

(2000) 04 AHC CK 0143
In the Allahabad High Court
Case No : C.R. No. 171 of 1998

Fashion Form (Pvt.) Ltd. and Another	APPELLANT
Vs	
UCO Bank	RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Criminal Procedure Code, 1973 (CrPC) — Section 195
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 196
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1, 17, 18, 19, 2

Citation : (2001) 2 CivCC 265 : (2001) 4 RCR(Civil) 304

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Arun Tandon, for the Appellant; Manoj Mishra, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Mr.Arun Tandon, learned Counsel for the revisionists, has raised a very short but interesting question while challenging the order dated 3rd August, 1998 passed by the learned Additional Chief Metropolitan Magistrate. VIIIth Court, Kanpur Nagar in Suit no. 176 of 1997, as to whether a suit being the suit under Order XXXVII of the CPC could at all be transferred to the Tribunal, which has not been empowered under Rule 1 of Order XXXVII of the Code by High Court by issuing any notification to such Tribunal in terms of clause (b) of sub-rule (1) of Rule 1 of Order XXXVII of the Code.

2. The application appears to have been filed after three days of expiry of the period of limitation seeking condonation of delay by means of an application u/s 5 of the Limitation Act. Mr.Manoj Mishra had opposed the said prayers for condonation delay. It appears that the delay was only by three days, which is insignificant excluding the time taken for obtaining the certified copy. Therefore, the explanation given appears to be sufficient.

3. The delay, is, therefore, condoned and the application under S.5 is allowed.
4. The Stamp Reporter had reported that the final order was not filed. But it appears that the final order has since been filed. Therefore, the defect is also removed.
5. At this stage, both the learned Counsel had agreed that the question being pure and simple question of law, the matter may be taken up for hearing and disposed of. By consent of the parties, the matter is treated as on day's list for hearing.
6. Both the learned Counsel had made their submissions on the merit of the question that is involved in the present revision.
7. Mr.Tandon, learned Counsel for the revisionists contends that in view of sub-rule (1) of Rule 1 of Order XXXVII of the Code, the suit filed under Order XXXVII of the Code is cognizable by the High Court City Civil Court, and the Court of Small Causes and by any other Courts unless by a notification in the official Gazette, the High Court confers such jurisdiction on such other Courts. According to him, the Tribunal established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the said Act) is not a Court and as such it cannot come within the meaning of clause (b) of sub-rule (1) of Rule 1 of Order XXXVII of the Code. The High Court can confer such jurisdiction only on other Courts. The Tribunal established under this Act, though Civil Court only for limited purpose and discharges judicial functions in the proceedings before it, yet it is not a Court and as such the jurisdiction under Order XXXVII of the Code can neither be conferred nor can be exercised by the Tribunal. He contends further that the present proceedings were instituted by the Bank under Order XXXVII of the Code in Civil Court and as such in absence of any jurisdiction of the Tribunal to entertain a proceeding under Order XXXVII, the instant proceedings could not be transferred by reason of Section 31 of the said Act. According to him, the summary procedure entitles the defendant to claim set off or set up counter claim. But the procedure as provided in Section 19 of the said Act does not perm it any such set off or counter claim being set up by the defendant and as such transfer of the summary suit would hit the defendant's right accrued in law to claim set off or set up counter claim, which would e taken away if the suit is transferred and entertained by the Tribunal established under the Act according to the procedure prescribed under the said Act. He then contends that Section 31 of the said Act does not include a summary suit under Order XXXVII of the Code. The expression "suit or other proceeding" used in Section 31 does not include a summary suit. The word "suit" used in Section 31 of the said Act has to be interpreted in its general meaning relating to regular suits. Inasmuch as a summary suit is an exception from a regular suit and as such cannot be included in the expression "suit" used in Section 31 of the said Act in absence of any definition of suit having been given in the Act itself. His other limb of argument is that the cause of action if had arisen after the establishment of the Tribunal, only then a suit pending on the

basis of such cause of action could be transferred. It does not include pending suits in respect of cause of action that had arisen before the establishment of the Tribunal. According to him, the Tribunal was established in 1999 whereas cause of action of the suit had arisen in 1997 and as such it could not have been transferred. According to him, the word "suits" as has been mentioned in Section 17 of the Act only could be transferred, which is explained by him relying on Section 18 of the said Act that the Civil Court will cease to have jurisdiction only in respect of suits in relation to matters specified in Section 17 of the said Act. Section 17 confers jurisdiction on the Tribunal from the appointed day, viz., the jurisdiction, powers and authority to entertain and decide applications as are entertainable by the Tribunal. As such the question is relevant to the appointed day of the establishment of the Tribunal. Therefore, according to him the present proceedings could not have been transferred and the impugned order cannot be sustained and is liable to be quashed.

8. Mr. Manoj Mishra, learned Counsel for the respondent on the other hand contends that the Act was enacted for certain specified purposes, which is apparent from its long title and the definition of debt given in Section 2(g) of the said Act, read with sub-section (4) of Section 1 of the Act. The appointed day has been defined to be a date on which the Tribunal is established and as such, according to him, by reason of Section 17 of the said Act, all matters cognizable under this Act, are to be decided by the Tribunal as soon it is established. By reason of Section 18 no Court shall have jurisdiction to decide any such matter filed within the scope of Section 17 on and from the date of establishment of a Tribunal and by reason of Section 31 all pending suits the cause of action of which is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of the Tribunal, shall stand transferred automatically on the appointed day by operation of law without there being any necessity of any order being passed by the Court. According to him, the order of transfer is a ministerial order and not a judicial order and does not purport to decide or determine any issue between the parties which can be brought within the purview of Section 115 of the Code. According to him, the moment the Tribunal is established all such suits within the meaning of Section 17 pending before any Court being the establishment of such Tribunal by fiction of law stood transferred to the Tribunal. It is only the transmission of the records that are to be effected by the Court in terms of sub-section (2) of Section 31 of the said Act. The order that has been impugned is in effect an order under sub-section (2) of Section 31 for transmission of the records to the Tribunal. Therefore, according to him, this revisional application should be dismissed.

9. I have heard both the learned Counsel at length.

10. Apparently, the question raised by Mr. Tandon seems to be of substance to the extent that by reason of sub-rule (1) of Rule 1 of Order XXXVII of the Code, the Tribunal not being a Court could not be conferred with the jurisdiction of summary procedure and as such the suit pending before a Court under Order

XXXVII of the Code could not be transferred. Section 19 of the Act prescribes the procedure to be followed by the Tribunal which lays down a complete procedure. The entire scheme of the act makes it a complete code by itself. Section 22 in sub-section (1) makes it clear that the Tribunal shall not be bound by the procedure laid down by the CPC while attracting by operation of law expressed in sub-section (2) of Section 22 of the act, specified provisions of the CPC relating to the matters specified under clauses (a) to (h) of sub-section (2) thereof. Sub-section (3) prescribes that the proceedings before the Tribunal to be judicial proceedings within the meaning of Section 193 and 228 and for the purpose of Section 196 of the Indian Penal Code and that a Tribunal would deem to be Civil Court for the purpose of Section 195 of the Code of Criminal Procedure. Thus, by reasons of Section 22 though the Tribunal has trippings of Court in respect of all the matters specified in clauses (a) to (h) of Section 22 of the said Act, yet it is not a Civil Court except for the purpose maintained in sub-section (3) of Section 22. As such even by notification, it is not possible for the High Court to confer jurisdiction to Order XXXVII to the Tribunal by reason of the express provision provided in sub-rule (1) of Order XXXVII of the Code which makes such summary procedure applicable to the High Court, City Civil Courts and Courts of Small Cause and other Courts. Since the Tribunal is not a Court by reason of the proviso provided in sub-rule (1), the High Court cannot empower the Tribunals other Court within the meaning of sub-rule (1) of Rule 1 of Order XXXVII and as such the jurisdiction under Order XXXVII could not be exercised by the Tribunal.

11. Now the question has to be examined as to whether a summary procedure pending in the Court under Order XXXVII could be transferred to a Tribunal and it could e tried in a manner other than the procedure laid down under Order XXXVII and thereby defendant's right to claim set off or set up counter claim under Order XXXVII could be taken away.

12. Admittedly, Order XXXVII prescribes the procedure in which the defendant is entitled to claim set off or set up counter claim by way of defence Whereas the procedure laid down in Section 19 of the Act though prescribes a summary procedure but does not provide for raising specifically any set off or counter claim. But if we go by letters and spirit of sub-section (3) of Section 19 and if it is given a literal meaning, in that event it makes it clear that set off can be raised in defence in the process of showing cause as to why the relief prayed for should not be granted. So far as the counter claim is concerned whether that can be raised or not, is not necessary to be gone into at this stage since it would not be relevant for our purpose. Inasmuch no one can claim any right with regard to procedural law. Procedural law does not confer any substantive right. Therefore, if under the summary procedure any particular right was provided, the curtailment thereof shall not provide any right to claim by any person that any right was conferred on or accrued to him by operation of law and that could not be taken away by reason of subsequent enactment or change in the procedure or incorporation in some other procedure. But then that would be relevant provided the vires of the Act is challenged which could not be done within the scope and

ambit of Section 115 of the Code. So long the Act remains intact and is not declared ultra vires or struck off till then it operates in the field for which it is intended and includes the purposes and objects for which it is enacted. The present Act has been given an over-riding effect by reason of Section 34 of the said Act, which includes a non-obstante clause to the extent that even though it is inconsistent with any other Act for the time being in force, the provisions of this Act shall have effect except in cases provided in sub-section (2) of Section 34 of the said Act. Therefore, despite the existence of Order XXXVII of the Code, the provisions of this Act would be effective so far as it is inconsistent with those of the CPC and as such Section 19 will prevail upon those of Order XXXVII even if the suit is transferred and tried by the Tribunal. So far as the provision contained in sub-section (2) of Section 34 of the said Act is concerned, it would not be relevant for our purposes since none of these exceptions are necessary to determine the question that call upon for decision. Therefore, the contention of Mr. Tandon to the extent of taking away the right accrued by law, cannot be sustained since such accrued right is taken away by operation of law itself particularly when no one can claim any right in respect of a procedure.

13. Now let us examine the question as to whether the suit could be transferred to the Tribunal. The long title of the Act reads as thus:

"An Act to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to the banks and financial institutions and for matters connected therewith or incidental thereto."

14. The purpose and object of the Act can be deciphered from the long title which is an aid for the purpose of interpretation of statute. The long title clearly describes the purpose and object for recovery of debts due to Banks so that such recovery could be adjudicated expeditiously. Thus, all matters which are related to debts due to Banks are to be subject-matter of the Act for which Tribunal has to be setup for expeditious recovery of such debts. Debt has since been defined in Section 2(g), which means any liability, including interest due from any person by a Bank during the course of any business activity undertaken by the Bank 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 subsisting or legally recoverable on the date of the application. The application as defined in clause (b) to Section 2 means application to be made to a Tribunal u/s 19 of the said Act. Therefore, any debt due to the Bank as defined in Section 2(g) comes within the scope and ambit of the act in respect whereof an application is made u/s 19 to the Tribunal. The Tribunal is to be established u/s 3 of the said act, which exercise the jurisdiction u/s 17 of the Act in respect of such debts from the appointed day. Appointed day has been defined in Section 2(c) of the act as the date on which the Tribunal is established under sub-section (1) of Section 3. Therefore, from the date a Tribunal is established u/s 17 it is entitled to exercise jurisdiction in respect of recovery of debts due to Banks.

15. By reasons of Section 18, from the date a Tribunal is established, Civil Court

ceased to have jurisdiction in relation to matters specified in Section 17. The expression used in Section 18 is positive or in other words affirmative to the extent that it makes it clear that no Court shall have or be entitled to exercise any jurisdiction or powers in relation to matters specified in Section 17. Thus, the cessation of jurisdiction is absolute by reasons of Section 18 from the appointed day. It has defined in Section 2(g), debt means the debt legally recoverable and the date of the application means the date after the appointed date when such an application could be made to the Tribunal. The suit in respect of cause of action which might have been barred by law on the date of the application by fiction of law could not be held to be barred by law on the appointed day if such suit is instituted before the limitation has expired and such suit is pending. Therefore, by reason of the pendency of the suit the debt due to bank remains recoverable even through the suit and as such on the appointed day it remains to be legally recoverable on the appointed day. Therefore, no distinction could be brought in respect of cause of action involved in suits instituted before the appointed day in respect of bar of jurisdiction as contemplated in Section 18, which takes away the jurisdiction of Civil Court in respect of all matters covered u/s 17 which means that the Court ceases to have any jurisdiction even to proceed with pending suits since the debt as defined in sub-section 2(g) includes the debt sought to be recovered in a pending suit is legally recoverable and thus bring the same within the scope and ambit of Section 17. Now these Sections 17 and 18 having over-riding effect by reason of Section 34, even if it is inconsistent with any other law the application of order XXXVII of the Code is excepted. Sections 17, 18 and 34 are to be construed harmoniously having regard to the intent, purpose and scheme of the act. A reconciled harmonious reading of these Sections clearly indicates the intention of the legislature to bar the jurisdiction of Civil Court in respect of debts, legally recoverable on the appointed day. A debt sought to be recovered in a pending suit is surely a debt legally recoverable and is due to the Bank. Therefore, Sections 17, 18 and 34 cannot be interpreted otherwise except to mean that jurisdiction of Civil Court ceases from the appointed day to proceed with matters pending before it which involves recovery of debts due to Banks so long it remains legally recoverable.

16. The question of over-riding effect and meaning of debt was considered by this Court in *M/s Hari Sahai Mal Tika Ram V. Punjab National Bank*, C.M. Writ Petition No.39050 of 1999 disposed of on 16th September, 1999. Taking the same view.

17. It is in such circumstances, the provisions of Section 31 has been engrafted in the Act itself. By reason of Section 31, all pending suits before any Court on the date of establishment of the Tribunal by fiction of law stood transferred to the Tribunal, Section 31 runs as follows:

"31. Transfer of pending cases.

(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:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court.

(2) Where any suit or other proceeding stand transferred from any Court to a Tribunal under sub-section (1)-

(a) the Court, shall as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal, and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made u/s 19 from the State which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit."

18. A plain reading of Section 31 indicates that 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. Thus, a suit being a suit or proceeding involving a cause of action within the jurisdiction of such Tribunal had it arisen after such establishment though in fact had arisen before and is pending in a suit by fiction of law shall stand transferred to the Tribunal. But reason of Section 17 read with Section 18 and Section 34 there cannot be any alternative interpretation of Section 321 other than that pending suits falling within the jurisdiction of Tribunal stood transferred to such Tribunal by operation of law. By reason of sub-section (2) upon such transfer the Court shall forward the records of such suits or other proceedings to the Tribunal. The Tribunal on receipt of such record proceed to deal with such suit or other proceedings in the same manner in the case of an application u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

19. Thus the transfer of the suit is complete as soon as the Tribunal established. The transfer is not dependent on any action of the Court or any other agency. It is by virtue of operation of law on the establishment of Tribunal all such suits pending in Civil Courts stood transferred to the Tribunal. The Court has only to perform the ministerial job of forwarding the records to the Tribunal. The Court had no option or choice to discretion except forwarding record to the Tribunal. It is simply a transmission of record, a ministerial job to be performed by the Court by reason of the legislative enactment in respect of cases, the jurisdiction whereof is barred u/s 18 of the Act.

20. Similar view was taken by this Court in M/s Hari Sahai Mal Teka Ram (supra), disposed of on 16th September, 1999.

21. The question that the proceeding under Order XXXVII could not be transferred to the Tribunal is completely answered by reasons of interpretation of clause (b) of sub-section (2) of Section 31 which prescribes that the Tribunal upon receipt of such record shall proceed in the same manner as in the case of an application u/s 19 from any stage viz., from the stage at which it was transferred or from any other earlier stage of de novo at the discretion of the Tribunal itself.

22. The Act had laid down a complete Code in itself, providing a special procedure and the procedure provided in the CPC having been excepted except to the extent provided in Section 22, and the jurisdiction of Civil Court having been barred u/s 18 of the Act, a harmonious construction of the scheme of the Act, in respect of the provisions, as referred to above, lead us conclusively to opine that whatever may be the proceeding, if it comes within the ambit of Section 17 of the Act pending in any Civil Court, stood transferred to the Tribunal on the establishment of the Tribunal. The expression "suit" having not been qualified it includes suit in general: be it a regular suit or a summary suit. There being nothing special or specifically explained and the term "suit" having not been defined in the Act it has to be understood to include all kinds of suits whether it is summary suit or otherwise. Even if a summary suit may not be brought within the expression "suit" occurring in Section 31, it definitely comes within the expression other proceedings occurring therein. Section 31 had not left any scope doubtful. It is clear and unambiguous.

23. Ordinarily, the Court has to interpret the law following the golden rule of interpretation viz. literal construction. At the present moment no external aid is necessary for construction of the provision of Section 31. The internal aid as discussed above conclusively reflects that there was no other intention of the legislature except that all pending suits in Civil Courts within the scope and ambit of Section 17 were to stand transferred on the establishment of the Tribunal leaving the Court to perform ministerial part of forwarding the records for transmission to the Tribunal.

24. Section 31 (2)(b) read with Section 19 clearly indicates that whatever might be the nature of proceeding in respect of the suit or other proceedings pending before the Civil Court, it has to be transmitted to the Tribunal and Tribunal has to proceed in the manner prescribed in Section 19 since by reason of Section 18 of the Civil Court ceases to have jurisdiction in respect thereof and such provisions having been given overriding effect by reason of Section 34 of the Act, excluding the application of the procedure prescribed in the Code of Civil Procedure, through Section 22 of the act.

For all these reasons though the submission of Mr.Arun Tandon seemed to be attractive and was very ably argued, with humility and respect, I am unable to persuade myself to agree with the contention of Mr.Tandon for the foregoing reasons.

25. In view of above, the revision fails and is accordingly dismissed.

26. At this stage Mr.Tandon contended that originally the Tribunal was established at Jabalpur which had jurisdiction in respect of the suits pending in U.O. Now a Tribunal has been established at Allahabad in U.P. and had started functioning. He prays that this suit may be transmitted to the Tribunal at Allahabad. If it is so in that event, it would be open to the revisionist to apply for transmission of the record to the Tribunal at Allahabad before the Tribunal at Jabalpur, in case the records have been received by the Tribunal at Jabalpur. If such an application is made, in that event, the Tribunal at Jabalpur shall transmit the records of the proceeding to the Tribunal at Allahabad, if it is established within a period of one month from the date of filing of such application and that the Tribunal at Allahabad, if established, shall dispose of the suit as early as possible preferably within a period of one year from the date of receipt of such record. In case the records have not been transmitted to the Tribunal at Jabalpur, in such case the records be transmitted to the Tribunal at Allahabad; which will proceed with the same accordingly.

27. However, there will be no order as to cost.

Let a certified copy of this order be supplied to the learned Counsel for the applicant at the earliest.