

(1998) 04 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 21008 and 24613-14 of 1997

Jay Jee Service Station and Another

APPELLANT

Vs

Syndicate Bank and Another
 Dr. R. Morarka and
Another Vs Vijaya Bank and Others

RESPONDENT

Date of Decision : 03-04-1998

Acts Referred:

Debt Recovery Tribunal (Procedure) Rules, 1993 — Rule 10
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31
Transfer of Property Act, 1882 — Section 67 A

Citation : (1999) 98 CompCas 551

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : S. Devadas, for Nayayamitra in W.P. No. 21008 of 1997 and Chaitanya Hegde, in W.P. Nos. 24613-14 of 1997, for the Appellant; Radhesh Prabhu, for Tukaram S. Pai for respondent No. 1 in W.P. No. 21008 of 1997 and Urval N. Ramadas, in W.P. Nos. 24613-14 of 1997, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—Common questions of law arise for consideration in these two petitions which shall stand disposed of by this common order. The questions relate to the true and correct interpretation of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the rules framed thereunder. The controversy arises against the following backdrop.

2. O. S. No. 5063 of 1992 was filed by the Syndicate Bank against the petitioners in W. P. No. 21008 of 1997, in the City Civil Court at Bangalore, for the recovery of a sum of Rs. 13,38,263.45 in connection with two facilities extended to the said petitioner by way of loan and overdraft against two sets of documents separately executed for each one of the said facilities. Similarly O. S. No. 14 of 1990 was filed by the respondent, Vijaya Bank, against the petitioners in W. P. Nos. 24613-14 of 1997, claiming a decree for a sum of Rs. 1,17,03,394.89 on account of two facilities one by way of open loan cash credit and the other by

way of import letter of credit facility, extended by the plaintiff-bank to the petitioners. With the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, both the suits were transferred in terms of Section 31 of the Act, to the Debt Recovery Tribunal at Bangalore, where the same were registered as O. A. No. 18 of 1996, and O. A. No.338 of 1995, respectively. The petitioners in W, P. No. 21008 of 1997, then moved an I. A. before the Tribunal, in which they challenged its jurisdiction to entertain and proceed with O. A. No. 18 of 1996, primarily on the ground that continuance of the proceedings before the Tribunal, on transfer from the civil court, was hit by Rule 10 of the Debt Recovery Tribunal (Procedure) Rules, 1993. The Tribunal examined the question raised before it and by its order dated July 14, 1997, while rejecting the contentions urged on behalf of the petitioners dismissed the I. A. filed by them. Aggrieved, W. P. No, 21008 of 1997 has been filed by the petitioners assailing the validity of the said order and for a declaration that the Tribunal is bound to follow the procedure prescribed by Rule 10 even in suits that are transferred to it u/s 31 of the Act. To the same effect is the prayer made in W, P. Nos. 24613-24614 of 1997.

3. S. P. Shankar and Chaitanya Hegde, counsel appearing on behalf of the petitioners, argued that Rule 10 of the Debt Recovery Tribunal (Procedure) Rules, 1993, permitted the filing of an application based on a single cause of action only. They urged that the rule contained a prohibition against the filing of applications by banks seeking a relief or reliefs, based on more than one of action. This rule against plural remedies, it was contended, implied that the application filed before the Tribunal, should not only be based on a single cause of action but the said cause must be in respect of a debt of more than Rs. 10 lakhs. That is because debts of Rs. 10 lakhs and above alone fall within the jurisdiction of the Tribunal in the absence of any notification u/s 1(4) of the Act, authorising filing applications of lesser amounts also. The contention in other words was that a suit pending in any civil court on the date of the promulgation of the Act, could in terms of Section 31, be transferred to the Tribunal only if the same satisfied the requirement of Rule 10, in that the suit was based on a single cause of action and the cause of action was one which if it had arisen after the establishment of the Tribunal would be within its jurisdiction. Since both the suits with which we are concerned, in these writ petitions were, according to learned counsel, based on more than one cause of action, the same could not have been either transferred by the civil court or tried by the Tribunal.

4. Counsel for the respondents on the other hand contended that Rule 10 of the Procedure Rules had no application to suits that had been instituted before the competent civil courts prior to the promulgation of the Act. Such suits it was contended constituted a class by themselves, which would by reason of Section 31 stand transferred to the Tribunals established under the Act, if the debt claimed in the same was one triable by the said Tribunal. It was urged that the expression "cause of action" appearing in Section 31 ought to be given a liberal interpretation so as to include the sum total of the relief which the plaintiff in the

suit may have claimed against the defendant, no matter that such relief arose in the context of more than one loan or other transactions between the parties.

5. In order to properly appreciate the contentions urged at the Bar it is necessary to briefly refer to the scheme underlying the Act and some of the provisions contained therein. The Act, it is apparent from a reading of its preamble, is aimed at establishing Tribunals for an expeditious adjudication and recovery of debts due to banks and financial institutions. It provides a speedy remedy for resolving disputes arising out of loans and other financial transactions between such institutions and their borrowers. The provisions are however applicable only where the amount of debt due to any bank or financial institution or to a consortium of banks and financial institutions is not less than Rs. 10 lakhs or such other amounts not less than Rs. 1 lakh, as the Central Government may by notification specify. The term "debt" is in turn defined by Section 2(g) of the Act, to mean any liability (inclusive of interest) which is alleged to be due from any person to a bank or financial institution or to a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or by the financial institutions whether secured or unsecured or whether payable under a decree or order of a civil court or otherwise and subsisting on the date of the application. Section 17 of the Act empowers the Tribunal from the appointed date to exercise jurisdiction, power and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions, whereas Section 18 excludes the jurisdiction of the civil courts and other authorities, in regard to matters specified in Section 17. Section 19 of the Act prescribes the procedure to be followed by the Tribunal and, inter alia, provides that a bank or financial institution may make an application to the Tribunal, for the recovery of any debt due from any person and that such an application shall be in such form and be accompanied by such documents as may be prescribed. The second proviso to Sub-section (2) to Section 19 excludes in its application to suits transferred u/s 31, the provisions contained in Sub-section (2) in so far as the same relate to payment of fee prescribed therein. Section 31 of the Act directs that every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under the 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 to the Tribunal, provided that appeals pending before any court shall not be so transferred. Upon transfer of any 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 stage which was reached before such transfer or from any earlier stage or even de novo as the Tribunal may deem fit.

6. Reference may also be made at this stage to the Debt Recovery Tribunal (Procedure) Rules, 1993, framed by the Central Government u/s 36 of the Act. Rule 4 of the said Rules provides that an application shall be presented in the form annexed to the Rules by the applicant in person or by his agent, whereas

rules 5, 6 and 7, regulate the presentation, scrutiny, and the fee payable on such applications. Rules 8 and 9 relate to the contents and the documents required to accompany the application whereas Rule 10 which is the very basis of the contentions urged on behalf of the petitioners relates to plural remedies and reads thus :

"Rule 10.--An applicant shall not seek relief or reliefs based on more than a single cause of action in one single application unless the reliefs prayed for are consequential to one another."

7. From a careful reading of the Rules, it would appear that the same do not operate retrospectively, They provide the procedure that the applicant is required to follow while filing applications after the Tribunals are established. The Rules do not, it is significant to note, make any provision as regards the form, or the contents, of the complaints/suits that get transferred to the Tribunal in terms of Section 31 of the Act. It is, therefore, safe to assume that all such suits are free from any procedural or other requirements such as the forms prescribed for the applications, the filing of the documents with the same, or even the filing of the reply and other documents by the respondents, if such reply and documents stood already filed before the civil court concerned. In other words, the procedural rules will have no application to what is not instituted for the first time before the Tribunal and what is received from the competent civil court in terms of Section 31. Such transferred suits would then constitute a class by themselves to which the requirements of the form of the applications otherwise prescribed by the Procedure Rules, would have no application. Reliance by the defendants upon the provisions of Rule 10, qua suits that are transferred from the civil courts was thus misplaced.

8. Let us now examine the issue from the standpoint of Section 31 of the Act. A closer look Section 31(2)(b) which empowers the Tribunal to deal with the transferred suits or other proceedings, would show that the Tribunal is, while dealing with such cases, required to do so, "so far as may be" in the same manner, as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage as it may deem fit. The expression "so far as may be" appearing in Section 31(2)(b) would in my opinion imply that upon the transfer of any suit or proceeding to the Tribunal, the procedure which it 1998] JAY JEE SERVICE STATION V. SYNDICATE BANK (KAR.) 431 may follow would apply only to the extent it is relevant at that stage of the proceedings. Stated differently if the civil court had already covered certain ground, the Tribunal would be entitled to continue the said proceedings from that stage onwards no matter that the complaint filed in the suit does not strictly conform to the form prescribed for making an application or the contents it is required to contain. It would also mean that no matter that the complaint is not in the form prescribed for an application, the Tribunal shall proceed with the same as though it were an application filed in the prescribed form and deal with the same, in so far as may be in the same manner as it would do in respect of the applications

freshly instituted. Reference may in this connection be made to the second proviso to Section 19(2) of the Act, which substantially supports this line of reasoning for it excludes cases transferred to the Tribunal under Sub-section (1) of Section 51 from the requirement of a fee which may otherwise be payable on a fresh application.

9. The contention urged on behalf of the petitioners however was that the expression used in the section, namely, "a suit or proceeding, 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", must be interpreted to mean a single cause of action constituting the basis of the suit and not two or more causes of action which may have been clubbed together by the plaintiff as was indeed permissible under the Civil Procedure Code, while seeking a decree. When so viewed, suits in which the plaintiff had set up more than one cause of action and thereby taken the debt claimed to Rs. 10 lakhs or more, could not according to the counsel be within the comprehension of Section 31 so as to be transferable to the Tribunal.

10. The expression "cause of action" has not been defined either by the Act or the Procedure Rules framed thereunder. Even the CPC does not provide any definition for that expression. There is all the same a profusion of judicial authority as to the meaning that can be assigned to the expression. Generally speaking, the expression has been understood to mean the bundle of facts which the plaintiff must prove in support of his right to the judgment. The expression has a dual meaning, one relevant to the jurisdiction of the court and the other to the basis of the claim. When seen in the context of the basis of a claim the expression has a restricted meaning whereas if used in relation to the jurisdiction of the court, it enjoys a wider meaning. In the restricted sense, it includes facts, constituting infringement of the right and is, thus, the cause which is the foundation of the suit whereas in the wider sense it includes the facts constituting the right itself, (see *Jaharlal Pagalia Vs. Union of India* (UOI), .

11. My noble brother Raveendran J., also had an occasion to refer to the judicial pronouncement on the subject in *Smt. Gerty Suvarna and Another Vs. Union of India and Others*, where an objection regarding maintainability of an application before the Tribunal was raised in near similar circumstances on the basis of Rule 10 of the Procedure Rules. This court observed that the expression "cause of action" has different meanings in different contexts and in different circumstances. Its meaning may be restricted, wide, compendious, contractual and even contextual. The use of words, "single cause of action" in Rule 10 was held to be in the context of regulating the manner of filing the applications before the Tribunal for recovery of amounts due to banks and financial institutions and the words "seeking relief or reliefs based on more than a single cause of action" were held to have been used in relation to the basis of the claim and not the jurisdiction of the Tribunal. When seen in the light of the above, the expression "cause of action" used in Section 31, falls in the second category. The expression

has been used in that provision in the context of the jurisdiction of the Tribunal and not in the restricted sense in which it is used in Rule 10. The emphasis in Section 31 is on the "cause of action" being within the jurisdiction of the Tribunal which signifies that the expression has been used in the wider context of determining the jurisdiction of the Tribunal and not in the narrower sense of being the basis of the suit.

12. Three situations may arise in relation to the suits that are transferred in terms of Section 31, namely : (1) suits in which more than one cause of action have been joined by the plaintiff but the debt claimed on the basis of each one of such causes of action is within the jurisdiction of the Tribunal being more than Rs. 10 lakhs or such other amount as the Central Government may by a notification specify. In such cases, there would be no difficulty either in the transfer of the suits or trial thereof by the Tribunals for the debt claimed as also the cause of action are both within the jurisdiction of the Tribunal, if the same had arisen after the establishment of the Tribunals. Merely because the plaintiff had joined more than one cause of action in the suit each one out of which if the same had arisen after the establishment of the Tribunal, would be within the jurisdiction of the Tribunal, would not either render the transfer or the trial of the transferred suit by the Tribunal invalid, in the absence of any provision in the Act or the rules requiring the plaintiff or the Tribunal to split the causes of action for separate trials ; (2) the second category is of cases in which one of the causes of action joined by the plaintiff in the civil suit is within the jurisdiction of the Tribunal but the rest being for lesser amounts are not. Even in such cases in the absence of any provision which may require the Tribunal to reject the plaint or direct the splitting of the cause of action for separate trials, the transfer of the entire suit including the causes of action which have been joined and which may not otherwise have been within the jurisdiction of the Tribunal would be permissible. The third category comprises cases where the debts claimed on the basis of different transactions individually are for amounts less than the one prescribed u/s 1(4) of the Act, but cumulatively go beyond the amount prescribed by the said provision. The real difficulty is encountered only in this class of cases for it is here that not only does the expression "cause of action" appearing in Section 31 assume importance but even the question whether different transactions constitute one single cause of action arises for determination. A liberal interpretation notwithstanding, if what is joined in the suit are distinctly different causes of action each one of which is for a debt less than the amount prescribed u/s 1(4), such a suit may not be transferable simply because the total amount claimed is for an amount beyond the minimum. Even the widest of interpretations of the term "cause of action" cannot support the argument that the jurisdiction of the Tribunal to try the same should be determined by reference to the sum total of the claims based on all the causes of action available against the defendant no matter that each such cause of action is unconnected with the other and would not have been triable by the Tribunal if the same had arisen after its establishment. This is, however, subject to the

caveat, that the causes of action joined in the suit are different. This difference must be real and not just superficial. Just because the borrower has taken more than one facility or executed more than one set of documents may not be conclusive of the matter. Such transactions or series of transactions may be no more than links in the chain of an overall scheme which the bank or the financial institution may have agreed to or conceived in relation to a particular project or business. Whether or not, therefore, different facilities extended to the defendant would constitute different transactions independent of each other so as to give rise to different causes of action will have to be judged in the facts and circumstances of each case. It is too broad a proposition to say that execution of separate documents or grant of separate banking facilities can in no situation constitute one single cause of action. Take for instance, a case in which the bank or the financial institution grants a loan on the basis of a project report submitted to it for the purchase of land and-machinery. Any such loan may be a part of an overall or a broader financial scheme or arrangement, whereunder the bank may also undertake to grant an overdraft facility for enabling the entrepreneur to carry on his business or an advance by way of working capital. The two transactions even though apparently independent may have an intrinsic co-relation with each other for one may be granted for the success of the other. In any such situation just because two sets of documents have been executed or two transactions have taken place at two different points of time that may not by itself give rise to two causes of action. When viewed in the wider perspective such transactions may constitute one single cause of action capable of being brought before the Tribunal in a single action for recovery of the debt claimed. Suffice it to say that the question whether two or more than two different transactions constitute one cause of action shall have to be viewed in the context of the averments made in the plaint and the co-relation which is established between such transactions so as to give rise to a single cause of action. It is true that in Smt. Gerty Suvarna and Another Vs. Union of India and Others, dealt with by this court, the causes of action were held to be different by this court as different documents had been executed at different points of time in favour of the bank. But that was because there was no question of one facility granted to the petitioner having any connection with the other. One of the facilities was a housing loan whereas the other was a secured loan for the purchase of a car and thus wholly unconnected with each other. It was in that context that the two transactions evidenced by two sets of documents at two different points of time were considered to be independent of each other giving rise to different causes of action. A joint petition was all the same held maintainable because the security provided by way of a mortgage was common to the two transactions. The enforcement of one liability was held to be consequential to the other having regard to the provisions of Section 67A of the Transfer of Property Act, and therefore, permissible under Rule 10. That was also a case of fresh institution before the Tribunal and not a suit transferred from the civil court.

13. In the present two cases, the suit filed against the petitioner in W. P. Nos.

24613-14 of 1997, falls in the first category namely cases where both the cause of action joined in the suit (assuming that the transactions constituting the basis of the suit gave rise to different causes of action) are for amounts more than Rs. 10 lakhs and, therefore, would have been within the jurisdiction of the Tribunal if they had arisen after its establishment. The transfer of the said suit or its trial by the Tribunal cannot, therefore, be found fault with.

14. In so far as W, P. No. 21008 of 1997 is concerned, the total debt claimed in the same is Rs. 13,38,263.45 which has its genesis in two facilities granted to the petitioners, one by way of loan and the other by way of an over-draft facility. While the petitioners argued that the two facilities were independent of each other and constituted two distinct causes of action which taken independently would not have been within the jurisdiction of the Tribunal, the respondent-bank claims that the two facilities were granted to the same set of individuals against the same securities and on the same date. The Tribunal has on a consideration of the material on record, in that case come to the conclusion that both the loan transactions arise out of one security and having been given to the defendants on the same day constitute one single transaction and, therefore, one single cause of action which is within its jurisdiction. This finding proceeds on an appreciation of the facts and the circumstances in which the facilities were extended to the defendants/petitioners as indeed the question whether different banking facilities granted to a borrower constitute one or more than one transaction, is a question which would depend upon the facts of each case. I find no error in the view taken by the Tribunal to warrant interference. The transfer of the suit to the Tribunal and its trial is not in the circumstances legally bad.

15. In the result these writ petitions fail and are hereby dismissed with costs assessed at Rs. 1,000 in each case.