

(2012) 12 KAR CK 0023

In the Karnataka High Court

Case No : Regular First Appeal No. 1508 of 2012

Gokualdas Images Pvt. Ltd.

APPELLANT

Vs

M/s. Axis Bank Limited

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : (2013) 2 AKR 682 : (2013) ILR (Kar) 1171

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : Dhananjay Joshi, for the Appellant; B.S. Shashibhushan for NVS Associates, for the Respondent

Final Decision : Allowed

Judgement

Jawad Rahim, J.—Plaintiff is in appeal against rejection to its plaint by the trial court applying the provision of Order VII Rule 11(d), C.P.C., by the impugned order. In response to notice regarding admission, the respondent bank is duly represented. It has also filed in the form of a short paper book certain material reflecting the factual position.

2. I have heard the learned counsel on both sides, viz., Sri Dhananjay Joshi for the appellant and Sri B.S. Shashibhushan for the respondent, and examined the records in supplementation thereto.

3. Before I advert to the contentious issues raised by the learned counsel on both sides, a brief reference to the factual matrix is necessary. It is:

a) The appellant, a company incorporated under the Companies Act, is engaged in the business involving export of products and merchandise. Among several bankers with whom it is operating, it had transacted with the respondent bank.

b) The appellant company claims to be one of the largest corporations with 15 automated factories across India having with it 7,000 machines. Being involved in export of garments and apparels, the receivables had to be calculated in

foreign currency, namely United States Dollars (USD, for short) which was susceptible to fluctuations in rate. The Reserve Bank of India (RBI, for short) had permitted hedging of exchange rate fluctuation and interest rates to a limited extent by entering into derivative contracts which may take the form of forwards, futures, swaps and options. The appellant used to have appropriate standardized forward covers through its recovery bankers.

c) The respondent bank approached the appellant offering to advise it on derivative contracts with currency options and represented to it that these would be more appropriate hedging tools to the appellant. These option/contracts were aggressively marketed by the bank as a convenient alternative to the forward covers taken by the appellant. The respondent bank also represented to it that the said option contracts would hedge the underlying risk that the appellant would be exposed to in the course of its trade, on account of fluctuating foreign exchange rates. It also assured the appellant that the Indian Rupee (INR) was bound to appreciate vis-à-vis the USD.

d) Acting on such positive assurances of the respondent bank, appellant entered into four currency option contracts for the fiscal year 2007-08 which are particularized as under:

- a) Transaction Reference No. OPTIO13,
- b) Transaction Reference No. OPTIO15,
- c) Transaction Reference No. OPTIO60 and
- d) Transaction Reference No. OPTIO61

Besides, in relation to the aforesaid currency option contracts, respondent bank executed an agreement called International Swaps and Derivatives Association Master Agreement (ISDA Master Agreement, for short) as coverage for the appellant. It also extended Loan Equivalent Risk (LER) facility to the tune of rupees forty crores to the appellant. It was for the sole purpose of translating off-balance sheet commitments of the appellant under the derivative contracts into a credit equivalent loan.

e) The appellant assertively contends it had not received any sum whatsoever from the respondent bank under the LER facility and it was only notional loan documentation.

f) The main grievance of the appellant is, despite such risk management and assurance by the respondent that it would minimize its risks, to its shock and surprise, it learnt from the respondent bank in July 2008 that it has suffered staggering losses under the derivative contracts and the options had reached the peak risk. When the appellant questioned how such staggering losses could occur, when the contracts were intended only to hedge and consequently minimize its risk profile, the bank assured the appellant this was only a temporary setback and would be set right. It also assured the appellant all these

risk factors would be sorted out at the bank's senior management level.

g) Subsequently, the respondent bank advised the appellant that three out of four contracts needed to be restructured by extending the debt upto March 2012 only one of the currency option derivative transaction numbered as OPTO15 was to be retained. Despite the appellant accepting such proposal and acting upon it, the losses mounted. At this stage, the respondent bank informed the appellant that since the derivative losses were approximately rupees forty five crores and threatened existence of the appellant, the same would be paid by the bank and the treasury outstanding would be closed to a large extent by way of a loan of rupees thirty five crores.

h) The appellant noticed such risk was the result of wrong advice by the respondent bank and if it was allowed to continue, there would be threatening loss again, and therefore it was not in favour of accepting any proposals of the bank. It is averred, the RBI, the apex body in the country governing banking, had required all financial institutions and banks to work in accordance with the guidelines and directions laid by it (RBI), and any contravention came within the mischief of the supervisory power of the said bank. Since similar losses on account of derivative contracts were faced by other companies, RBI had initiated action firstly, by issuance of a circular dated 29.10.2008 bearing No. RBI/2008-09/252/DBOD BP BC No. 69/21 03.009/2008-09, and required all banks to park the dues accruing from losses in a separate account. In pursuance to the circular of the bank, there was no need for the respondent bank to extend any loan to the appellant and it was required to park all exposures on account of losses occasioned by currency options derivative contracts with the appellant into a separate account.

4. Several other grounds and circumstances are averred in the plaint as the basis for seeking the relief which I shall refer to in the paragraphs following. Suffice to say that the main grievance of the appellant is, the respondent bank has not adhered to the earlier terms of the contract by which derivative contracts were entered into, and because of its wrong advice and management, notional loss was created by the bank. Appellant also assertively contended in the plaint the bank had to hold itself responsible, and it could not have translated the loss to the plaintiff but had to shift as parking account.

5. With this reference to the transaction with the respondent, plaintiff-appellant questioned the action of the respondent in issuing the recalling notice presuming or creating the loss of rupees thirty five crores. It has also questioned the so-called sanction letter of the bank dated 15.1.2009 issued to it. It has questioned the contention of the respondent that the appellant had availed term loan from it quantified at rupees thirty five crores. In this regard, it has further pointed out that rupees fifteen crores out of rupees thirty five crores is shown by the respondent bank to have been paid off as loan of M/s. Abn Amro Bank for securing first charge of the appellant's property, which is described as fiction and incorrect statement on facts.

6. Further, appellant would contend that in view of apprehended weakening financial position and being of the opinion that it may default in repayment of its dues to bankers, appellant invoked Corporate Debt Restructuring (CDR) mechanism set up by the RBI and requested all its regular bankers as well as the respondent bank to agree on a restructuring package of the debt owed by the appellant to enable it to repay the same over a longer period of time to reduce its pressure.

7. Accepting the financial viability of the appellant's ventures and having a reasonable certainty of recovering its dues, many of the banks agreed to restructure all its debt and to proceed in the CDR process. The appellant's grievance is, it is the respondent alone who, with mala fide intention, declined to participate in such process and issued a recalling notice to the appellant calling upon it to pay to it rupees forty seven crores. A copy of the said notice dated 8.6.2010 is appended to the plaint.

8. I do not wish to refer to the other contentions of the appellant as they refer to several transactions and the conduct of the respondent bank. Suffice to say that the appellant filed the suit to seek redressal of its grievance against demand for rupees forty seven crores as loan. In the suit, appellant sought the following reliefs:

a) Declaring that the currency option contract bearing No. OIT1013 trade dated 27th November, 2007 being illegal in law and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

b) Declaring that the currency option contract bearing No. OPT1015 trade dated 29th November, 2007 being illegal in law and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

c) Declaring that the currency option contract bearing No. OPT1060 trade dated 9th January 2008, being illegal in law and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

d) Declaring that the currency option contract bearing No. OPT1061 trade dated 9th January, 2008 being illegal in law and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

e) Declaring that the re-structured currency option contract bearing No. OPT1145 trade dated 8th September, 2008 being illegal in law and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

f) Declaring that the rupee term loan extended vide sanction letter dated 15.01.2009 for offsetting the derivative losses of the Plaintiff being illegal in law

and public policy, opposed to the RBI Guidelines and obtained fraudulently is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

g) Declaring that notice of the Defendant bearing No. AXIX/BLR/CMC/3145/2010-11 dated 8th June, 2010 being illegal in law and public policy and opposed to the RBI Guidelines is void ab-initio and is therefore unenforceable and not binding on the plaintiff.

h) Restrain the Defendants by an order of perpetual injunction either by themselves or through its officers, agents, servants or any other person claiming through it, from directly or indirectly taking any action whatsoever in pursuance of the recall notice dated 8th June, 2010 and for recovery of any dues under the afore-said currency option contracts and term loan.

i) Directing the Defendant to pay to the plaintiff the costs of the suit.

j) Pass any such other order as the Hon"ble Court may deem fit in the facts and circumstances of the instant case and towards the interest of Justice and Equity.

9. Along with the plaint, an application under Order XXXIX Rules 1 and 2, C.P.C. was filed seeking a restraint order to restrain the respondent bank from proceeding to recover the alleged loan from it.

10. The learned trial judge has granted ad interim order of injunction which was in force. It is not very clear, but it is not disputed either, that suit summons and notice of I.A. was served on the respondent bank, who, for reasons best known, did not initially enter contest. It was thus set ex parte. However, in belated action, it filed an application under Order VII Rule 11(d), C.P.C. seeking rejection of the plaint on the grounds urged in the affidavit of one Dolagovinda Mishra, authorized signatory of the respondent bank that the civil court had no jurisdiction to try and entertain the suit. The second ground was, as the respondent bank had invoked its power to recover the loan through recall notice dated 8.6.2010, the civil court had no jurisdiction. In paragraphs 7 to 9, he refers to the nature of transaction between the parties and in paragraph 8, he averred that any action in civil law in the civil court would be in conflict with the right of the bank to recall the loan and recover it as provided under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as the Act, for brevity), and the suit is therefore, bad in law. In paragraph 9, he referred to the provision of clause 5 of the ISDA Master Agreement which empowers the bank to terminate outstanding transactions, i.e. item (a) of ISDA Master Agreement.

11. With regard to the relief of injunction sought by the appellant, it contended it could not be granted in view of the bar u/s 41(b) of the Specific Relief Act.

12. The averments in the affidavit contain the factual matrix and refers to the applicability of the Act and could be entertained only by the Tribunal and not by the civil court. In short, the respondent bank tried to non-suit the appellant on the ground that the subject matter of dispute was cognizable only by the Tribunal

constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and not by the civil court, and the relief in the nature of injunction sought by the appellant was barred under the provision of Section 41(b) of the Specific Relief Act.

13. As is expected, appellant countered all these contentions and reiterated its right to have the dispute relating to the nature of transaction adjudicated by the civil court of competent jurisdiction, and not the Tribunal with limited jurisdiction to deal with cases relating to recovery of debt. The serious contest resulted in the trial court allowing the parties to file additional pleadings though uncalled for, has sat in judgment to decide not only the jurisdictional aspect, but also on the merit of the claim of the appellant. By the impugned order, the learned judge has allowed the application, rejecting the plaint, assailing which the appellant is in this appeal.

14. I have had the benefit of arguments with persuasive eloquence by the learned counsel on both sides and citational support of several decisions cited at the Bar which are listed out below:

For the appellant:

- 1) Bhau Ram Vs. Janak Singh and Others,
- 2) Indian Bank Vs. ABS Marine Products Pvt. Ltd.,
- 3) Rajshree Sugars and Chemicals Limited Vs. AXIS Bank Limited, formerly known UTI Bank Limited,
- 4) Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation,
- 5) M/s Richa Industries Ltd. and Others Vs. ICICI Bank Limited and Another,
- 6) ICICI Bank Limited Vs. Fab N. Fabrics and
- 7) VCK Share and Stock Broking Services Ltd. Vs. Bank of Rajasthan Ltd.,

For the respondent:

- 1) M. Somasundaram and S. Selvakumar and Others Vs. Mr. V. Srinivasan Naidu and The District Collector-cum Accommodation Controller and Others,
- 2) Pravanjan Patra Vs. Republic of India and Others,

15. It needs no mention that the appellant has sought adjudication by the civil court a dispute raised by it basically relating to the genesis of liability created by the bank. In other words, while the respondent bank describes the appellant as the borrower in terms of the loan which it has documented, the appellant refutes such contention, contending it had entered only into derivative contract with the bank which was of a special nature and was to provide the appellant derivative contracts as a convenient alternate to the forward covers in foreign exchange

dealings. The option contracts offered by the bank were to hedge underlying risks to which the appellant was being exposed to on account of fluctuating foreign exchange rates. The currency options offered by the bank were hedging of exchange rate fluctuation and interest rates to a limited extent by entering into derivative contracts which takes the form of forwards, futures, swaps and options. There was no literal loan transaction, that is, lending or borrowing of money by the respondent bank to the appellant. Any liability under the contract was notional and was subject to other contingencies stipulated in the agreement. Appellant does not dispute it had exchanged correspondence with the respondent bank, but they described it as only at the instance of the bank, which was misleading. The liability of rupees forty five crores raised by the respondent bank is described as a unilateral determination without actuals being taken into consideration. It is also termed as violation of the RBI circular imposing certain restrictions on derivative contracts. It denies that the liability of the appellant under the said contract has translated into financial liability to be paid to the bank. Thus, they contend, the so-called debt of rupees forty five crores created by the bank is factually incorrect. In this context it has sought a declaration regarding the nature of transaction between it and the respondent bank. Therefore, they contend the suit seeking for declaratory relief to determine what is the nature of transaction would lie only in the civil court of competent jurisdiction under the provisions of Section 9, C.P.C., and the Tribunal constituted under the DRT Act would not have jurisdiction.

16. In negation of these grounds, the contention of the respondent bank is, be it derivative contract or literal borrowing, financial liability is created on the appellant to discharge which is quantified at rupees forty five crores. The respondent bank has suffered the brunt of fluctuation in USD vis-?-vis Indian rupee and has paid it, to be recovered ultimately from the appellant under the terms of the contract. Thus, it contends like any other accounting system, on accounting it has quantified liability of the appellant at rupees forty five crores, and in view of threatening/mounting liability of the appellant, it deemed it fit to recall the loan and issued recall notice dated 8.6.2010. Since it has issued such notice, any further action would be only before the Debt Recovery Tribunal constituted under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and not any other forum like the civil court. He would contend, the jurisdiction of the Tribunal as defined under the Act brings within its sweep the relief sought by the plaintiff in the suit. Therefore, the appellant had to move for the relief before the Tribunal and the civil court has no jurisdiction.

17. The alternate submission is, even if under the Act appellant would not have locus to file the application, it can seek redressal of its grievance as spelled out in the plaint through its counter claim permissible under the Act. Lastly, it is submitted appellant cannot resort to seeking a restraint order to restrain the bank from proceeding legally to recover its debt as the said relief is barred by Section 41(b) of the Specific Relief Act.

18. With this prelude to the contentions advanced and defence statement of the respondent bank, I have examined the legal position with regard to jurisdiction. Undoubtedly, the conspectus of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, is necessary.

19. Our attention gets drawn to the following provisions: Sections 17, 18, 19, 34, and more importantly, Section 2(1)(g). Section 2(g) defines "debt" as "any liability (inclusive of interest) which is claimed 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 or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.". From the definition, it is clear that a "debt" is a liability claimed as due from any person by a bank or financial institution or a consortium of banks. It leaves no doubt that the "debt" referred to in this provision should be a "debt" owing and payable to a bank or financial institution or a consortium of banks and should be recoverable from any person. Action from any private individual even if he/she has to recover any amount from any person as a "debt" is out of the definition of Section 2(g) of the Act. It only refers to the "debt" payable to the bank or financial institution or a consortium of banks and no other juristic person or private individual.

20. Section 3 refers to establishment of the Tribunal to be nomenclatured as Debt Recovery Tribunal to exercise jurisdiction, powers and authority conferred on such Tribunal by the Act only. Section 17 deals with the jurisdiction of the Tribunal. Sub-section (1) of Section 17 envisages "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." This further clarifies that the jurisdiction of the Tribunal is to entertain and decide applications only from the banks, financial institutions for recovery of its dues due to such bank or financial institutions. It undoubtedly excludes all causes of action even if it is a loan transaction between any creditor and debtor, whether it is a juristic person or an individual.

21. Section 19 of the Act can be taken as a supplementary provision to clarify this position. It reads thus:

19. Application to the Tribunal:

(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries the business or personally works for gain; or

(c) the cause of action, wholly or in part arises:

Therefore, Section 19 makes it clear where a bank or financial institution has to recover any debt from any person, it may make such application, which otherwise would mean that an application from any other juristic person or an individual is not amenable to action u/s 19 of the Act. However, the contention of the respondent bank is, even though Section 19 specifies it is only the bank or financial institution which can file the application for recovery of a debt from any person, but such person has the right under sub-section (5) of Section 19 to lay counter-claim. By this submission he would contend, defendant on being summoned could raise a counter-claim against the bank or financial institution like the one raised by the appellant in this suit. Such submission has to be tested from the language of Section 19(5) of the Act which reads thus:

19. Application to the Tribunal:

(1) ...

(2) ...

(3) ...

(4) ...

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

Sub-section (6) is also relevant. It reads thus:

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

It spells clearly such counter claim is permissible only if the bank or financial institution has filed an application for recovery of debt. This would leave no doubt that there should be a proceeding for recovery of debt before the Tribunal for lodging counter-claim. No other relief like declaratory decree or adjudication of any dispute is contemplated or envisaged under sub-section (6) of Section 19 of the Act. In this view, there is no gainsaying that the appellant-plaintiff had to wait for the respondent bank to initiate action for filing application for recovery of the debt, to raise such counter-claim.

22. Secondly, it is pertinent to note as on the date appellant had filed the suit, there was no application pending before the Debt Recovery Tribunal u/s 19 of the Act to enable it (appellant) to raise such counter-claim. The right of the

defendant referred to in sub-section (6) to raise a claim, firstly, is only with reference to an ascertained sum recoverable as debt, and secondly, in response to suit summons in the application. Both these situations are absent in the present case, and therefore, Section 19(6) was not available to the appellant.

23. In fact, the bar of jurisdiction should not escape our notice. Section 18 envisages "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, an a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17." The bar would operate only if it is shown that the relief sought in the plaint is one covered u/s 17 and not otherwise. When the jurisdiction of the civil court is ousted and what are the circumstances to be considered is well settled by the Constitution Bench of the apex court as early as in 1969 in the case of *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, where, dealing with the issue as to whether the dispute raised by the assessee regarding assessment of tax under the Sales Tax Act could be brought for adjudication in the civil court in view of the bar u/s 17 of the M.P. Sales Tax Act, it held, though u/s 17 of the said Act, an appeal provision was created to allow an assessee to question assessment, the jurisdictional power of the civil court u/s 9 is not ousted. It has laid down the following tests to be applied to determine when the jurisdiction of the civil court is ousted. It has enumerated as follows:

(1) Where the statute gives a finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy of the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its

constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final and there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

What emerges from the educative exposition of law on the subject by the Constitution Bench is, to first ascertain the nature of dispute. The nature of adjudication which the court has to do is to keep in mind whether there is any alternate and efficacious remedy provided under the law other than civil court to ascertain whether any action under any provision gives finality to the action taken. If there is an express bar of jurisdiction of the court, then examination of the scheme of that particular Act (law) to find the adequacy or sufficiency of the remedies provided may be relevant, but it is not a decisive factor to sustain the jurisdiction of the civil court. Therefore, if the result of enquiry becomes decisive in respect of the nature of relief, the civil court is held to have jurisdiction to adjudicate and then pronounce jurisdiction.

24. In the instant case, several case laws are cited at the Bar for and on behalf of the respondents show that the Tribunal alone can entertain the action for recovery of a debt. That proposition is applicable if the respondent bank was in action seeking to enforce its right to recover the debt. In that event, the bank had certainly the remedy only under the Act, as the jurisdiction of the civil court is barred if the amount of debt to be recovered is more than rupees ten lakhs. This gives an indication that in an action for recovery of debt, there is no total bar of the jurisdiction of the civil court. Only the quantum decides jurisdiction and not otherwise. The amount of debt determines the jurisdiction of the civil court or the Tribunal. It is abundantly clear from the language of Section 7 that only if recovery of a debt is more than rupees ten lakhs, then the bank or financial institution or consortium of banks could present an application before the Tribunal and such action is barred in the civil court. But when an adjudication is sought to decide whether there is existence of "legal debt", the jurisdiction of the Tribunal defined by Section 17 cannot be enlarged to decide that issue because it can only be decided by the civil court of competent jurisdiction and not by the Tribunal.

25. There is another way by which we need to ascertain the jurisdiction of the Tribunal. The jurisdiction of the Tribunal is conferred only if the application is by the bank or financial institution named in that section for recovery of the "debt" defined in clause (g) of Section 2 of the Act. The answer is, obviously, in the negative. There must be action for recovery of a debt as defined u/s 2(g) and that "debt" should be due and recoverable only by a bank or financial institution or consortium of banks, and not otherwise. The issue as to whether there is really any "debt" or not is beyond the legal competence of the Tribunal to decide.

26. I hasten to add that quantification of a debt may be an issue within the jurisdiction of the Tribunal, but not to decide existence of the debt.

27. The learned counsel for the respondent, alternatively contended that the grievance of the appellant being in relation to the financial transaction with the bank, it can be construed as "debt" with reference to Section 2 (g) of the Act. He has sought to support this contention, referring to The Reserve Bank of India Act, 1934. By this his serious endeavour was to contend that the genesis of the claim of the plaintiff being financial transactions between the bank, and the bank being one of the parties to the litigation, It is only the Debt Recovery Tribunal which has jurisdiction to decide the issue. His efforts to bring the dispute raised by the plaintiff and to the relief as "debt" as defined u/s 2(g) of the Act, is unacceptable. This proposition is difficult to accept because what is a "debt" has already been defined under the provision and who can apply to the Tribunal for recovery of such debt is also specified. Had there been any indication in Section 19 of the Act as to who else could file the application other than the bank, financial institution or consortium of banks it was possible to take the view that for any dispute relating to financial transactions, the person aggrieved may apply to the Tribunal. But as, except the bank, financial institution or consortium of banks, no other person is indicated in Section 19, who can apply, we cannot confer jurisdiction by our own interpretation.

28. It is a settled proposition of law that when interpretation of a provision is attempted, there is no permissibility of borrowing what is not indicated in the provision. In the provision, there is no indication that apart from the bank, financial institution or consortium of banks, any other juristic person or individual could move an application for adjudication of dues treating it as "debt".

29. Lastly, it has to be held that the jurisdiction of the civil court is not totally barred as, referred to in paragraphs supra. Except for the jurisdiction conferred on the Tribunal, all other disputes being of civil nature are cognizable u/s 9, C.P.C. by the civil court of competent jurisdiction.

30. As regards the relief for injunction sought for by the plaintiff, learned counsel for the respondent was right in pointing out Section 41(b) of the Specific Relief Act. It reads thus:

41. Injunction when refused.-

a)

b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

31. I may accept the proposition that such injunctive order cannot be granted. But when action is linked with the issue under consideration in the civil court of competent jurisdiction and if it could be shown that a pending decision on the issue by the civil court, any action would be premature or would render a conflicting decision, then the bar will not be operative. Taking the extreme view, even if the provision had to be applied, all that the plaintiff will lose is to get the relief of restraining the respondent from instituting action in the Debt Recovery

Tribunal, but the relief in the suit cannot be treated as barred by law.

32. Besides it is well settled that to reject the plaint under Order VII Rule 11(d), C.P.C., what is required is to consider only the statement in the plaint and not any other material which may be available to the defendant as defence. In the instant case, regrettably we note that the learned trial judge has sat in judgment over the merit of the plaintiff's case and the defence of the respondent bank against such claim. Such approach of the learned trial judge is nothing but pre-judging the issue which required enquiry as provided by the Code of Civil Procedure. Consequent to it an unjustified expression of opinion on merit touching the issue under consideration has been expressed. Learned judge has not noticed the mandate of this provision to decide whether "cause of action" was there for the plaintiff to file the suit, or whether the suit claim was barred by law. As could be seen, the trial court has formed an opinion that the relief sought by the plaintiff is covered under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and therefore, jurisdiction of the civil court is barred. I have dealt with this issue in paragraphs supra and affirmatively held the relief sought in the plaint is beyond the jurisdiction of the Tribunal and therefore, it falls within the ambit of Section 9, C.P.C., thereby saving the jurisdiction of the civil court to decide it in accordance with law. Being of this view I am satisfied the weaponry in the legal arsenal of the respondent bank is not so lethal as to non-suit the plaintiff at the threshold. The plaintiff deserves an opportunity of substantiating its contentions in the trial and that cannot be nipped in the bud. For these reasons, I am satisfied the appellant must succeed in its legal pursuit.

In the result, the appeal is allowed. The matter is remanded to the trial court to proceed from the stage where it had stopped, giving opportunity to both sides as is provided under law. In the circumstances, there shall be no order as to costs.