

(1999) 08 DEL CK 0129

In the Delhi High Court

Case No : CW 5164 of 1998 and CM 10211/98

J.U. Mansukhani and Co and Another

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Citation : (1999) 5 AD 435 : AIR 2000 Delhi 103 : (1999) 81 DLT 524 : (1999) 51 DRJ 95 : (1999) ILR Delhi 439 : (1999) 4 RCR(Civil) 505

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Rakesh Tikku, for the Appellant; K. Srinivas, for the Respondent

Judgement

S.K. Agarwal, J.

1.The petitioners are seeking quashing of the order passed on 21.8.1998 by Debt Recovery Tribunal, New Delhi (for short the Tribunal) declining to dismiss or reject the Original Application of respondent No.2 - Indian Bank (for short "the Bank") for a decree of Rs. 2,43,50,000/- (Rupees two crores forty three lakhs and fifty thousand only) against the petitioners and other respondents, instituted under the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 (for short the Act).

2.The Bank filed an Original Application against the petitioners (respondent No.1 and 2 in the Original Application) and others before the Tribunal for recovery decree of the above amount, inter alia, pleading therein:-

"(i) respondent No.1 through its partners approached the applicant Bank at its Jamshedpur, Bihar Branch for issuance of drafts on various dates;

(ii) that pursuant to the request of respondents Nos. 1 and 2 the applicant Bank at Jamshedpur, Bihar issued the following Bank drafts:-

S1. DD No. Date of Issue Amount 1. 032133 25.3.98 30,00,000/- 2. 032134 25.3.98 35,00,000/- 3. 032135 25.3.98 40,00,000/- 4. 032008 25.3.98

30,00,000/- 5. 194223 25.2.98 13,50,000/- and the said drafts were payable at the Service Branch of the applicant Bank at New Delhi.

(iii) That similarly respondent No.2 also requested the applicant Bank at its Jamshedpur, Bihar branch for the issuance of Bank drafts and got issued bank drafts Nos. 032136 dated 25.3.1998 for Rs.25,00,000/- and another draft No. 032137 dated 25.3.1998 for Rs. 50,00,000/- and the same were also payable at the Service Branch, New Delhi of the applicant Bank.

(iv) That the proceeds of the above drafts were received by the respondents through clearance by getting the same presented through respondents Nos. 3 and 4. As there was no suspicion the same were paid in due course of banking business.

(v) The said drafts were fraudulently obtained by respondent nos.1 and 2 in collusion with the Bank official.

(vi) That on reconciliation of the accounts it was found out that the respondents have not deposited the amount for getting issued these Bank drafts, and the payment of the same has resulted in overdraft.

(vii) That on receiving the information the applicant Bank contacted the respondents for the payment as the amount of the drafts but the respondents have failed to pay the same.

(viii) That the proceeds of the drafts is lying deposited in the accounts of the respondents bearing account Nos. 0231286004 of respondent No. 1, and account no.0400840008 of respondent no.2 being maintained with respondent No. 3 HDFC Bank Ltd."

3. After service of summons the petitioners filed an application praying for rejection of the Bank's Original Application, inter alia, alleging that the proceedings before the Tribunal were without jurisdiction: bank drafts in question were received by the petitioners from one Jai Prakash Singh of Money Multiplier Services (for short the MMS) in the normal course of their business and were deposited with the Housing Development Finance Corporation (HDFC) and Canara Bank (respondents No. 3 and 4) and thus they were bona fide purchasers: no document was produced by the Bank with their Original Application to prima facie establish that the petitioners had any business activity with them; the petitioners never requested the Bank to issue drafts in question. It was alleged that the averments made in the Original Application alone cannot form the basis of an action before the Tribunal and that the alleged transaction was not a "debt" within the meaning of Section 2 of the Act, which was legally recoverable on the date of institution .

4. The Bank filed a reply to above application stating that the demand drafts were got issued from their Jamshedpur Branch Bank without consideration in connivance of the petitioners; they directly or indirectly approached the Bank for issuance of the demand drafts on various dates; they were admittedly recipients

of the said drafts without any corresponding consideration to the Bank; they owned the said amounts to the bank and thus the relationship of debtor and creditor was established, and that the transactions for all intents and purposes is covered by definition of "Debt" given under the Act.

5. The Tribunal vide order dated 21st August, 1998 dismissed the application of the petitioners holding that the Original Application of the Bank before it was maintainable and it has the jurisdiction to try and decide the same.

6. Mr. Rakesh Tikku, learned counsel for the petitioners argued that u/s 17 of the Act Tribunal has jurisdiction and authority to entertain and decide applications of the Banks and other financial institutions, only for recovery of "debts due" to them. He relied on definition u/s 2(g) of the Act which reads as under:-

2. Definitions: In this Act, unless the context otherwise requires,-

(g) "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 institutions 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."

7. It was argued, that by virtue of the above definition, the banks and financial institutions can institute an application for recovery of the debt, only if the same, arises during the course of their business activity; that the Bank has not placed on record any document to demonstrate that the petitioners had entered into any business activity with them; and that the money held by the petitioners was in the nature of a trust and there was no legally recoverable debt. He relied on two decisions of this court reported *Oriental Bank of Commerce Vs. Sri Mohan Gupta* (62) 1996 DLT 229 and *Bank of India Vs. Vijay Ramniklal Kapadia & Ors.* 1997(3) 77.

8. Mr. K. Srinivas, learned counsel for respondent No. 2 argued (i) that the stand taken by the petitioners in the writ petition is inconsistent with the stand taken by them before the Tribunal. It was brought to our notice that in the writ petition it is stated that the money held by the petitioners is in the nature of a trust and as such all obligation which a trustee is liable in law to discharge have been cast on the petitioners: however in the application before the Tribunal it was pleaded by the petitioners that they were bona fide purchasers of the said drafts and had no notice of any defect in title and that the writ petition was otherwise not maintainable because of availability of an effective alternative remedy of appeal under the Act against any order passed by the Tribunal. In support of this submission reliance was placed on decision of this court in *M.C. Mittal Vs. Central Bank of India*, ;(ii) that the definition of the "debt" given in Section 2(g) of the Act is very wide and the Tribunal has jurisdiction to adjudicate and decide the application of the Bank and relied on the decision of Supreme Court in *United*

Bank of India Vs. The Debts Recovery Tribunal and Others, , wherein the Supreme Court rejected the similar contention to the effect that the plaintiff's claim is one for damages and compensation which would again be dependant upon the inquiry or receiving information from the defendants 2 and 3 with regard to the refund pay orders and the statement of accounts thereof. According to Mr.Gupta, howsoever wide the expression "debt" in Section 2(g) of the Act may be, it will certainly not encompass within itself the claim of the plaintiff-Bank, as there has been no borrowing from the plaintiff-bank by the defendant No. 1."

9. Law in this regard has been settled by the Supreme Court in Union Bank of India's case (supra), the relevant observations are as under:-

"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. With the aforesaid principle in mind, on examining the averments made in the plaint, we have no hesitation to come to the conclusion that the claim in question made by the plaintiff is essentially one for recovery of debt due to it from the defendants and, Therefore, it is the Tribunal which has the exclusive jurisdiction to decide the dispute and not the ordinary civil court....."

10. The use of the expression "any liability" or "any person" and other-wise throughout the section shows the legislative intent to provide the word "debt" with widest possible meaning. Issuance of the bank drafts is clearly the business activity of the bank. The essence of the definition of "Debt" in Section 2(g) of the Act is the existence of any liability founded on the allegation as due from any person; the creditor being a Bank or a financial institution or a consortium of the two; the liability may be in cash or otherwise; it may be secured or unsecured; it may be payable under a decree or order of any civil court or otherwise; the only rider being that the liability must be legally recoverable. The question whether the Tribunal has jurisdiction or not, at this stage, will have to be decided on the basis of the allegations made in the Original Application. In the said application, as noticed above there are allegations made on the basis of which, in view of what has been held in Union Bank of India's case (supra) by the Supreme Court, there is no manner of doubt that the same is triable by the Tribunal and for that reason there is no need to consider the other decisions cited at the bar.

11. We are of the considered view that there is no merit in the petition and the same is dismissed with no order as to costs.