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(2011) 07 DEL CK 0268

In the Delhi High Court

Case No : FAO (OS) 70 of 2010 and CM 1406 of 2010

ICICI Bank Ltd. and Another — APPELLANT

Vs

Small Industries Development Bank of India and Another — RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Constitution of India, 1950 — Article 24
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17

Citation : (2011) 07 DEL CK 0268

Hon'ble Judges : Vikramajit Sen, J;Siddharth Mridul, J

Bench : Division Bench

Advocate : A.S. Chandhiok, Rishi Kapoor, Ritesh Kumar, Piyush Sanghi, Simranjit Singh and Sumit Goel, for the Appellant; Rishi Kapoor, for the Respondent

Final Decision : Allowed

Judgement

1. With the consent of parties, we proceed to pass the final Order. The Appeal assails the Order of the learned Single Judge dated 19.11.2009 dismissing the Appellant''s Application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Mr Chandhiok, learned Senior Counsel for the Appellant, canvasses two points before us. Firstly, he states that on a reading of the Plaint it is palpably clear that the Suit ought to have been dismissed as it is being filed after the expiry of the prescribed period of Limitation. The second contention is that the Suit is barred on the application of Section 17 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Mr Bisaria learned Counsel for the Plaintiff/Respondent submits that the question of the Suit being barred u/s 17 of 1993 Act had not been raised before the learned Single Judge. He has read out the Application under Order VII Rule 11, which in fact vindicates his submission. Be that as it may, despite these Objections, we are of the opinion that since the argument raises only a legal issue, the Appellate Court cannot be precluded from its consideration. A prima facie reading of Section 17 of 1993 Act makes it abundantly clear that if a Bank or a financial institution seeks to recover debts

due to it, it will be the Tribunal which shall have jurisdiction to carry out the adjudication. Reliance on a judgment of a learned Single Judge in Canara Bank v. Tarahind Impex P. Ltd. decided on 4.10.2004, does not assist the argument put forward by Mr Bisaria. The Act does not prescribe that Section 17 will not be applicable if the recovery is sought by a bank or financial institution from another bank or financial institution.

2. Even if we were not to note the objection based on 1993 Act, the Suit is liable to be dismissed on the grounds of Limitation. There can be no gainsaying that at Order VII Rule 11 stage, the Plaint has to be read on a demur. Our attention has been drawn to the contents of the Plaint. Suffice is to reproduce paragraph 28 which reads as follows:

28. That thus, the Plaintiff is legally entitled to receive the following amounts from the Defendants No. 1 & 2:

(a)Equivalent of US $ 22,000 @ (US$ 1 = Rs. 42.38)

Rs. 932360/-

(b)Bill negotiated during FY-2001

Rs 21,72 lakh

(c)Share of Insurance claim

1 Rs.-7.63 lakh

Rs. 3867360.00

(d)Interest @ 18% per annum

(i)In respect of claim (a) above from 6.3.99 to 8.9.07-

Rs 1429499.46

(ii) In respect of claim (b) above from 1.4.01 to 8.9.07-

Rs 2519281.97

(iii) In respect of claim (c)above from 13.12.01 to 8.9.07-

Rs. 788670.25

Rs. 4737451.68

That though the Defendant No. 3 has been impleaded by the Plaintiff in the suit as the Defendant No. 3 has to reply certain facts mentioned in the plaint which are necessary for the proper adjudication of the present case. The Plaintiff is not claiming any relief against the Defendant No. 3 as the reference is pending before the BIFR and the same is under consideration before the BIFR. The Plaintiff reserve its right to make claim against Defendant No. 3 on later stage by suitably amending the plaint.

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3. So far as the first claim is concerned the period of Limitation would expire on 5.2.2002; the second claim would become time barred on 31.03.2003; and the third claim on 12.12.2004. This period would be enlarged in the event that the Defendant has acknowledged his debt within the aforementioned period of Limitation. Mr Bisaria has read out the correspondence exchanged between the Appellant and the Respondent/Plaintiff Bank. In order that the Suit should be treated as within the period of Limitation there has to be a categorical admission of debt. It is insufficient and irrelevant that the Defendant has assured the Plaintiff of giving due consideration to the Plaintiffs demands. In this case, we are satisfied that there is no acknowledgement of debt within the period of Limitation.

4. The case of the Respondent/Plaintiff is that the Appellant/Defendant received a sum of money, part of which should have been disbursed to the Plaintiff. In such like cases, Article 24 of the Limitation Act would be relevant. It states that for money payable by the Defendant to the Plaintiff and for money received by the Defendant for the Plaintiff''s use the period of Limitation of three years is to be computed which will commence from the date on which the money has been received. It is, in these circumstances, that the Appeal is allowed. The impugned Order is set aside. On a reading of the Plaint itself, it appears obvious that the Suit is barred by the principles of Limitation. Held accordingly.

5. In these circumstances, CS (OS) No. 2278/2007 be listed by the Registry before the learned Single Judge at the earliest for passing appropriate Orders. There shall be no Order as to Costs. Pending Application stands disposed of.

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