
(1999) 08 BOM CK 0055

In the Bombay High Court

Case No : Petition No. of 1999 in Suit No. of 1999

Centurion Bank Ltd.

APPELLANT

Vs

Indian Lead Ltd. and Another

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 25, 31

Citation : (1999) 4 ALLMR 347 : (2000) 100 CompCas 537

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Virag Tulzapurkar and Priya Smart Dwarkadas, instructed by Wadia Ghandy and Co, for the Appellant; Mustafa Doctor, instructed by Federal and Rashmikant, for the Respondent

Judgement

F.I. Rebello, J.—The plaintiffs by the present petition have applied for leave under clause 12 of the Letters Patent. The suit by the plaintiff is for a declaration that the hire purchase agreement dated January 27, 1995, and the hire purchase agreement dated July 3, 1995 are validly terminated with effect from June 5, 1999 ; a further declaration that the defendants have no right, title or interest or claim whatsoever in respect of the said equipment, etc.; that the defendants be ordered and directed forthwith to hand over and deliver possession to the plaintiffs of the said equipment; that the defendants be ordered and decreed to jointly and/or severally pay a sum of Rs. 31,32,608 collectively under the said agreements being arrears of hire charges up to June 5, 1999, with further interest thereon ; that the defendants jointly and/or severally be ordered and decreed to pay to the plaintiffs a sum of Rs. 25,02,274 towards hire purchase charges for the remaining period of hire ; that the defendants be ordered and decreed to pay damages/compensation for wrongfully retaining and using the equipment in a sum of Rs. 33,744 per month from June 5, 1999, with further interest thereon till possession of the equipment is handed back ; without

prejudice to the above prayers a sum of Rs. 74,48,000 by way of loss and/or damages with interest thereon and for perpetual injunction to restrain the defendants from in any manner retaining or holding on to possession or using the said equipment given on hire under the said agreements.

2. The suit by the plaintiffs is against defendant No. 1 with whom the hire purchase agreement was entered into and defendant No. 2 who was a guarantor.

3. It is the contention on behalf of the plaintiffs that the reliefs which are prayed for with the exception of prayer clause b(iii) are reliefs which are not covered by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and consequently this court will have jurisdiction to hear and decide the suit. It is contended that prayer clause b(iii) is an ancillary relief to the main relief and as such the plaintiffs should not be driven to another forum for recovery of debts under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act (hereinafter referred to as "the Recovery of Debts Act").

4. On the other hand, on behalf of the defendants, it is contended that there is a specific prayer for recovery of debts. The suit against defendant No. 2 is in his capacity as guarantor, which will purely be for recovery of debt and consequently this court will have no jurisdiction and the suit lies within the exclusive jurisdiction of the Recovery of Debts Act. It is contended on behalf of the defendants that this court has no jurisdiction in view of the Recovery of Debts Act.

5. To decide whether this court will have jurisdiction it will be useful to consider some of the sections involved to answer the various contentions. Section 2(g) of the Recovery of Debts Act defines what is a "debt". Section 17 is the section which confers jurisdiction on the Tribunal and the Appellate Tribunal. It will be worthwhile reproducing Section 17(1), which reads as under :

"17.(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."

6. Section 18 pertains to exclusion of jurisdiction. The said section reads as under:

"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 Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

7. u/s 19(7) after the Tribunal passes an order, the Presiding Officer shall issue a certificate under his signatures on the basis of the order of the Tribunal, to the Recovery Officer for recovery of the amount of debt specified in the certificate. u/s 21 in the event an order is passed against a party for payment of an amount

such a party can prefer an appeal on depositing with the Appellate Tribunal 75 per cent, of the amount of debt so due. The proviso provides for waiver for reasons to be recorded in writing. Section 25 is the section pertaining to modes of recovery of debts. It only provides for the manner in which a debt can be recovered on a certificate being issued under Sub-section (7) of Section 19. Section 28 provides for alternative modes of recovery. Section 31(1) reads as under:

"31.(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal."

A conjoint reading of these sections, to my mind, will indicate that in respect of recovery of debts it is the Tribunal alone which would have jurisdiction.

8. The question, however, is what happens in a case where there are other reliefs apart from the relief for recovery of debt. In that context to my mind Section 31 which is the section pertaining to transfer would have an important bearing. That section speaks about the cause of action. In other words the cause of action must relate to recovery of debt. If the proceedings are in respect of such cause of action, then only the proceedings pending in a court will be transferred u/s 51. Such cause of action must arise from transactions with banks or financial institutions and must be for recovery of debt. The other relevant section is Section 19(7) under which the Presiding Officer has to issue a certificate for the recovery of the debt which then can be recovered in a manner provided by Section 25 of the Act. In other words, the relief granted must be capable of being executed u/s 25 of the Act.

9. In the instant case admittedly there is one prayer which can be said to be a prayer for recovery of debt and which can be decided u/s 17 of the Act. In many legislations, the Legislature when it wants to oust the jurisdiction of the civil court on any issue frames the language of the section in such a manner that if any issue arises which has to be decided by the alternative forum then that forum alone and not the civil court can exercise jurisdiction. In a case where an issue arises before a civil court, which has to be decided by the special forum, the Legislature provides that such an issue is to be referred to the special forum for its decision. The decision or finding then has to be remitted to the civil court. This is for the purpose of excluding the jurisdiction of the civil court vested in the civil court u/s 9 of the Code of Civil Procedure, 1908. Section 9 of the Civil Procedure Code, 1908, sets out that the court shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either expressly or impliedly barred. By virtue of this section a civil court is conferred with jurisdiction to decide all matters unless those matters are excluded by another special enactment either expressly or impliedly. Admittedly under the Debt Recovery Act, recovery of a debt is barred. Does that mean that the civil court

would cease to have jurisdiction in respect of the entire suit or only in respect of the issue pertaining to debt. The normal rule of construction is that the jurisdiction of the civil court is not excluded unless it is specifically excluded or it follows by necessary implication. Under the Debt Recovery Act there is no total ouster of jurisdiction of the civil court. The ouster is by virtue of Section 18, which sets out that no court or other authority can try matters for recovery of debts. In so far as the reliefs which do not pertain to debts on a plain reading of Section 17 of the Debt Recovery Act, are concerned, there can be no doubt that the civil court will still retain jurisdiction. A prayer for damages is not a prayer for recovery of debt. Similarly the other reliefs in the present suit. The only relief which if and at all cannot be decided is the relief pertaining to recovery of unpaid installments. There is no provision in the Debt Recovery Act which provides that in the event any such issue arises the issue must be either referred to the Tribunal or that the court is bound to stay the proceedings before such issue is decided. Considering the language of sections 17, 25 and 31 of the Debt Recovery Act and Section 9 of the Code of Civil Procedure, 1908, can it still be said that the civil court would retain jurisdiction in the present case as recovery of debt is only an ancillary relief to the other reliefs of declarations and recovery of properties as is contended ? The cause of action is the breach of the terms of the agreement and consequent termination of the agreement. Can such a cause of action be split ? Under Order 2, rule 2 of the CPC leave can be granted to sue subsequently for a relief arising from the same cause of action. Otherwise it is not permissible to split the cause of action. Under Order 2, rule 2, the plaintiff, when he files the suit, must include the entire claim. If he omits to sue or relinquishes part of the claim he then cannot sue in respect of the portion omitted or relinquished.

10. To take a view that a party must be driven to two forums would be to increase multiplicity of proceedings which the Legislature seeks to avoid. As far as possible the court must avoid this approach. It will, therefore, have to be examined what is the cause of action and if in suits where the civil court has jurisdiction to grant most of the reliefs, will the civil court retain jurisdiction even for that part of the relief which pertains to recovery of debts ?

11. Useful reliance for that purpose may be placed on clause 12 of the amended Letters Patent of this court. This court on its original side has jurisdiction to decide suits of every description. However, in the case of suits for land or immovable property, if such land or property be situated within the territorial jurisdiction of this court. In this context the question has arisen as to what is the meaning of the expression "suit for land or other immovable property?". Various Division Benches of this court including in the case of *The Khandesh Spinning and Weaving Mills Company Limited Vs. Moolji Jaitha and Co.*, , which has been affirmed by the Federal Court in *Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.* AIR 1950 FC 83 have taken the view that to exclude the jurisdiction of this court what has to be decided is whether the suit is a suit substantially for land. To my mind this would be the correct approach to apply in

the present case also. The test to apply would be whether the cause of action is substantially an action for recovery of debt. For illustration, we may take the case of a banking company or financial institution covered by the Debt Recovery Act. If such institution possesses or owns properties which they give out on rent or licence and the tenant or licensee fails to pay the arrears and the lease or licence is terminated and there is no Rent Act in that area, which will be the forum which will have jurisdiction ? In such a situation, can it be said that to recover the arrears of rent or licence fee, being a debt within the meaning of the Act the party will have to be sent to the Debt Recovery Tribunal and in so far as the relief of eviction is concerned, it will be the civil court that would have jurisdiction ? To my mind this is not the object of the Recovery of Debts Act. The Recovery of Debts Act to my mind has been principally enacted for the purpose of recovery of loans granted by banks and financial institutions. Therefore, if the suit is a suit for recovery of debt and also for sale or realisation of securities which would be ancillary to the purpose of recovery of debt, such a suit" would be a suit substantially for recovery of debt. Such a suit would not be maintainable before a civil court. Useful reliance can be placed on the judgment of the apex court in the matter of United Bank of India v. Debts Recovery Tribunal [1999] 96 Comp Cas 602 ; 4 SCC 69 to understand the object of the Act and the extent of scope of jurisdiction under the Debt Recovery Act. In that case a suit was filed in the Calcutta High Court. After the Recovery of Debts Act came into force the suit was transferred to the Debt Recovery Tribunal. An application was moved before the Tribunal that the Tribunal has no jurisdiction. That application was rejected, against which a petition was filed before the Calcutta High Court. The Calcutta High Court took the view that the suit as framed was one for damages and compensation which were required to be quantified before a decree is passed, i.e., an undetermined debt and such a suit will not be within the purview of the provisions of the Act in question. On the facts the judgment of the High Court was reversed. The apex court has reproduced the Statement of Objects and Reasons of the Act as reflected in the Bill in para. 5 of the said judgment. However, to my mind what is more, relevant are the observations in para. 15 which read as under (page 608) :

"In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the Tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint have to be looked into and then find out whether notwithstanding the specially created Tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such Tribunal is ousted."

In other words what the apex court has said is look at the entire averments in the plaint and from that find out as to whether the civil court has jurisdiction in which event the jurisdiction of the Tribunal is ousted. The ouster of jurisdiction to my mind in these cases would be to find out as to what is the cause of action and not merely the relief prayed for. For the Tribunal to have jurisdiction the cause of action must be substantially for recovery of debt. Once from the averments it is

found that the cause of action is substantially for recovery of debt then the Tribunal will have jurisdiction to grant/decide ancillary reliefs issues provided the order passed can be executed in the manner provided by the Debt Recovery Act.

12. As to what is the cause of action useful reference may be made to the judgment of this court in Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others, . Chagla C, J. was deciding the issue as to whether the court would have jurisdiction to decide a suit involving the partition of both movable and immovable properties. While dealing with the issue of movable properties, the learned Chief Justice observed as under (page 370) :

"If the property or part of the property is situated within jurisdiction, then the cause of action or a part of the cause of action has arisen within jurisdiction The question of location of movables does not arise from the point of view of its situs ; it arises from the point of view of the cause of action.

Therefore, in holding that the court has jurisdiction to try a suit for partition of movables if the movables are situated within jurisdiction. I am not so holding on the ground that the situs of the movables is within jurisdiction, but solely on the ground that the location of the movables within jurisdiction constitutes a part of the cause of action of a partition suit for movables."

Therefore, if the language of Section 31 is seen read with Section 17 it must be the "cause of action" based on which the Tribunal assumes jurisdiction. A party could move the Tribunal if it is a proceeding for recovery of debt alone or substantially a proceeding for recovery of debt and the certificate issued can be executed under the Act.

13. On behalf of the plaintiffs their learned counsel points out that in respect of several causes of action if the court has original jurisdiction in respect of one such cause of action then under clause 14 of the Letters Patent this court can grant permission to sue in respect of the other several causes of action. For that purpose he relies on the judgment of a Division Bench of this court in Arte Indiana v. P. Mittulaul Lalah Sons [1999] 4 LJ 422. In that case the Division Bench was considering clause 14 of the Letters Patent. The Division Bench held that under clause 14 there is no requirement that the cause of action must arise within the territorial jurisdiction for the court to exercise the power under clause 14. Admittedly in that case no part of the cause of action had arisen within the territorial jurisdiction of this court. It is only by virtue of Section 62 of the Copyright Act, In the case of breach of copyright that the plaintiff has been conferred a right to sue in the court where he carries on business.

14. I am not persuaded by that argument. Firstly, clause 14 applies when the plaintiff wishes to club several causes of action. Secondly, if the civil court has no jurisdiction ordinarily to try a suit, clause 14 cannot be invoked to confer jurisdiction which is ousted. A civil court to try a suit must have territorial, pecuniary and jurisdiction as to the subject-matter. If it does not have any of those jurisdictions it cannot entertain the suit. This is also the position under the

Letters Patent. Clause 11 limits the territorial jurisdiction of this court and clause 12 confers jurisdiction in respect of the subject-matter. To accept that argument it must be held that if the plaintiff has a cause of action and even though the jurisdiction of the civil court is expressly barred in respect of the subject-matter or has no territorial jurisdiction by invoking clause 14 the court could assume jurisdiction. To invoke clause 14 the cause of action must have arisen within jurisdiction as observed in *Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others*, . No court can confer jurisdiction on itself which it does not have. A cause of action is a bundle of facts which enables persons to maintain a suit in a court That court can only be a court which has territorial, pecuniary and jurisdiction as to the subject-matter. The power under clause 14 can be invoked to join a cause of action which may not arise within the jurisdiction of the court, but is a cause of action which can be tried by a civil court. Clearly a suit for recovery of debt cannot be filed in a civil court. That jurisdiction has been conferred on the Tribunal. The judgment in *Arte Indiana v. P. Mittulaul Lalah Sons* [1999] 4 LJ 422 (Bom) will have to be restricted to cases under the Copyright Act.

15. Reference may gainfully be made to Section 155 of the Companies Act. u/s 155, the Company Law Board has been conferred jurisdiction to decide the issues pertaining to rectification of register of shares. The question arose as to who would have jurisdiction to decide disputes regarding title to the shares. Would it be the Company Law Board or the civil court ? The question has been resolved by the apex court in *M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others*, . The question before the apex court therein was (page 313) "whether in the proceedings u/s 155 of the Companies Act, the court has exclusive jurisdiction in respect of all the matters raised therein or has only summary jurisdiction?" It may be noted that there is no express provision like Section 18 of the Debt Recovery Act, whereby the jurisdiction of the civil court or other bodies is excluded. The question was of an implied ouster as a body had been created to decide certain issues. Answering the issue in para. 26, the apex court observed as under (page 325) :

"There could be no doubt that on any question raised within the peripheral field of rectification, it is the court u/s 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court has been taken away merely on account of the deletion of the aforesaid proviso. Otherwise, under the garb of rectification one may lay claim to many such contentious issues for adjudication not falling under it. Thus, in other words, the court under it has discretion to find whether the dispute raised is really for

rectification or is of such a nature, unless decided first it would not come within the purview of rectification."

The apex court then went on to answer that in exercising power for rectification within its field there could be no doubt that the court as referred to u/s 155 read with Section 2(11) and Section 10, it is the company court alone which has exclusive jurisdiction. The apex court then observed that where in matters of rectification all matters raised in that connection can be decided by the court u/s 155 of the Companies Act then it is the company court which will have jurisdiction and if it finds adjudication of any matter not falling under it, then it may direct the party to move the civil court. The apex court then observed that to the extent the court u/s 155 has exclusive jurisdiction the jurisdiction of the civil court is impliedly barred and what does not fall within the purview of the company court it is the civil court which will have jurisdiction. What emerges from the judgment is that it is the nature of the issues that will determine the jurisdiction.

16. Therefore, if the cause of action is such that it can be tried by the Tribunal alone the jurisdiction of the civil court would be ousted. While deciding the matter the Tribunal can decide peripheral matters as long as the reliefs which it can grant can be executed by the Recovery Officer u/s 25 based on the certificate issued by the Tribunal. If the substantial cause of action is other than recovery of debt then even though there is a relief pertaining to recovery of debt the jurisdiction of the civil court will not be ousted.

17. To my mind, therefore, in suits of the present nature the jurisdiction of the civil court will not be ousted bearing in mind that there is no provision for referring an issue to the Tribunal after the suit is filed on the coming into force of the Debt Recovery Act. The purpose of the Act is to provide a speedy means for banks and financial institutions to recover their debts. If it is held that such institutions must be compelled to file two different proceedings it will frustrate the very object of the Act. Therefore, in my opinion considering the object underlying the Act, the scheme of the Act, the certificate issued for recovery of debt, it is the civil court which will have jurisdiction. The issue in the suit may include an issue regarding debt as long as the suit is substantially a suit other than for recovery of debts based on the same cause of action and the reliefs granted are capable of being executed in a manner provided by the Act.

18. Having said so looking at the averments in the plaint, the suit is essentially based on an agreement which has been breached and subsequently terminated and consequently for recovery of the machinery, damages and unpaid installments. In the instant case, therefore, the suit is substantially a suit not for recovery of debt, but for recovery of machinery and damages. Consequently, this court will have jurisdiction.

19. It has been pointed out that defendant No. 2 is a guarantor against whom the suit is only for recovery of money. The suit against the guarantor is not a suit

for recovery of debt but for enforcement of the guarantee. The liability of the guarantor is joint and several with the principal debtor. Apart from proving that the contract was illegally terminated, damages will have to be proved for getting a relief against the guarantor. The suit against the guarantor in the facts of this case is maintainable before a civil court. The suit as filed is a suit substantially for the reliefs other than recovery of debt.

20. It is made clear that I have not considered nor decided the issue as to whether a suit independently on a guarantee can be filed against the guarantor alone before the Tribunal. In the present case, in so far as the guarantor herein is concerned, it has been decided on the facts of the present case.

21. Having said so leave granted under clause 12 of the Letters Patent.