(2009) 03 DEL CK 0313

In the Delhi High Court

Case No : CS (OS) No. 328 of 2009

Development Credit Bank — APPELLANT

Vs

Devender Kumar and Company and Another — RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 2

Citation : (2009) 03 DEL CK 0313

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Amrendra Kumari Gini, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

IA No. 2298/2009

Allowed, subject to all just exceptions.

Application is disposed of.

CS(OS) No. 328/2009

Plaint be registered.

1. This is a suit filed by plaintiff for recovery of Rs. 39,69,694/- against the defendants on the ground that a loan of Rs. 31,06,800/- was sanctioned and disbursed to Defendant No. 1 for purchasing two construction equipments. The loan was repayable in 35 installments of Rs. 1,08,072/- per month.

2. The plaintiff has also alleged that to secure the repayment of the loan account, the construction equipments of Ashok Leyland Taurus 2516 make were

hypothecated vide Deed of Hypothecation dated 28th April, 2007.

The plea of the plaintiff is that to further secure the repayment of loan, Defendant No. 2 has stood guarantor in the said transaction and he had also executed Deed of Guarantee dated 28th April, 2007 at the Branch Office of the plaintiff at Delhi.

The plaintiff, however, contended that it is a scheduled commercial bank within the meaning of Banking Regulations Act, 1949, having its Registered Office at 301, Trade Plaza, 414, Veer Savarkar Marg, Prabha Devi, Mumbai-400025 and its regional Branch Office is at 305, 3rd Floor, New Delhi House, Barakhamba Road, New Delhi- 110001.

The Recovery of Debts due to Banks and Financial Institutions Act, 1993 came into force on 27th August, 1993 and u/s 2(e) of the said Act, ''banking company'' has the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulations Act, 1949 (10 of 1949).

3. The plaintiff has admitted that plaintiff is a scheduled commercial bank within the meaning of Banking Regulations Act, 1949. Consequently, the plaintiff is a banking company as contemplated under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

4. u/s 17 of the said Act, the Tribunal has the jurisdiction, powers and authority to entertain and decide application from the banking and financial institutions for recovery of debts due to said banking and financial institutions and u/s 18 of the said Act, no court or other authority has jurisdiction in relation to the matters specified in Section 17 of the said Act.

The present suit of the plaintiff, which is a banking company as contemplated under The Recovery of Debts due to Banks and Financial Institutions Act, 1993, is for recovery of a debt due from Defendant No. 1 and Defendant No. 2, therefore, u/s 18 of the said Act, jurisdiction of the Civil Court is barred in relation to the matter pertaining to recovery of debts due to a banking company.

Order VII Rule 11 of the CPC contemplates that a plaint can be rejected where the suit appears from the statement made in the plaint to be barred by any law.

On the basis of averments made by the plaintiff in the suit, it is barred under the provisions of The Recovery of Debts due to Banks and Financial Institutions Act, 1993.

The suit of the plaintiff is, therefore, rejected being barred under the provisions of The Recovery of Debts due to Banks and Financial Institutions Act, 1993.

IA No. 2297/2009

5. Since the suit of the plaintiff is barred under the provisions of The Recovery of Debts due to Banks and Financial Institutions Act, 1993, the application is also not maintainable and it is dismissed as not maintainable.

