

(2000) 07 BOM CK 0022

In the Bombay High Court

Case No : Notice of Motion No. 1921 of 2000 in Suit No. 1990 of 2000

Industrial Development Bank of India

APPELLANT

Vs

Krishna Filaments Ltd. and Others

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Banking Regulation Act, 1949 — Section 5

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 2

Citation : (2000) 4 ALLMR 31 : (2001) 1 BomCR 426 : (2000) 4 MhLj 431 :
(2002) 2 RCR(Civil) 237

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : R.M. Kadam and Chetan Kapadia, instructed by K. Ashar and Co, for the Appellant; P.K. Samdani and P. Siquera, instructed by Little and Co., for defendant No. 1, U. Srivastava, for defendant No. 5 and Joshi, instructed by , M. Dhruv and Co., for defendant No. 3, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The plaintiff which is styled itself as Industrial Development Bank of India (Debenture Trustee) filed the suit to claim certain amounts from the defendants due to them as Debenture Trustee. The Plaintiff was appointed as Debenture Trustee as per Debenture Trust Deed dated 24-10-1997. The plaintiff has agreed to act as Trustee of Debenture holders of the defendant No. 1 company. The complaint that generally made in the plaint is that the amount due to the Debenture holders have not been paid by the defendants in the light of the provisions of the Debenture Trust Deed. By invoking relevant provisions of the Debenture Deed, the plaintiff as Trustee can recall the entire amount from the first defendant and pay to the Debenture Holders, in case the 1st defendant commits any default under the Trust Deed.

2. A preliminary objection has been raised by 1st defendant by way of this Motion contending that this Court has no jurisdiction in the light of the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short referred to as "Debt Recovery Act"). This being a preliminary issue, it has

to be decided first which, of course can be decided without leading any further evidence and with the available materials. The first defendant has contended that since the plaintiff is a bank and suit claim is beyond Rs. 10 lacs, by the virtue of section 18 of the Debt Recovery Act, the suit shall stand transferred to the Debt Recovery Tribunal. To fortify his argument he took me through the relevant provisions of the Debt Recovery Act, particularly section 2(g) of the said Act which defines debt as follows :

"debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institution during the course of any business activity undertaken by the bank or the financial institution or the consortium 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 and subsisting on, and legally recoverable on, the date of the application."

3. The learned Counsel Shri. P.K. Samdani, appearing for the first defendant has strenuously argued that the suit claim is a debt coming u/s 2(g) of the Debt Recovery Act, because the amount became payable to the plaintiff during the course of business activities of the plaintiff and therefore, what is sought to be recovered in suit is really a debt due to the bank and therefore, this Court has no jurisdiction. He also drew my attention to section 17 of the Act which reads as under :

"(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."

4. Mr. Samdani submits that a wider meaning should be given to the word "debt" as held by the Supreme Court in the decision, United Bank of India Vs. The Debts Recovery Tribunal and Others, . The Counsel has strongly placed reliance on the observation of the Supreme Court in above decision. In Para 15, the Supreme Court held thus:

"In the case in hand, there cannot be any dispute that the expression "debt" has to be given the widest amplitude to mean any liability which is alleged as dues from any person by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any Court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint have to be looked into and then find out whether notwithstanding the specially created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such tribunal is ousted."

5. As observed by the Supreme Court, if entire pleadings of the present suit is taken into account, I have no hesitation to hold that the Tribunal's jurisdiction is ousted in this case.

6. The learned Counsel of the defendant tried to lay emphasis on the words "Banks and Financial Institutions" occurring in section 17. He also cited decision of the Supreme Court in Allahabad Bank Vs. Canara Bank and Another, . Out of the questions arose in the aforesaid decision one was that whether the bank should seek leave of the Company Court before approaching the Tribunal or whether the Company Court can stay the proceedings before the Tribunal under sections 442, 446 and 537 of the Companies Act. The Supreme Court in that context has held the principle of purposive interpretation was applied by considering the provisions of the Companies Act and purposive interpretation should help to have decision in favour of the jurisdiction and powers of the Company Court and the said principle has to be excluded in view of the superior power of Debt Recovery Act and special power contained therein. On examining the entire material before this Court, the aforesaid decisions will be of no help to the defendant No. 1.

7. Admittedly, the suit is filed by the Trustee and the rights and liabilities of the Trustee emanates from the Trust Deed executed between the plaintiff and first defendant which is produced along with plaint. The cause of action arose for the filing of the suit on the allegation that there is breach or violation of the provisions of the Trust Deed. Therefore, the suit is not filed by the bank for recovery of debt as defined u/s 2(g) of the Debt Recovery Act but in the capacity of a Trustee. Rights and liabilities of the parties stem from the provisions of the agreement, not under any statute under which Plaintiff Bank is constituted, nor under any provision of the Debt Recovery Act. While we closely examine definition of debt under 2(g) of the Debt Recovery Act, it can be seen that it must be a liability due from any person by a bank or financial institutions "during the course" of any business activities undertaken by the bank or the financial institutions". At this juncture, it is relevant to refer to the provisions of the Banking Regulation Act. The bank is defined under Banking Regulation Act. u/s 5(b) of the Banking Regulation Act, banking means accepting for the purpose of lending or investing of deposits of money from the public payable on demand or otherwise, and withdrawable by cheque, draft order or otherwise. Under definition of Banking Company u/s 5(c), Banking Company means any company which transacts the business of banking (in India). Section 5(b) and section 5(c) of the Banking Regulation Act reads as follows :

"5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

"5(c) "banking company" means any company which transacts the business of banking (in India)".

If we read definition of "debt" contained in Debt Recovery Act in conjunction with section 5(b) and (c) of the Banking Regulation Act, the words "business activities" that is appearing in the definition clause of "debt" must be the business activities which is undertaken u/s 5(b) and (c) of the Banking Regulation Act. In other words, in order to attract the provision of the Debt Recovery Act, it must be a debt owing to a bank or financial institution during its business activities as shown u/s 5(b) and (c) of the Banking Regulation Act. So a person who approaches the Court to challenge the jurisdiction of this Court from entertaining the suit of a bank, not only he must show that the debt is due from any person to a bank but also it must show that the debts was incurred during the course of business activities of the bank which is defined u/s 5(b) and (c) of the Banking Regulation Act. As I indicated earlier, the claim in the suit, is not the amount due or debt created during the business activities of the plaintiff as a bank. The plaintiff is constituted under I.D.B.I Act which has undertaken the business under Banking Regulation Act, as well. The activities undertaken under the Trust Deed is not prohibited by I.D.B.I. Act or any other law. Plaintiffs Bank is one which is therefore, entitled to maintain the suit against the defendant even if the amount exceeds Rs. 10 lakhs. In such a situation the debt due to the plaintiff, cannot be treated as "debt" falling u/s 2(g) of the Debt Recovery Act. Here admittedly the debt was cropped up out of agreement executed between first defendant and the plaintiff which is out side the business activities of a bank as defined u/s 5(b) and (c) of the Banking Regulation Act read with section 2(g) of the Debt Recovery Act.

8. In the light of the legal paradigm stated above, I hold that this Court has jurisdiction to entertain this suit. The objection raised by way of this "Notice of Motion" is therefore, over ruled.

9. In the result, Notice of Motion stands dismissed.

P.A. to issue ordinary copy of this order and Associate of this Court to authenticate the same.