
(2002) 01 AHC CK 0112
In the Allahabad High Court
Case No : Civil Revision No. 41 of 1998

Excellent Foundary Fluxes Co. and Others	APPELLANT
Vs	
Syndicate Bank	RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

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

Citation : (2002) 1 AWC 580 : (2003) 1 BC 263

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : M.D. Singh "Shekhar", V. Singh and Dinesh Tewari, for the Appellant; D.P. Bahadur, Rajiv Pratap Bahadur and Sanjay Pratap Bahadur, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This revision u/s 115, C.P.C. has been preferred against the order, dated 3.1.1998 passed by the 1st Additional Civil Judge (Senior Division), Ghaziabad in Suit No. 1031 of 1992. The facts enumerated in the revision are as follows :

"The opposite party, Bank, filed the Original Suit No. 1031 of 1992 in the Court of Civil Judge (Senior Division), Ghaziabad for recovery of Rs. 26,63,631.35 p. against the revisionists. The suit was transferred to the Court of 1st Additional Civil Judge (Senior Division) for disposal. The revisionists contested the suit. One of the pleas taken by them was that the entire transaction of loan took place at Delhi and cause of action for the suit arose at Delhi, that, therefore, the Court of 1st Additional Civil Judge (Senior Division), Ghaziabad, has no territorial jurisdiction to try the suit. Preliminary issue was framed on this point and the case was fixed for disposal of that preliminary issue."

2. In the meantime. (The) Recovery of Debts Due to Banks and Financial Institutions Act. 1993, (Act No. 51 of 1993) (hereinafter called as "Act") was

enforced w.e.f. 27th August. 1993. On the enforcement of this Act. the plaintiff opposite party moved an application 96C u/s 31 of the Act to transfer the suit to the Tribunal, constituted under the Act. The learned Additional Civil Judge (Senior Division) by the impugned order has allowed the application and has ordered that the suit be transferred for disposal to the Debt Recovery Tribunal at New Delhi u/s 31 of the Act. Aggrieved by it, the present revision has been preferred.

3. I have heard Sri M.D. Singh "Shekhar". learned counsel for the revisionists and Sri D.P. Bahadur, learned counsel for the opposite-party and have perused the record.

4. It has been argued by Sri. M. D. Singh "Shekhar". learned counsel for the revisionists that question of territorial jurisdiction was raised and this question was to be decided by the Civil Judge ; that before the decision of that question he had no jurisdiction to transfer the case to the Debt Recovery Tribunal : that, therefore, the order is without jurisdiction. The second contention raised by the learned counsel for the revisionists is that in any case, the learned Additional Civil Judge (Senior Division) at Ghaziabad had no jurisdiction to send the case to the Debt Recovery Tribunal at New Delhi and the impugned order is without jurisdiction ; that in any case he should have transferred the case to the Debt Recovery Tribunal created for the State of U. P.

5. I have considered the arguments. Few provisions of the Act are material to appreciate the contentions.

6. Clause (1) of Section 17 of the Act provide regarding the Jurisdiction of the Tribunal. It reads as follows :

"(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."

7. Section 18 of the Act provide for bar of the Jurisdiction of the civil courts and it reads as follows :

"18, On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers and 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."

8. Regarding pending cases, the provisions has been made u/s 31 of the Act. The case has been transferred by the learned 1st Additional Civil Judge (Senior Division). Ghaziabad by the impugned order under the said provision of the Act. Clause (1) of that Section 31 is as follows :

"(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."

9. I have considered the above provisions. Section 18 bars, the Jurisdiction of the civil court to hear the suit. Therefore, on the enforcement of the Act, the learned Additional Civil Judge ceased of the Jurisdiction to decide the suit. If it was so, he had also no jurisdiction to decide any issue framed in the suit. The entire jurisdiction was given to the Tribunal.

10. The learned Additional Civil Judge was not left with the jurisdiction to decide any issue of the suit, therefore, he could not have decided the issue whether he had territorial jurisdiction to decide the suit. The approach of the learned Additional Civil Judge was, therefore, correct and he has rightly refused to decide the issue regarding the territorial jurisdiction. The jurisdiction stand transferred and is vested in the Tribunal for which the learned Additional Civil Judge (Senior Division). Ghaziabad, was required to transfer the suit u/s 31 to the Tribunal.

11. Section 31, as extracted above, show that the suit shall stand transferred to the Tribunal which would have jurisdiction to try the suit had it been filed after the establishment of the Tribunal.

12. In this case, it is admitted that loan was taken at Delhi. The opposite party filed the suit at Ghaziabad only for the reason that the mortgaged property is situated in district Ghaziabad and alleged that the Ghaziabad Court has also the Jurisdiction to try the suit. The revisionists pleaded that the Court at Ghaziabad had no territorial jurisdiction and the suit should have been filed at Delhi. Therefore, now they cannot plead that Tribunal at Delhi has no Jurisdiction to decide the matter.

13. The plea of the revisionists is that the Delhi Court have the jurisdiction to try the suit. Beside this plea, it is admitted in this case that the entire loan was given at Delhi and not at Ghaziabad. Therefore, the Delhi Court had jurisdiction to try the suit. In case the suit would have been filed after the enforcement of the above Act, it would have been filed before the Tribunal at Delhi. Therefore, in accordance to the provisions of Section 31, mentioned above, the learned 1st Additional Civil Judge has rightly transferred the case to the Tribunal at Delhi.

14. In view of the above discussion, none of the argument of the learned counsel for the revisionists has any merit. This revision has been filed simply with the intention to delay the disposal of the suit, which is for recovery of the huge amount.

15. The revision is without merit and is, hereby, dismissed with costs. The record of the case shall be sent immediately to the Tribunal at Delhi, as directed by the court below for the decision of the case.