

(1999) 01 KAR CK 0056

In the Karnataka High Court

Case No : Civil Revision Petition No. 1865 of 1997

Karnataka Bank Limited, Holenarasipur

APPELLANT

Vs

S.N. Nanjappa and Another

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1 (4),
2 (g), 31 (1)

Citation : AIR 1999 Kar 256 : (1999) 98 CompCas 186 : (1999) 3 KarLJ 217

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri K. Raghavendra Rao, for the Appellant; Sri S.V. Narayana Murthy, for the Respondent

Judgement

1. Heard.

2. The petitioner is the decree-holder Bank and respondents are judgment-debtors 1 and 2 in Ex. No. 16 of 1995 wherein the Execution Petition is dismissed by the Executing Court by its impugned order dated 17-4-1997 made on I.A.VII u/s 151 of the CPC filed by respondents praying for its dismissal on the ground that the total figure of the amount recoverable under the decree in execution as on the date of the said application was exceeding Rs. 10 lakhs and, therefore, by virtue of sub-section (4) of Section 1 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("the Act" for short), the Court below ceased to have jurisdiction to recover the same from them.

3. In passing the impugned order reliance had been placed by the executing Court on a decision of this Court in K. Kunhambu and Another Vs. Vijaya Bank, . It is held therein that the Execution Petition filed in the Trial Court by any decree-holder Bank, Financial Institution for recovery of the decretal amount exceeding Rs. 10 lakhs does not lie before it and that the same shall have to be made before the concerned Debt Recovery Tribunal under the Act which alone has

jurisdiction to execute such, a decree.

4. Mr. K. Raghavendra Rao, learned Counsel representing petitioner's Bank argued assailing the validity of the impugned order. He has submitted that in the case in hand the total amount due under the decree in question as on the date when the execution petition was filed, was Rs. 9,07,360/-, which was indicated in the relevant column of the petition itself, and that, therefore, the Trial Court, in law, had the jurisdiction and was competent to proceed with the execution of the decree against respondents. He further submitted that the authority of this Court in the case of Kunhambu, supra, is distinguishable since in that case the execution petition itself was filed for recovery of the decretal amount which was more than Rs. 10 lakhs.

5. This contention of Mr. K. Raghavendra Rao is not successfully met with by respondents.

6. Mr. S.V. Narayana Murthy, learned Counsel for respondent 1 argued otherwise in support of the impugned order of the Court below. Substantiating his contention he submitted that the definition of "debt" under clause (g) of Section 2 of the Act squarely supports his case inasmuch as the current interest which accrued during pendency of the execution proceeding till the date of making the said I.A. VIII by the respondents when added to the decretal amount shown in the execution petition was undisputedly exceeding Rs. 10 lakhs and therefore by virtue of sub-section (4) of Section 1 the executing Court ceased to have jurisdiction to proceed further with the matter and the only option which was left open for it was to transfer the proceeding to the concerned Debt Recovery Tribunal u/s 31 of the Act.

7. For proper appreciation of rival contention put forward by both sides it is necessary to advert to the relevant provisions of the Act contained in sub-section (4) of Section 1, Section 2(g) and Section 31 thereof. Section 1(4) which deals with the pecuniary jurisdiction of the ordinary Civil Court as also that of the Debt Recovery Tribunal states.-

"1. Short title, extent, commencement and application.-

(1) xx xx xx xx. (2) xx xx xx xx. (3) xx xx xx xx. (4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify".

The term "debt" is defined by sub-clause (g) of Section 2 as under.-

"(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;"

8. The relevant portion of sub-section (1) of Section 31 which provides for transfer of pending cases from Civil Courts to the Tribunal established under the Act, reads:

"31. Transfer of pending cases.--(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this 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 on that date to such Tribunal:"

9. A combined reading of the aforequoted relevant provisions of the Act brings this legal position clearly to the fore that the quantum of debt which is material for the purpose of determination of jurisdiction or absence of jurisdiction of the regular Civil Court is that the debt which was due as when the cause of action for recovery thereof arose and for which the suit or proceeding was instituted by a Bank or Financial Institution or a consortium of Banks. Sub-clause (g) of Section 2 makes it further manifest that the cut of date for this cause of action is the date on which the plaint or the application (for execution of decree) is filed. Therefore, the current interest accrued on the creditor -Institution's claim during pendency of its such suit or proceeding (initiated by an application) has no role to play and is immaterial concerning the jurisdiction of the Civil Court or the Tribunal to proceed with the trial of the proceeding pending before it. It was as the date of the application made for recovery of the debt mentioned therein which the jurisdiction of the Court or the Tribunal assumes importance. Section 31 confirms this legal position stating that only such of the suit or proceeding pending before any Civil Court instituted by the creditor-Institution for recovery of the "debt" is required to be transferred to the concerned Tribunal established under the Act wherein the cause of action on which the claim was based is such that it would have been, if it had arisen after such establishment of the Tribunal, within the jurisdiction of that Tribunal. Therefore, the objection of Mr. S.V. Narayana Murthy, learned Counsel for respondent 1 is without legal force and substance.

10. The authority of this Court in the case of Kunhambu, supra, relied on by Mr. Narayan Murthy is obviously distinguishable as rightly submitted by Mr. K. Raghavendra Rao. In that case of Kunhambu, the execution petition was filed by the decree-holder Bank in the Trial Court for recovery of the total amount of Rs. 18,29,851.15 shown therein as payable under the Decree under execution. In other words the total amount of "debt" as on the date of cause of action when the said petition was made exceeded Rs. 10 lakhs with the result by virtue of sub-section (4) of Section 1 the debt amount as on that date of cause of action was beyond the limit of pecuniary jurisdiction of the Trial Court which passed the decree and, therefore, it had no jurisdiction to execute the same. In the instant

case it is not so. The total amount of debt as on the date of making the execution petition in the case on hand was admittedly less than Rs. 10 lakhs for recovery of which the petition was filed. As held, the accrual of current interest during pendency of the execution proceeding before the Court below was immaterial, and, therefore, it did not alter the situation. Therefore, the impugned order to the contrary of the executing Court is an erroneous order and is not sustainable in law. Hence the revision is entitled to succeed.

11, For the reasons aforesaid, the Revision is allowed. The impugned order dated 17-4-1997 of the Court below passed on I.A. VIII under Ex. 16 of 1995 is set aside and the matter is remitted to it with a direction to proceed further therein in accordance with law.

Parties to bear their own costs.