(2018) 05 CAL CK 0064

In the Calcutta High Court

Case No : GA No.941 of 2018, CS No.128 of 2003

Icici Bank Ltd. APPELLANT

Vs

Incab Industries Ltd. RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Recovery of Debts and Bankruptcy Act, 1993 — Section 2(h), 31

Citation : (2018) 05 CAL CK 0064

Hon'ble Judges : SOUMEN SEN, J

Bench : Single Bench

Advocate : N. Srinivas, A. Guha, Debdut Mukherjee, Shivangi Thard

Final Decision : Disposed Of

Judgement

The Court : This is an application by the plaintiff for transfer of the suit to the Debts Recovery Tribunal-I for adjudication of the debt involved in the

proceedings under the provisions of the RDB Act, 1993. The application appears to have been necessitated by reason of amendment being carried out

to Section 2(h) of the Recovery of Debts and Bankruptcy Act, 1993 on 1st September, 2016 by which the definition of â??financial institutionâ?? has

been expanded to include a claim by debenture trustee.Â It is not in dispute that the plaintiff has filed a suit as a debenture trustee.Â At the time of

institution of the suit the plaintiff could not have approached the Debts Recovery Tribunal as the Tribunal would have lacked jurisdiction to entertain

the suit.Â The suit was properly instituted before this Court.Â The question arises as to whether the plaintiff could continue with the suit in view of

the amendment being carried out to the definition in Section 2(h) of the RDB Act.

Under the amended provision, financial institution means a debenture trustee registered with the Board and appointed for secured debt securities.Â

The opposition to this application is that since the suit was not pending when the Act came into operation, Section 31 of the Debts Recovery Act,

1993, as was the original name of the said Act, would not apply. It is submitted that only those suits and proceedings that were pending at the time of

coming into force of 1993 Act are to be transferred to the Debts Recovery Tribunal.Â The instant suit cannot be said to be pending within the

meaning of Section 31 of the Debts Recovery Act and accordingly, this suit cannot be transferred.

The learned counsel appearing on behalf of the defendant has relied upon a decision of the Honâ??ble Supreme Court in â??Raghunath Rai Bareja

and Another vs. Punjab National Bank and Othersâ?? reported at (2007) 2 SCC 230 and submitted that the Honâ??ble Supreme Court, on

interpretation of Section 31 of the Debts Recovery Act, 1993 in relation to the execution proceeding, held that the order transferring the execution

petition to the Debts Recovery Tribunal was without jurisdiction because Section 31 states that only the suits or other proceedings pending before the

Court immediately before the establishment of the Tribunal under the Act shall stand transferred to the Tribunal.Â It is submitted that since the

Tribunal was established in 1993 and no proceeding was pending before any Court on the date when the Tribunal was established, no transfer could

take place under Section 31 of the 1993 Act.

In the instant case, the question is of ouster of jurisdiction by legislative amendment to the original Act.Â The Tribunal assumed jurisdiction only with

regard to the matters specified in the Act.Â Any amendment to the said Act by way of expanding its horizon would automatically denude the Court

of its jurisdiction.Â The example that immediately comes to my mind is the decision of the Honâ??ble Supreme Court in â??United Bank of India vs.

Debts Recovery Tribunal, Calcuttaâ?? reported at (1998) 2 SCC 70 where the issue arose before the Calcutta High Court whether the definition of

debt includes damages.Â Now that the definition has been amended and includes damages, such ambiguity no more exists.Â However, the

Honâ??ble Supreme Court on interpretation of the original definition of â?? debtâ?? held that debt includes damage and accordingly, the jurisdiction

of the High Court was held to be taken away by such legislation.Â The instant proceeding is in the nature of an original proceeding.Â The object and purpose of the Act is to have a specialized Tribunal fully dedicated to decide matters arising out of debt, the definition of which was expanded from

time to time.Â

The expanded definition of â??debtâ?? and â??financial institutionâ?? as it stands denudes this Court of jurisdiction as the Court by reason of such

amendment is no more having the jurisdiction to decide the instant suit.Â An execution proceeding is a separate proceeding.Â The purpose and

object of the Act would be defeated if interpretation given by the defendant is accepted.Â The suit which otherwise could have been tried by this

Court originally, in my view, could not be continued in view of amendment of section 2(h) whereby the Tribunal is given exclusive jurisdiction to try lis

of a debenture trustee for enforcement of its right and recovery of the sum as debt.

Under such circumstances, this application is allowed.Â There shall be an order in terms of prayer (a). The Department is directed to send the

original record of the suit of CS No.128 of 2003 to the Debts Recovery Tribunal-I for adjudication after retaining loco copies of the original record

within four weeks from the date of communication of this order to the Department. In view of this order, CS No.128 of 2003 shall not be shown as

pending. GA No.941 of 2018 is, accordingly, disposed of.Â However, there shall be no order as to costs.

