas of both the parties, i.e., after filing of the written statement by the defendants and that the question of jurisdiction will be determined after framing of issue on this point. As already noticed, the appeals were filed against the said order in the Appellate Tribunal at New Delhi.

13. According to Mr. Paras Kuhad, in view of the order dated July 20, 2000, passed by Naolekar J. the appeal filed by the respondents herein are not maintainable and that the said order was passed by agreement of the parties and that both the parties have agreed that the matter which is already pending before the Debts Recovery Tribunal, Jaipur, for recovery of the debts may be decided by the Tribunal and, therefore, the agreed order cannot be made a subject matter of appeal before the Tribunal. By the said order dated July 20, 2000, the learned judge has directed the Debts Recovery Tribunal to adjudicate and decide the matter within a period of three months from placement of the

said order before the Tribunal and directed the company petition to be kept pending. Placing reliance on this order, Mr. Kuhad submitted that a bare perusal of the said order reveals that Respondent No. 1 has specifically agreed to the jurisdiction of the DRT, Jaipur. This statement was controverted by Shri R. K. Anand, counsel appearing for the respondents. It is not clear from the above order that the question of jurisdiction of the DRT which was raised by the respondent herein, was brought to the notice of the learned single judge. There is no indication in the order that the said fact was also brought to the notice of the learned judge who was dealing with the company petition. Had it been brought to the notice of the learned single judge, the learned judge would have issued appropriate direction. A reading of the order would show that the learned judge was under the impression that since the matter is pending before the DRT for adjudication in regard to the recovery of the debts, the learned judge has directed the Tribunal to decide the matter within a period of three months. Therefore, in our opinion, no shelter can be taken by Shri Kuhad, on the question of deciding the jurisdiction issue by the Tribunal.

14. According to respondents Nos. 1 and 2, the petitioner-bank had filed the claim petition before the Tribunal at Jaipur on the strength of the four agreements dated September 21, 1995. The said agreement according to Shri Anand contains a jurisdiction clause vide which the parties are mutually agreed to resolve the dispute at the courts at Delhi only and thereby ousting the jurisdiction of other courts. The said clause is reproduced herein for ready reference :

"Agreement shall be subject to the jurisdiction of the courts at Delhi."

15. It is also seen from the proceedings of the Tribunal dated July 5, 2000 that the respondents sought time to file reply to the original application. It is also seen that on the first date of appearance, the respondents raised the dispute regarding jurisdiction of the Tribunal at Jaipur to entertain the application.

16. According to the respondents, all the documents pertaining to the said credit facilities were executed at Delhi and despite admitting the fact that there is a specific agreement with regard to the jurisdiction, the Tribunal had failed to decide the issue of jurisdiction first, which is contrary to the laws. Therefore, Shri Anand submitted that the question of jurisdiction ought to have been decided first.

17. We see much force and substance in the said submission of Shri Anand. It is settled law that parties to an agreement can mutually choose and agree for adjudication of their disputes to a particular court if different courts have jurisdiction to try and entertain the disputes inter se the parties. It is also settled law that the parties who have signed the agreement are bound by that agreement. Under such circumstances, the Tribunal ought to have decided the question of jurisdiction first.

18. The respondents on August 2, 2000, also filed an application u/s 19(25) of

the Act challenging jurisdiction of the Tribunal. However, after hearing detailed arguments advanced by both the parties on the interim application as well as the application challenging the jurisdiction of the Tribunal, the Tribunal by order dated September 6, 2000, declined to vacate or modify the order dated June 26, 2000. The Tribunal, in our view, has failed to decide the issue of jurisdiction and kept the application of the respondents herein in abeyance on the ground that the same will be decided after obtaining pleas of both the parties as ordered, vide order dated July 5, 2000. However, it is not in dispute that detailed submissions and arguments were advanced by both the parties. Though arguments were advanced by both the sides in regard to the maintainability of the appeals under Sections 17 and 20 to the Appellate Tribunal, we are not expressing any opinion, on the said issue which in our opinion, depends upon the order to be made by the Tribunal in regard to its jurisdiction to entertain and decide the plaint filed by the bank. In our view Section 19(25) of the Act empowers the Tribunal to pass orders/directions to prevent abuse of its process or to secure ends of justice. In our view, the application u/s 19(25) challenging jurisdiction of the Tribunal is maintainable. The balance of convenience lies in favour of the respondents.

19. Mr. Paras Kuhad, on the other hand, submitted that the petitioner-bank is functioning as a bank within the territorial jurisdiction of the DRT, Jaipur, and it has its registered office at Jaipur within the territorial jurisdiction of the DRT, Jaipur, as well as it has its central office at Udaipur. Further, the acceptance of the proposal for sanctioning the credit facilities, etc., have also taken place at Jaipur. The loan application of respondent No. 1 was considered in the meeting of the board of directors of the bank at Jaipur, as such, the application filed u/s 19 of the Act is within the jurisdiction of the DRT, Jaipur.

20. In view of the above contentions, it is for the Debt Recovery Tribunal to decide the question of territorial jurisdiction first and then subject to the said decision on the jurisdiction issue to proceed further. We, therefore, direct the Debt Recovery Tribunal, Jaipur, to decide the question of its territorial jurisdiction within one month from the date of receipt of this order. The parties to the action are permitted to file additional written pleas in support of their contentions in regard to the territorial jurisdiction of the Tribunal. It shall be filed immediately without any further loss of time. The Tribunal shall decide the jurisdiction issue as already indicated, within the time stipulated above. In the meanwhile, interim order passed by the DRT, Jaipur shall be in force. Likewise, the order passed by this court staying proceedings which are pending before the Debts Recovery Appellate Tribunal, New Delhi, in Appeal No. 191 of 2000 shall also be in force till the disposal of the decision in regard to the jurisdiction issue. The Debt Recovery Tribunal is directed to proceed now only with regard to the jurisdiction issue and proceed further to decide the case on the merits subject to the final out come of the order that may be passed.

21. In view of the above direction, there is no need or necessity to refer to the

decisions cited by Shri Paras Kuhad contending that every order will not include the interim order, etc. Though, some judgments were also cited by learned counsel for the parties in regard to the maintainability of the writ petition and availability of the alternative remedy, we are not expressing any opinion in regard to the view taken in those judgments for the present case in view of our direction issued to the Tribunal to decide the question of jurisdiction.

The writ petition is disposed of accordingly.