

(2015) 02 MAD CK 0299

In the Madras High Court

Case No : Transfer Application No. 732 of 2013

Bekae Properties (P) Ltd.

APPELLANT

Vs

Kothari Industrial Corporation Ltd. and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(22), 19(7)

Citation : (2015) 3 BC 222 : (2015) 3 CTC 491 : (2015) 2 MLJ 322

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : R. Thiagarajan, for the Appellant; T. Mahendran and C.S.K. Sathish, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—This application has been filed under Order XIV Rule 8 of O.S. Rules read with Clause 13 of Letters Patent Act, praying to withdraw O.A. No. 925 of 2000 pending on the file of the Debt Recovery Tribunal-I, Chennai, and to transfer the same to this Court to try the same along with Civil suits viz., C.S. No. 468 of 2011 and C.S. No. 511 of 2011 pending before this Court (original side). The brief facts of the case as averred in the affidavit filed in support of this application, which are necessary to decide this application, are as follows:

1.1. The 1st respondent herein viz., Kothari Industrial Corporation Ltd., in its ordinary course of business had availed a term loan of Rs. 5 crores on 03.12.1995 from Times Bank Ltd., having its branch office at No. 40, Nungambakkam, High Road, Chennai, for its business expansion activities. In order to secure the said loan, the respondents 1 and 2 herein had executed an instrument of equitable mortgage in favour of Times Bank Ltd., on 16.01.1996 by depositing the original title deed of the property namely an undivided 2/3rd share in the land together with buildings and structures thereon known as

Kothari Buildings No. 114, Mahatma Gandhi Road, Nungambakkam, Chennai, Old Survey No. 330, Resurvey Nos. 58/2 and 38/81 and comprised in Collector's Certificate No. 6557, measuring about 171/2 grounds together with building with ground and five floors in the Registration District of Madras, Sub-Registration District of Thiagarayanagar. On 16.01.1996, the 2nd respondent had executed a comprehensive continuing Guarantee and indemnity for the said loan availed by the respondents 1 and 2. The 1st respondent and Times bank Ltd., on 14.01.1996 and 29.01.1996 have registered the said charge with Registrar of Companies by filing the prescribed Form Nos. 8 and 13 respectively.

1.2. While so, with effect from 26.02.2000, Times Bank Ltd. was amalgamated with the 4th respondent viz., HDFC Bank Ltd. By virtue of the amalgamation, all the assets and liabilities of Times Bank Ltd. have been taken over by the 4th respondent. The 1st respondent was irregular in repayment of the loan amount to the 4th respondent. Hence, the 4th respondent by a legal notice dated 13.07.2000 recalled the loan availed by the 1st respondent. The 4th respondent also initiated recovery proceedings for the amounts due and payable by the 1st respondent and filed O.A. No. 925 of 2000 on the file of the Debts Recovery Tribunal-I, Chennai, for recovery of a sum of Rs. 3,44,62,144.80 from the respondents 1 and 2. On the basis of the admission made by the respondents in their counter statement, the Debt Recovery Tribunal-I, Chennai issued an Interim Recovery Certificate on 31.07.2002 for Rs. 2,49,873,000/- towards outstanding loan besides legal expenses incurred by the 4th respondent.

1.3. The respondents 1 and 2 by a Memorandum of Understanding (MOU) dated 18.07.2006 had availed financial advisory services from the 3rd respondent to liquidate their debts. The respondents 1 and 2 under the aforesaid MOU have authorized the 3rd respondent to sell its assets to discharge the debts including the debts owed by them to the 4th respondent. The 3rd respondent, in exercise of the said power and authority conferred upon it, approached the applicant in November-2006 and requested to get the debts of the respondents 1 and 2 assigned in its favour along with the underlying security to save the 1st respondent from going commercially insolvent. The applicant purely as a commercial transaction had agreed to get the debt of the respondents 1 and 2, along with the rights of 4th respondent assigned in its favour.

1.4. Accordingly, at the instance of the 3rd respondent, the 4th respondent by a Deed of Assignment dated 08.11.2006 assigned the rights to the applicant, all the defaulted loans of the 1st respondent to the applicant for a sum of Rs. 4,50,00,000/-. The said deed of assignment was registered as Document No. 1102 of 2006 in Book-I in the Office of the Sub-Registrar, Thousand Lights, Chennai. The applicant had paid a huge sum of Rs. 27,00,000/- towards stamp duty for effecting the above assignment of debt. Thus, the applicant by virtue of the said assignment has become a lawful assignee of the benefit of all guarantees, securities, mortgage, indemnities, interest accrued and the power and right of the 4th respondent possessed against the respondents 1 and 2 and

entitled to recover the entire defaulted loan payable by the respondents 1 and 2 to the 4th respondent herein in its own name and for its own benefit without the consent of the 4th respondent herein.

1.5. The 1st respondent on 09.11.2006 was intimated by the applicant about the assignment of its debt. The 1st respondent by an undertaking dated 10.11.2006 acknowledged the same explicitly and agreed on its own volition not to challenge the same before any court of law. In the said undertaking the 1st respondent also recorded their "no objection" for the applicant moving the Debts Recovery Tribunal-I, Chennai for attachment of the rents from the tenants of the 1st respondent who were occupying the mortgaged property. The applicant upon getting the debts of the respondents 1 and 2 assigned in its favour had filed an application in O.A. No. 925 of 2000 on the file of the Debts Recovery Tribunal-I, Chennai to substitute it as an applicant. Since the applicant being a private party "not falling within the definition of "Bank" or "Financial Institution" as defined under S. 2(e) and (h) of the Recovery of Due to Banks and Financial Institutions Act, 1993, (Act 51 of 1993) the said application could not be proceeded with.

1.6. The respondents 1 and 2 in order to save the interest towards the mortgage loan have offered to pay to the applicant the rental proceeds of the mortgaged property. In continuance of such arrangement, the 1st respondent on 23.02.2007 by a registered lease deed, registered as Document No. 195 of 2007 in the office of the Sub-Registrar, Thousand lights, Chennai leased out a portion of the mortgaged property being the northern portion of the suit property at Fourth Floor measuring to an extent of 3674 sq.ft. or thereabouts constructed area along with 322 sq.ft. in common area to the 5th respondent for a period of three years for a monthly rent of Rs. 1,39,860. As per Clause 3.2 of the lease deed, the 1st respondent conferred the power to collect the rent from the 6th respondent. But, the 1st respondent was not paying interest due towards the mortgage money and also failed to route the rental income accruing from the mortgaged property as to the applicant as promised.

1.7. The respondents 1 and 2 instead of repaying the debts owned to the applicant, they filed a memo before the Debt Recovery Tribunal-I, Chennai in O.A. No. 925 of 2005 on 27.03.2009, stating that "the matter has been settled outside the Court". The Debts Recovery Tribunal-I, Chennai was misled by the above said memo filed by the party thereto. The fact remained that the 1st respondent as on that date had not made any payment either to the applicant or to the 4th respondent. The applicant promptly filed a memo before the Debt Recovery Tribunal-I, Chennai and exposed the sinister move of the 1st respondent. However, subsequently, the said O.A. No. 925 of 2000 was dismissed for default on 31.03.2009 by the Debt Recovery Tribunal-I, Chennai.

1.8. Thereupon, the 4th respondent Bank has filed M.A. No. 64 of 2009 to restore O.A. No. 925 of 2000, which is pending before the Debts Recovery Tribunal-I, Chennai. In the said proceeding, the 1st respondent has filed its counter and contended that in view of the assignment of the debt by the 4th

respondent in favour of the applicant herein, it is for the applicant to work out its remedy independently and separately only by filing a civil suit before appropriate forum or court as the case may be.

1.9. In view of the conduct of the respondents 1 and 2, the applicant was constrained to constantly demand repayment of the debts due and payable by the respondents 1 and 2 to the applicant under the deed of assignment dated 08.11.2006. Though several letters were addressed to the respondents 1 and 2 and demands made through their executives on various occasions, it had not invoked any response from the respondents 1 and 2. While, the respondents 1 and 2 admitted their liability, they deliberately offered for less amount than actual due to the applicant by way of cash, by conveying a portion of the mortgaged property in favour of the applicant or by mixture of both. The 1st respondent had addressed letters dated 29.09.2009, 14.02.2011 and 18.04.2011 to the applicant in this regard. Since the offer made by the 1st respondent could only extinguish a part of the liability of the respondents 1 and 2, the applicant by its letter dated 18.05.2011 expressed in its inability to accept the same. Thereupon, the 1st respondent had filed Rent Control Petition in R.C.O.P. No. 55 of 2010 on the file of the learned XVI Small Causes Court (Rent Controller), Chennai against the respondents 3 and 5 seeking for an order of eviction on the ground of presumed "Willful default" in payment of rents and "Additional Accommodation". In the said proceedings, strangely the applicant was not made a party to the proceedings. The 1st respondent has also deliberately not whispered anything about the agreement and the arrangements entered into between the parties thereto.

1.10. The amounts due from the respondents 1 and 2 to the applicant on the assignment deed dated 08.11.2006 as on 01.05.2011 was a sum of Rs. 25,08,00,000/-. Therefore, the applicant has filed C.S. No. 468 of 2011 before this Court claiming a sum of Rs. 25,08,00,000/- as per the Deed of Assignment dated 08.11.2006 with interest at 22% p.a. (quarterly rest) between the date of filing of the plaint and the date of payment and in default for sale of the mortgage property and certain other reliefs. The 1st respondent as a counter blast has filed C.S. No. 511 of 2011 before the Court against the applicant seeking redemption of mortgage by offering to pay a sum of Rs. 5,13,62,532/-.

1.11. It is the case of the applicant that O.A. No. 925 of 2000 filed by the 4th respondent before the Debt Recovery Tribunal-I, Chennai against the respondents 1 and 2 and C.S. No. 468 of 2011 filed by the applicant against the respondents 1 and 2 and C.S. No. 511 of 2011 filed by the 1st respondent against the applicant arose from one and the same cause of action. The issue to be decided in these cases are identical, namely the liability of the respondents 1 and 2. The evidence that may be led by both parties before this Court and the Debts Recovery Tribunal would be identical and similar in both the proceedings. Hence, the present application has been filed by the applicant for transferring O.A. No. 925 of 2000 pending on the file of the Debt Recovery Tribunal-I,

Chennai to this Court to try along with the said civil suits.

2. The respondents 1 and 2 have filed a counter denying the allegations made by the applicant. It is stated in the counter by the respondents 1 and 2, inter alia, that the present transfer application has been filed by the applicant seeking to transfer O.A. No. 925 of 2000 to the file of this Court under Clause 13 of the Letters Patent Act. Clause 13 is not even applicable to this case and the present transfer application is liable to be dismissed in limini. Clause 13 of the Letters Patent Act deals with the power of the High Court to withdraw and transfer the suits from any other Court's to try and determine the same itself. It is well settled law that Tribunals are not Courts and specifically that Debt Recovery Tribunal is not a Civil Court. The proceedings before the Debt Recovery Tribunal is not a suit and therefore, Clause 13 of the Letters Patent is not even applicable in the present instance. The reliefs sought to be determined in the said Original Application and the Civil Suits are completely different. The Debt Recovery Tribunal has been constituted by a special enactment namely the Recovery of Debts Due to Banks and Financial Institutions Act. Section 18 of the said Act specifically bars the Jurisdiction of any Court to try and determine matters falling under Section 17 of the said Act. By virtue of such specific bar, a proceeding such as an OA by a Bank or a Financial Institution can be filed only before the Debt Recovery Tribunal. Thus, the respondents 1 and 2 sought for dismissal of the application.

3. The learned counsel appearing for the applicant submitted that the respondents 1 and 2 borrow a term loan of Rs. 5 crores on 03.12.1999 from Times Bank Ltd. Subsequently, the Times Bank Ltd. got amalgamated with the 4th respondent viz., HDFC Bank Ltd. on 26.02.2000. Since the 1st respondent was irregular in repaying the loan amount, the 4th respondent recalled the loan availed by the 1st respondent by legal notice dated 13.07.2000 and initiated recovery proceedings by filing O.A. No. 925 of 2000 on the file of the Debts Recovery Tribunal-I, Chennai, for recovery a sum of Rs. 3,55,62,144.80 from the respondents 1 and 2. In the said OA, the respondents 1 and 2 admitted their liability to the extent of Rs. 2,49,873,000/- towards outstanding loan. Hence, the Debt Recovery Tribunal-I, Chennai, issued an Interim Recovery Certificate on 31.07.2002 for the said admitted amount. Since the respondents 1 and 2 were not in a position to pay the loan amount, they had availed financial advisory services from the 3rd respondent, by a Memorandum of Understanding, to liquidate their debts. Further, by the said MoU, they authorized the 3rd respondent to sell their assets to discharge the debts including the debts owned by them to the 4th respondent. Thereafter, at the instance of the 3rd respondent, the 4th respondent by a Deed of Assignment dated 08.11.2006, assigned the rights to the applicant. On 09.11.2006 the 1st respondent was intimated by the applicant about the assignment of its debt. The 1st respondent has also given an undertaking on 10.11.2006 that they would not challenge the said assignment before any court of law. Even thereafter, the respondents 1 and 2 failed to make repayment. Hence, the applicant as an assignee has filed an application in O.A.

No. 925 of 2000 on the file of the Debts Recovery Tribunal, Chennai to substitute it as an applicant. Since the applicant is a private party and not falling within the definition of "Bank" or "Financial Institution" as defined under S. 2(e) and (h) of the Recovery of due to Banks and Financial Institutions Act, 1993, the said application could not be proceed with by the Tribunal. Hence, the applicant has filed the present suit in C.S. No. 468 of 2011 before this Court against the respondents 1 and 2. The respondents 1 and 2 have also filed a suit in C.S. No. 511 of 2011 as against the 4th respondent and the applicant herein, for recovery redemption of the mortgage by offering to pay a sum of Rs. 35 lakhs.

4. Since the issues involved in these suits and in O.A. No. 925 of 2000 pending on the file of the Debt Recovery Tribunal, chennai, are one and the same, the said OA has to be transferred to this Court and to be tried along with the present suits. If the said OA is not transferred and tried along with the present suits, the applicant would be put to irreparable hardship and loss. In this regard, the learned counsel appearing for the applicant has also relied upon Clause 13 of Letters Patent Act and submitted that this Court has power to remand and try and determine any proceeding as a Court of extraordinary original jurisdiction.

5. The learned counsel for the applicant further submitted that the Debt Recovery Tribunal is incompetent to pass a decree and the applicant as a private party also cannot be substituted as an applicant in the application in the said OA. In this regard, the learned counsel for the applicant, by relying upon the judgment reported in Vinita M. Khanolkar Vs. Pragna M. Pai and Others, submitted that unless the appellate powers of the High Court under Letters Patent is expressly excluded by the statue, the High Court is having ample power to transfer the proceedings pending before the Tribunal. For the same proposition, the learned counsel for the applicant has also replied upon the judgment reported in Jaswiner Singh v. Mrigendra Prita 2012 (b) CTC 129. The learned counsel for the applicant, by inviting the attention of this Court to Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, submitted that the bar of jurisdiction under Section 18 of the said Act would be attracted, provided that the proceedings are initiated by the Bank as against the borrower and similarly, if the borrower has got any claim as against the bank, the remedy is available only before the DRT in view of the provisions of Section 17 of the said Act; whereas in the instant case, the applicant is an assignee of the debt and since the assignee is a private party, it cannot be substituted in the place of the applicant therein/4th respondent herein before the DRT. Since the dispute is also relating to the assignment of debt, absolutely there is no bar for this Court to transfer the proceedings pending before the Tribunal to this Court to try the same along with the suits.

6. It is yet another submission of the learned counsel appearing for the applicant that when the Letters Patent Act was enacted and Chartered High Courts were formed, which were the creation of Charter Party, there was no Tribunals existing in India and in such circumstances, there was no occasion for the High Court to

consider the power of Tribunal and power of High Court or vice-versa. However, after creation of the Tribunals, the question that came up for consideration in number of decisions when there is a claim by the bank and counter claim by the borrower as to what shall be scope and ambit of such proceeding, whether the Civil Court is competent to hear and decide the counter claim and whether the Civil Suit can be transferred to Tribunal to be tried along with OA preferred by the bank. So far as the present case is concerned, after the claim of the bank has been assigned by virtue of the Assignment Deed in favour of the applicant it would not be appropriate on the part the bank to prosecute the OA pending before DRT, having assigned the debts in favour of the applicant herein, since the applicant herein stepped into the shoes of the fourth respondent Bank. That is the reason why, the suit has been filed by the applicant against the borrower of the loan from the Bank before this Court, since they are not competent to proceed against the borrower of the loan before the Debt Recovery Tribunal. In such circumstances, the remedy that is available to the 4th respondent herein/bank is to support the cause of assignee and the proceeding pending before DRT has to be transferred and tried along with C.S. No. 468 of 2011 and C.S. No. 511 of 2011.

7. The learned counsel appearing for the applicant, by inviting the attention of this Court to Article 227 of Constitution of India, submitted that this Court is having the power of superintendence over all the Sub-ordinate Courts and Tribunals within the State; therefore, this Court by invoking the powers under Article 227 of Constitution of India, can order to transfer the Original Application from the Tribunal to the file of this Court and try the same along with the present suits.

8. The learned counsel for the 3rd respondent submitted that the 3rd respondent was authorized by the respondents 1 and 2 to sell the assets and discharge the debts owned by the respondents 1 and 2 to the 4th respondent. At the instance of the 3rd respondent, the debts owned by the respondents 1 and 2 to the 4th respondent Bank was assigned to the applicant. Though the debts were assigned in favour of the applicant, they were not in a position to substitute themselves in O.A. No. 925 of 2000 pending before the Debt Recovery Tribunal, since the applicant is neither a Bank nor a financial institution. Therefore, it would be appropriate to transfer O.A. No. 925 of 2000 pending before the Debt Recovery Tribunal to this Court to be tried along with C.S. No. 511 of 2011 and C.S. No. 468 of 2011, since the issues involved in the suits and OA are interconnected with each others. In fact, on one occasion, O.A. No. 925 of 2000 filed by the 4th respondent Bank was dismissed by the Debt Recovery Tribunal on 31.03.2009 for default; thereafter, the 4th respondent herein filed an I.A. No. 64 of 2009 to restore the OA to file; in the said IA, the respondents 1 and 2 herein filed a counter stating that the 4th respondent herein has no locus standi to file the above application because the 4th respondent herein has already relinquished its rights and interest over the debts of the respondents 1 and 2 in favour of the applicant herein and that after the execution of the said assignment deed, the

relationship of creditor and debtor ceased to exist between the 4th respondent and the respondents 1 and 2 and that the respondents 1 and 2 are not liable to pay any amount towards the subject matter of the loan in O.A. No. 925 of 200 to the 4th respondent herein. Now, in the suit in C.S. No. 511 of 2011 filed by them, the respondents 1 and 2 are disputing the assignment deed executed in favour of the applicant herein. In view of the contradictory statements made by the respondents 1 and 2 herein, it is absolutely necessary to transfer the said O.A. No. 925 of 2000 from the file of the Debt Recovery Tribunal to the file of this Court to try the same along with the present suits. The learned counsel for the 3rd respondent had also drawn the attention of this Court to Clause 13 of Letters Patent Act and submitted that for the purpose of justice, this Court can transfer the case pending before the Tribunal to this court to be tried along with the suits. In this regard, the learned counsel for the 3rd respondent relied upon the judgment reported in Kalidas Roy and Others Vs. University of Calcutta and Others, , wherein it has been held that:

"The power given is in a wide form and in my opinion, has to be construed as such. Provided that this Court thinks that the transfer should be effected for "Purpose of Justice" there are no limitations whatsoever and I do not propose to read any limitation to it unless for some compelling reason. My attention has been drawn to various decided cases. Historically they are interesting and I shall briefly notice them. But each case is an authority for the particular facts arising therein and cannot govern a different set of facts." A reliance was also placed by the learned counsel for the 3rd respondent on the decision reported in Baburam Agarwalla Vs. Jamunadas Ramji and Co., , wherein it has been held as follows:

"The words "purpose of justice" in Clause 13, Letters Patent, are in my opinion advisedly general and wide so as not to fetter the discretion of this Court in any way. To attempt to define these words will be to defeat the amplitude of the provision. To conclude from various decisions from time to time the enunciation of different grounds on which transfer can be made under this clause and then to say that those grounds are exhaustive will be an unnecessary limitation of the scope of this provision. The Letters Patent are to be construed as a Statute and if the Statute has not, chosen to formalise or exhaust the grounds on which suits may be removed from other Courts to this Court it is not for this Court to define or delimit such grounds. The clause in the Letters Patent prescribes that "when the said High Court shall think proper to do so for purposes of justice" it will have the power to remove a suit from the Court mentioned therein and to try and to determine such suit here in this Court. What are the "purposes of justice" and when "the said High Court shall think proper to do so" are, in my opinion questions better left to be decided on the merits and facts of each case." Thus, the learned counsel for the 3rd respondent submitted that by invoking Clause 13 of Letters Patent Act, this Court can transfer the proceedings pending before the Tribunal to this Court to try the same along with the present suits.

9. Countering the submissions made by the learned counsel for the applicant as

well as the learned counsel for the 3rd respondent, the learned counsel for the respondents 1 and 2 submitted that the 4th respondent-Bank had executed the deed of assignment in favour of the applicant herein without any intimation to the respondents 1 and 2. Only after the execution of the deed of assignment, the respondents 1 and 2 were intimated. Knowing fully well that the applicant herein is neither a Bank nor financial institution, the 4th respondent has assigned the debts without intimating the respondents 1 and 2. The assignment deed was made on 08.11.2006 and the respondents 1 and 2 were intimated about the assignment deed only on 09.11.2006. Now, the respondents 1 and 2 are ready to discharge the entire loan amount before the Tribunal; but due to the pendency of the present transfer application, they are not in a position to deposit the amount before the Tribunal. The applicant herein has remedy as against the 4th respondent bank, who has assigned the debt. Thus, according to the learned counsel for the respondents 1 and 2, it is incorrect to state that the applicant has no remedy, if the proceeding pending before the Tribunal is not transferred to this Court. The learned counsel for the respondents 1 and 2 further submitted that the Debt Recovery Tribunal has been constituted under special Act namely The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Section 18 of the said Act specifically bars the jurisdiction of any Court to try and determine matters falling under the said Act; therefore, the proceedings pending before the Tribunal cannot be transferred to this Court by invoking Clause 13 of the Letters Patent Act. The learned counsel for the respondents 1 and 2 would further submit that the judgments relied upon by the learned counsel for the 3rd respondent reported in *Kalidas Roy and Others v. University of Calcutta and Others* (supra) and *Baburam Agarwalla v. Jamundas Ramji and Co.* (supra) deals about the transfer of the suit pending before the Civil Court. The words envisaged in Clause 13 of the Letter Patent also speak about the power of the Court to move and try the suit as a Court of extraordinary jurisdiction in the suit. But the proceedings pending before the Tribunal cannot be construed as a suit; therefore, Clause 13 of Letters Patent cannot be invoked with regard to the proceedings pending before the Tribunal. In this regard, the learned counsel for the respondents 1 and 2 relied upon the following decisions:

- (i) *State Bank of India Vs. Ranjan Chemicals Ltd. and Another*,
- (ii) *B. Raju v. Official Liquidator High Court Madras as the Liquidator of Kaushik Sitch Gears Pvt. Ltd.* 2014 (1) CTC 785 : LNIND 2014 MAD 27 : (2014) 2 MLJ 472
- (iii) *Allahabad Bank Vs. Canara Bank and Another*,
- (iv) *Hira Lall and Sons and Others Vs. Lakshmi Commercial Bank*,
- (v) *Ms. Varsha S. Metha and Another v. Day Mar Apparels Pvt. Ltd. and Others* (2003) 115 Comp Cas 936 (Mad) : LNIND 2000 MAD 1195
- (vi) *The Vysya Bank Ltd. Vs. Shankar Export Pvt. Ltd.*,

10. The learned counsel for the respondents 1 and 2 has further submitted that

now the applicant itself had taken steps to implead it as a respondent in O.A. No. 925 of 2000 by filing an application and the same is now pending before the Debt Recovery Tribunal. Thus, the learned counsel for the respondents 1 and 2 sought for dismissal of the above application.

11. By way of reply, the learned counsel for the 3rd respondent submitted that all the judgments relied upon by the learned counsel for the respondents 1 and 2 are relating to the transfer of the proceedings in respect of the dispute between the borrower and the bank; but, in the instant case, the debt was already assigned in favour of the applicant herein; hence, the judgments relied upon by the learned counsel for the respondents 1 and 2 cannot be made applicable to the present facts of this case. Further, the learned counsel for the 3rd respondent submitted that considering the peculiar facts and circumstance of the case this court can independently decide the transfer application since in the instant case the dispute is between the assignee of debt and the borrower and not between the borrower and the Bank. Further, the learned counsel for the 3rd respondent submitted that though there are no precedents with regard to the transfer of proceedings pending before the Debt Recovery Tribunal to this Court in respect of the disputes between the assignee of debt and borrower, the application need not be dismissed for want of precedents. In this regard, the learned counsel for the 3rd respondent relied upon the judgment reported in S.P. Gupta Vs. President of India and Others, . The relevant portion of the said judgment reads as follows:

"1071. It is argued on behalf of the Government that there is no precedent in administrative law to such a conclusion being reached. There cannot be a precedent in England, in the United States of America and in Australia as there are no Additional Judges in those countries of the type we are having in India and in India too we do not have a precedent because no such case has come up before the Court so far. This case is indeed an extraordinary one. This Court, however, is under a duty to do complete justice when a matter comes before it. What kind of relief should be granted in such a case is governed by the facts and circumstances of the case and the legal provisions governing it. If the problem is a new one a new solution has to be evolved. A Judge who has cultivated assiduously a sense of right and wrong sometimes may even depend upon his hunch while moulding the relief to be granted in a given case. It is a part of the judging process. The following words of judge Hutcheson are illuminating indeed. He tells us:

"I must premise that I speak now of the judgment or decision, the solution itself, as opposed to the apologia for that decision: the decree, as opposed to the logomachy, the effusion of the judge by which that decree is explained or excused.... The judge really decides by feeling and not by judgment, by hunching and not by ratiocination, such ratiocination appearing only in the opinion. The vital motivating impulse for the decision is an intuitive sense of what is right or wrong in the particular case; and the astute judge, having so decided, enlists his every faculty and belabors his laggard mind, to only to justify that intuition to

himself, but to make it pass muster with his critics. Accordingly, he passes in review all of the rules, principles, legal categories, and concepts "which he may find useful, directly or by an analogy, so as to select from them those which in his opinion will justify his desired result. (See JEROME FRANK; "LAW AND THE MODEM MIND" (1963) p. 112)."

1072. The following observations of DENNING, L.J. (as he then was) in *Candler v. Crane, Christmas and Co.* (1951) 2 KB 164 at p. 178 though in the minority are also relevant here. He observed:

"This argument about the novelty of the action does not appeal to me in the least. It has been put forward in all the great cases which have been milestones of progress in our law and it has always, or nearly always, been rejected. If you read the great cases of *Ashby v. White* (1703) 2 Ld. Raym, 938, *Pasley v. Freeman* (1789) 3 Term Rep. 51 and *Donoghue v. Stevenson* (1932) AC 562, you will find that in each of them the judges were divided in opinion. On the one side there were the timorous souls who were fearful of allowing a new cause of action. On the other side there were the bold spirits who were ready to allow it if justice so required. It was fortunate for the common law that the progressive view prevailed."

Thus, the learned counsel for the 3rd respondent submitted that the present transfer application need not be dismissed for want of any precedent and if a problem is new one, this Court can decide the issue independently.

12. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

13. It is the submission of the learned counsel appearing for the applicant that the 1st respondent herein in the course of business had availed loan from the Times Bank Ltd., on 30.12.1999 to the tune of Rs. 5 crores. Subsequently, Times Bank Ltd. was amalgamated with the 4th respondent-HDFC Bank. Since the 1st respondent was highly irregular in repaying the loan amount, the 4th respondent initiated recovery proceedings against the respondents 1 and 2 in O.A. No. 925 of 2000 on the file of the Debt Recovery Tribunal-I, Chennai, for recovery of a sum of Rs. 3,44,62,144.80 from the respondents 1 and 2. In fact, on the basis of the admission made by the respondents 1 and 2 in their counter statement, an Interim Recovery Certificate was also issued by the Debt Recovery Tribunal on 31.07.2002 for a sum of Rs. 2,49,873,000/-, towards outstanding loan besides legal expenses incurred by the 4th respondent. While so, at the instance of the 3rd respondent, the 4th respondent by a Deed of Assignment dated 08.11.2006 had assigned the rights to the applicants in respect of all the defaulted loans of the 1st respondent to the applicant for a sum of Rs. 4,50,00,000/-. Thereafter, the applicant demanded repayment of the debt amount due and payable by the respondents 1 and 2 to the applicant under the Deed of Assignment dated 08.11.2006. But, none of the letters of the applicant invoked any response from the respondents 1 and 2. Hence, the applicant has filed an application in O.A. No.

925 of 2000, which was filed by the 4th respondent, to substitute it as the applicant. But, the said application could not be proceeded with before the Debt Recovery Tribunal, since the applicant is only a private party and not a bank or financial Institution as defined under the Recovery of debts Due to Banks and Financial Institutions Act, 1993. Therefore, applicant has filed the present suit before this Court against the respondents 1 and 2 for recovery of money under the deed of assignment. Since the issued involved in the Original Application and the present suit is interconnected to each other, the present application has been filed to transfer the Original Application from the Debt Recovery Tribunal to this Court to be tried along with the present suit.

14. By relying upon the judgment reported in Patel Roadways Limited Vs. Birla Yamaha Limited, it is submitted by the learned counsel for the 3rd respondent that the suit means a prosecution or pursuit of some claim, demand or request; the act of suing, the process by which one endeavours to gain an end or object; attempt to attain a certain result. Hence, according to the learned counsel for the 3rd respondent, the Original Application No. 925 of 2000 pending before the Tribunal can be construed a suit; it cannot be said that the proceedings pending before the Tribunal cannot be transferred and tried along with the present suits by this Court, since there is a specific bar under Section 18 of the Act. Thus, it is the submission of the learned counsel for the applicant as well as the 3rd respondent that by invoking Clause 13 of the Letters Patent Act, this Court can transfer the OA from the Tribunal to this Court and try the same along with the present suit, for the purpose of justice. In support of this contention, the learned counsel for the 3rd respondent relied upon the decision reported in Baburam Agarwalla v. Jamundas Ramji and Co (supra).

15. It is the rival contention of the learned counsel appearing for the respondents 1 and 2 that the proceedings pending before the Debt Recovery Tribunal cannot be tried along with the suit by this Court by transferring the same, since there is a specific bar under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act.

16. In this regard, it would be appropriate to refer some of the judgment, relied upon by the learned counsel for the respondents 1 and 2. In State Bank of India v. Ranjan Chemicals Ltd. (supra) it has been held as follows:

"In the light of our conclusion that the claim of the Company in the suit could be considered to be a claim for set-off and a counterclaim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the Bank as a cross-suit. Obviously, the proceedings before the Debt Recovery Tribunal Could not be transferred to the Civil Court since that is a proceeding before the Tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that act. Therefore, the only other alternative would be to

transfer the suit to the Tribunal in case that is found warranted or justified." In *B. Raju v. Official Liquidator High Court Madras as the Liquidator of Kaushik Sitch Gears Pvt. Ltd.* (supra) it has been held as follows:

"27. considering the exclusive jurisdiction of the Debts Recovery Tribunal constituted under the RDB Act, the Order passed by the Company Court transferring Appeal Nos. 1 and 2 of 2013 from D.R.T-III to itself under the provisions of the Companies Act, 1956 is without jurisdiction is clear from the provisions of the RDB Act, 1993 and the General enactment, namely, Companies Act, 1956 and also the decisions seen supra. Thus, the consequential Orders passed in the impugned order dated 5.11.2013 permitting the Official Liquidator to take steps for selling the property is also without jurisdiction." In *Allahabad Bank v. Canara Bank and Another* (supra) it has been held as follows:

"21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) (formerly under Section 19(7)) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other Court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act.

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned.

23. Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil Court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act. ... The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for

adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

24. There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to banks and financial institutions stated in its report that the exclusive jurisdiction of the Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and Section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer.

25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other court or authority much less the civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act."

In the judgment reported in *Ms. Varsha S. Metha and Another v. Day Mar Apparels Pvt. Ltd. and Others* (supra) it has been held as follows:

"46. It is true that the High Court has got powers under Article 227 as a power of superintendence as laid down in the above decisions. For this proposition, no decision is necessary, in view of the fact that Section 18 of the Act which provides bar of jurisdiction would itself give exemption for the powers of the Supreme Court and the High Court exercising jurisdiction under Articles 226 and 227. Even assuming that the powers are there, whether those powers under Articles 226 and 227 can be invoked by the High Court sitting in the original civil jurisdiction to transfer the application pending before the Tribunal which has got an exclusive jurisdiction to try along with the pending suit?

47. For this question, my answer is, this extraordinary power should not normally be invoked so as to usurp the exclusive jurisdiction to the Tribunal specially constituted by the Special Act and so as to confer the jurisdiction to the Civil Court which is not normally competent to try the said application."

In *Vysaya Bank Ltd. v. Shankar Export Pvt. Ltd.* (supra) it has been held as follows:

"Accordingly, we are of the view that this Court cannot have any jurisdiction to try and adjudicate the application filed by the Bank to recover its dues from the company even if the said application can be transferred to this Court because the application filed by the Bank/appellant before the Debt Recovery Tribunal can only be decided by the Debt Recovery Tribunal under the Debt Recovery Act. Therefore, the question of trying the same by this Court after transfer cannot arise at all. If such a suit is tried after transfer, there cannot be any doubt that

the judgment and decree that would be passed by this Court would be a nullity and without jurisdiction. Therefore, in our view, the question of jurisdiction readily comes into play, that is to say, this Court has no jurisdiction or cannot have any jurisdiction to try the pending application filed by the Bank/appellant before the Debt Recovery Tribunal under the Debt Recovery Act and such being the position in law, we are of the view that the question of entertaining a petition under Clause 13 of the Letters Patent to transfer the application filed under Section 17 by the Bank/appellant against the company from the Tribunal to this Court cannot arise at all. Accordingly, we are of the firm opinion that the Trial Court ought not to have entertained the application under Clause 13 of the Letters Patent at all as this Court cannot have any jurisdiction to try such claim of the Bank-appellant and it is the Debt Recovery Tribunal which can only decide such claims under the Debt Recovery Act." A reading of the dictum laid down in the above said judgments would show that the proceeding filed before the Debt Recovery Tribunal under The Recovery of Debts Due to Banks and Financial Institutions Act can be tried by the Tribunal alone and not by any other Civil Court, since the Tribunal has been specifically constituted by the Recovery of Debts Due to Banks and Financial Institutions Act and the proceeding has to be tried only in the manner provided under the said Act. If the proceeding pending before the Debts Recovery Tribunal is transferred to this Court, the same can not be tried in the manner provided under the Act and such transfer will defeat the very object of the Recovery of Debts Due to Banks and Financial Institutions Act 1993.

17. But, it is the main submission of the learned counsel for the 3rd respondent that for the purpose of justice, the proceedings pending before the Tribunal can be transferred to the civil Court. In this regard, the learned counsel for the 3rd respondent has also relied upon number of judgments dealing about the transfer of suits from the Civil Courts under Clause 13 of Letters patent. But, in my considered opinion, the proceedings pending before the Tribunal cannot be construed as a suit. Therefore, the Judgment relied upon by the learned counsel for the 3rd respondent can not be made applicable to the facts of this transfer application. In the present case, knowing fully well that the applicant is a private party, the 4th respondent has assigned the debt in favour of the applicant. Therefore, under the Assignment Deed, the applicant-assignee is having alternative remedy as against the assignor. In fact, the applicant has already filed an application to implead them as a respondent in the said Original Application before the Tribunal and according to the learned counsel for the 2nd respondent, the said impleading petition is pending before the Tribunal. It is stated by the learned counsel for the applicant that after the assignment deed, there is no debt due to the 4th respondent by virtue of the assignment deed in favour of the applicant herein. Therefore, the applicant can agitate the said defence before the Tribunal, if the application filed by them is allowed by the Debts Recovery Tribunal. Therefore, I am not inclined to accept the submission made by the learned counsel for the applicant that for the purpose of justice, the

proceedings pending before the Tribunal can be transferred to this Court by invoking the powers under Clause 13 of the Letters Patent.

For the foregoing reasons, I do not find any merit in the above transfer application and the same is liable to be dismissed. Accordingly, the transfer application is dismissed.