

(2002) 06 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 19418 of 2002

Carbeauti and Another

APPELLANT

Vs

The Karnataka Bank Limited and Others

RESPONDENT

Date of Decision : 03-06-2002

Acts Referred:

Constitution of India, 1950 — Article 227
Debt Recovery Tribunal (Procedure) Rules, 1993 — Rule 19, 7
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19 (6),
19 (8)

Citation : AIR 2002 Kar 434 : (2002) 112 CompCas 75 : (2002) ILR (Kar)
4594 : (2002) 5 KarLJ 50 : (2002) 3 KCCR 216 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : K.V. Narasimhan, for the Appellant;

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—An interesting question arises in this writ petition for a decision of this Court. Petitioners herein are the defendants in the application filed by the Karnataka Bank Limited in O.A. No. 681 of 1995 pending before the Debt Recovery Tribunal. The application is for recovery of certain amounts from the defendants.

2. During the pendency of the application, defendants have filed an application u/s 19(6) read with Section 19(8) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 read with Rule 19 of the Debt Recovery Tribunal (Procedure) Rules, 1993. In the said application, they have requested the Tribunal to permit them to raise a counter-claim in a sum of Rs. 65 lakhs together with current and future interest. That application is opposed by the applicant.

3. When the application was filed by the defendants before the Registry of the Tribunal, the same came to be returned with a direction to pay the Court fee on

the counter-claim. Basing on the note made by the Registry, the learned Presiding Judge of the Tribunal has ordered for payment of the requisite Court fee to consider the aforesaid application. Aggrieved by the same, defendants in the original application have filed first appeal before the Debt Recovery Appellate Tribunal at Chennai, in M.A. No. 5 of 2002. The Appellate Tribunal by its detailed and well-considered order dated 4-4-2002 has disposed off the appeal and further had permitted the appellants therein to file their counter-claim before the Debt Recovery Tribunal, Bangalore, with requisite Court fee, and has further directed the learned Presiding Officer of the Tribunal to entertain the counter-claim and dispose off the counter-claim along with the original application in accordance with law. Aggrieved by the said order made by the Appellate Tribunal, petitioners are before this Court.

4. Learned Counsel Sri K.V. Narasimhan appearing for the petitioners contends that petitioners need not have to pay the Court fee on the counter-claim made by them in the original application and further the learned Counsel would submit that there is no provision either under the Act or under the Rules, which requires them to pay the Court fee on the counter-claim filed by them in the original application filed by the Karnataka Bank Limited. In support of these contentions, learned Counsel invites my attention to the provisions of Sections 2(g) and 19(8) of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000 ("Act" for short) and Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993 ("Rules" for short).

5. To appreciate the contentions canvassed by the learned Counsel, provisions of Sections 2(g), 19(8) and 19(9) of the Act and Rule 7 of the Rules requires to be noticed. Therefore, they are extracts. They read as under:

"Section 2(g).--"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 institution 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.

Section 19(8).--A defendant in an application may, in addition to his right of pleading a set-off under Sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

Section 19(9).--A counter-claim under Sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same

application, both on the original claim and on the counter-claim.

Rule 7. Application fee.--(1) Every application u/s 19, interlocutory application or application for review of a decision of the Tribunal shall be accompanied with a fee provided in Sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawing on a nationalised Bank in favour of the Registrar and payable at the station where Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar and payable in Central Post Office of the station located at any place within local limits of the jurisdiction of a Tribunal".

6. Section 2(g) of the Act defines the meaning of the expression "debt" which means, any liability inclusive of interest which is claimed as due from any person by a Bank or a financial institution.

7. Chapter IV of the Act provides for procedure before the Tribunal. Section 19 speaks of application to the Tribunal. Section 19(8) of the Act provides for an application being filed by a defendant in addition to his right of pleading a set-off as envisaged under Sub-section (8) of the Act, set-up, by way of counter-claim against the claim of the applicant any right or claim in respect of cause of action accruing to the defendant against the applicant either before or after filing of the application.

8. Sub-section (9) of Section 19 of the Act provides for the procedure to be adopted by the learned Presiding Officer of the Tribunal while deciding the counter-claim. It says, if a counter-claim is made under Sub-section (8) of the Act by the defendant, the same will have the effect of a cross-suit so as to enable the Tribunal to pass final orders on the same application, both on the original claim and on the counter-claim.

9. Rule 7 of the Rules, 1993, provides for payment of the application fee. It says, every application filed u/s 19 of the Act, interlocutory application, application for review of a decision of the Tribunal, shall be accompanied with a fee as provided under Sub-rule (2) of Rule 7 of the Rules.

10. Sub-rule (2) of Rule 7 of the Rules provides for the table showing the nature of the application and the amount of fee payable on an application for recovery of debts due, application for review, application for interlocutory order and a Vakalathnama.

11. Keeping the possible construction that could be placed on the aforesaid provisions and also the parameters of the jurisdiction of this Court under Article 227 of the Constitution as explained by Apex Court in the case of Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, wherein it is stated that where the Legislature has, in its wisdom not provided second appeal or revision to the High Court, the object is to give finality to the decision of the Appellate Authority and the High Court under Article 227 of the Constitution of India cannot assume

unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or injustice, where grave injustice would be done unless the High Court interferes. Let me notice the fact situation and the orders made by the Appellate Tribunal in MA. No. 5 of 2002.

12. Bank has filed a suit against the defendants for recovery of debts due to it. After service of notice of the application, the defendants before the Tribunal, have filed an application I.A. No. 15 of 2001 u/s 19(8) of the Act claiming counter-claim against the applicants. But, along with the application, they had not paid the requisite Court fee. Office of the Tribunal has taken exception for filing of the application without a proper Court fee. The note made by the Registry of the office is accepted by the learned Presiding Judge. That is how the matter had gone before the Appellate Tribunal. The Appellate Tribunal after noticing the amended provisions of Sub-section (8) of Section 19 of the Act and Rule 7 of the Rules, has come to the conclusion that since the counter-claim requires to be decided as a cross-suit, the applicants seeking counter claim should pay the requisite Court fee. This reasoning of the Appellate Tribunal is based on the basis of the language employed in Sub-sections (8) and (9) of Section 19 of the Act read with Rule 7 of the Rules.

13. Prior to the amendment of provisions of Section 19 of the Act some time in the year 2000, the Act did not provide for any counterclaim and/or damages against the Bank. The Debt Recovery Tribunal had no powers to enforce any claim against the Bank and as such the counter-claim could not have been claimed against the Bank. By virtue of the amended provisions, namely, Sub-section (8) of Section 19 of the Act, a defendant in an application in addition to his right of pleading a set-off under Sub-section (6), set up by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant. Earlier to the amendment to the provisions of Section 19 of the Act, an application for counter-claim was required to be filed before the Civil Court against the Bank, since the counter-claim is based on separate and independent cause of action. The suit was required to be filed by paying separate Court fee within the period of limitation. Even in such of those cases where the suit and the counter-claim is filed by the Bank and the defendant's suit is pending before the Civil Court and after constitution of Debt Recovery Tribunal, by virtue of Section 31 of the Act, what could be transferred is only the suit filed by the Bank, the counter-claim was still required to be delinked from the original suit and decided by the Civil Court alone. Because of this anomalous situation and keeping in view the interest of the defendants also, the Legislature has thought fit to amend the provisions of Section 19 of the Act by inserting Sub-section (8) of Section 19 of the Act, by which the defendants can make an application in addition to his right of pleading a set-off as envisaged under Sub-section (6) to make a counter-claim against the claim of the applicant and since the counter-claim is based on separate cause of action, and independent claim against the Bank, the same requires to be filed

within the period of limitation by paying separate Court fee and by virtue of provision of Sub-section (9) of Section 19 of the Act, a counter claim made under Sub-section (8) will have the same effect as cross-suit and the Tribunal is required to pass final order on the counter-claim by following the procedure as required for disposal of the Bank's application filed under Sub-section (1) of Section 19 of the Act. Since the application for counter-claim is made u/s 19 of the Act, the party, who makes that application is required to pay the Court fee as prescribed under Rule 7 of the Rules. This aspect of the matter has been rightly understood by the Appellate Tribunal while directing the petitioners herein to pay the requisite Court fee on the counter-claim made by them in O.A. No. 681 of 1995. In that view of the matter, I do not find any illegality in the orders made by the Appellate Tribunal, which calls for my interference.

14. Accordingly, writ petition is rejected without reference to respondents. Ordered accordingly.