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(1996) 07 KAR CK 0014

In the Karnataka High Court

Case No : CRP. 650 of 1996

K. Kunhambu and Another — APPELLANT

Vs

Vijaya Bank — RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 25, 3 (1)

Citation : (1996) ILR (Kar) 3244 : (1996) 7 KarLJ 94

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : K. Giridhar, for the Appellant; Viswajith Shetty, for the Respondent

Final Decision : Allowed

Judgement

Mohamed Anwar, J.—Heard the Learned Counsel for the parties.

2. The petitioners herein are the Judgment Debtors (JDrs. for short) in Execution Petition No. 94/92 pending on the file of the Court-below and the respondent Vijaya Bank is the Decree-Holder. This revision by the JDrs. is directed against the said execution proceeding filed against them by the respondent in the Court-below ie. the Learned Second Additional Civil Judge, Mangalore for recovery of decretal amount to the tune of Rs. 18,29,851-15 on the ground that in view of the relevant provisions of the ''Recovery of Debts Due to Banks and Financial Institutions Act, 1993'' (''the Act'' for short) the execution proceeding before the Court-below is not maintainable and that the respondent DHr. has to approach the Debt Recovery Tribunal constituted under the Act stationed at Bangalore for realisation of the said decretal amount.

3. Indisputably, the amount payable to respondent-DHr. by the petitioners under the said decree, which is a, money decree, squarely falls within the ambit of definition of ''debt'' contained in Sub-clause(g) of Section 2 of the Act. Admittedly, the Debt Recovery Tribunal has been established at Bangalore for the

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States of Karnataka and Andhra Pradesh by the Central Government with effect from 30.11.94 by a Gazette Notification issued u/s 3(1) of the Act. Section 17 thereof invests the Tribunal so established with the jurisdiction, power and authority to entertain and decide applications from Banks and Financial Institutions for recovery of debts due to them. Section 18 bars the jurisdiction of the Civil Courts in matters covered by Section 17. Section 31 relates to transfer of pending cases from particular Courts to the Tribunal. Section 25 envisages the mode of recovery of debt by Banks and Financial Institutions. It reads:

"Modes of recovery of debts:- The Recovery Officer shall, on receipt of the copy of the certificate under Sub-section (7) of Section 19, proceed to recover the amount of debts specified in the certificate by one or more of the following modes, namely:-

(a) attachment and sale of the movable and immovable property of the defendant:

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant."

Evidently, on a combined reading of the aforementioned relevant provisions it clearly transpires that the decretal amount payable under a money decree to any Bank or Financial Institution which is a debt as defined under the Act cannot be realised through regular Court and that the Decree-holder Bank or Financial Institution will have to approach the Tribunal established under the Act for recovery of the said amount from Judgment Debtor/Debtors.

4. In this regard Learned Counsel for respondent Sri. Viswajith Shetty brought to my notice a Circular No. RCC.No. 98/SO/95 dated 13.3.1995 brought out by the High Court of Andhra Pradesh issuing necessary instructions to all the Presiding Officers of the Civil Courts under the Control of High Court not to entertain and decide the suits and execution petitions where the amount of debt due to any bank or Financial Institution is Rs. 10,00,000/- and above and to transfer all such pending suits and execution petitions to the Tribunal, immediately. It is essential that similar circular be brought out by this Hon''ble High Court also giving similar directions to the Presiding Officers of the Civil Courts in Karnataka in the interest of effective implementation of the scheme of the Act, if such a circular is not yet issued. Registrar General of this Court shall take notice of this instruction.

5. In that view of the matter, the revision deserves to be allowed. Hence, the revision is allowed. The execution proceeding initiated by the respondent against petitioner in Ex.P.94/92 before the Court-below is quashed reserving liberty for the respondent to approach the Debt Recovery Tribunal, Bangalore for execution of the decree in question against the petitioner.

Parties to bear their own costs.

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