

(2004) 01 BOM CK 0074

In the Bombay High Court

Case No : Appeal No. 622 of 2000 in Notice of Motion No. 1921 of 2000 in Suit No. 1990 of 2000

Krishna Filaments Ltd.

APPELLANT

Vs

Industrial Development Bank of India and Others

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Banking Regulation Act, 1949 — Section 5, 6
Civil Procedure Code, 1908 (CPC) — Section 9A
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 2

Citation : (2005) 1 BC 317 : (2004) 2 BomCR 16 : (2004) 118 CompCas 356 : (2004) 2 MhLj 823 : (2004) 53 SCL 79

Hon'ble Judges : R.S. Mohite, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : V.C. Kotwal, P.K. Samdani and Pratik Sekseria, instructed by Little and Co, for the Appellant; Ravi Kadam, Chetan Kapadia and Rajesh Sawant, instructed by K. Ashar and Co. for respondent Nos. 1 and 4, G.E. Vahanvati, General, Birendra Saraf and Nita Gagalani for respondent No. 2 and Mridula Kadam, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—This is an appeal by original defendant No. 1 against an order dated July 6, 2000, passed by a single judge of this court dismissing the notice of motion taken out by the said defendant No. 1. The said notice of motion prayed for the dismissal of the suit filed by respondent No. 1 herein (original plaintiff) by contending that this court has no jurisdiction to try the suit and/or to pass any appropriate orders therein. The appellants and respondents Nos. 2 to 5 are defendants in that suit (though respondent No. 5 has been subsequently deleted for the purposes of this appeal).

2. The short facts leading to this appeal are as follows :

The appellant is a public limited company. On April 28, 1997, it came out with a

public issue of 33,45,000 secured optionally fully convertible debentures (OFCD) of Rs. 200 each at a discounted price of Rs. 160. These debentures were issued to banks, mutual funds, financial institutions, including respondent No. 1 and individual subscribers herein some time in June, 1997. On October 23, 1997, a debenture trust deed was executed between the appellants and respondent No. 1 appointing respondent No. 1 as the trustee for the debenture holders in respect of the above debentures issued by the appellants. The trust deed recorded the terms and conditions of this trusteeship including the remuneration therefor. Accordingly a trusteeship agreement was executed between the appellants and respondent No. 1 on October 24, 1997.

3. Subsequently, a portion of these debentures of aggregate nominal value of Rs. 4,65,62,600 was converted into equity shares. The balance non-convertible portion aggregating to Rs. 62,24,37,400 was to be redeemed in three instalments, i.e., on June 17, 2000, June 17, 2001, and lastly on June 17, 2002, respectively. Since there was default in honouring the first instalment itself, respondent No. 1 claimed the outstanding principal amount i.e., Rs. 62,24,37,400 along with interest thereon and remuneration of Rs. 55,252 and filed a suit to claim the total amount of Rs. 79,92,08,074. They also prayed for enforcement and the realisation of the securities charged to the debenture holders. They took out a notice of motion bearing No. 1649 of 2000 for interim reliefs. A reply was filed by the appellants thereto. At that stage, the present notice of motion bearing No. 1921 of 2000 was taken out by the appellants on July 3, 2000, raising a preliminary issue of jurisdiction u/s 9A of the Civil Procedure Code, 1908 (as applicable in the State of Maharashtra), contending that this hon'ble court has no jurisdiction to try the said suit. It was submitted that the suit was filed for recovery of the amounts above Rs. 10 lakhs allegedly due to the debenture holders and respondent No. 1 and other banks and financial institutions and the said suit was barred in view of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDB Act"). The motion was opposed by respondent No. 1 herein by filing a reply and the matter was argued, and the learned single judge passed an order on July 6, 2000, dismissing the motion holding that this court does have jurisdiction to try and entertain the suit. It is against this order that the present appeal is filed.

4. It was principally contended on behalf of the appellants that the suit claim was essentially a claim to recover a "debt" falling within the definition of "debt" u/s 2(g) of the RDB Act. It was submitted that since the amount had become payable to respondent No. 1 during the course of its business activities, the concept of debt has to be given a wider meaning to give full force to the purpose of the Act. A Tribunal had been specifically constituted under the provisions of the RDB Act to speedily recover debts due to banks and financial institutions. The Tribunal had been conferred with the jurisdiction and the powers and authority for that purpose u/s 17 of the said Act and, therefore, the bar of jurisdiction created u/s 18 of the RDB Act will have to be given full force. To support this

submission, a necessary reference was made to the frame of the suit and to the nature of the rights of the debenture trustees as existing under the trust deed in the present case. It was therefore submitted that the learned single judge had erred in coming to the conclusion that this court continued to have jurisdiction to try and decide the suit.

5. As against this submission of the appellant, it was submitted on behalf of respondent No. 1 that one will have to look at the provisions of Sections 2(g), 17 and 18 of the RDB Act in their proper context. One will have to keep in mind the purpose for which the Act was passed and the Tribunals thereunder were created. For that purpose, one will have to see the Statement of Objects and Reasons leading to the passing of the enactment as also the reports of the Committees which were constituted by the Government earlier to look into the problems arising out of the pendency of bank suits and a large portion of their funds being locked up in unproductive assets. It was submitted that the Tribunals had to first look into the problems of huge arrears of bank suits for which they were constituted. The cause of action leading to the filing of the present suit is arising out of the breach or violation of the provisions of the trust deed by the appellant and, therefore, the suit was filed by respondent No. 1 in its capacity as a trustee for the debenture holders. It is not a suit by a bank or a financial institution for recovery of the debt due to it for which purpose a separate jurisdiction is created in favour of the Tribunals u/s 17 of the RDB Act and the cognisance of such suits by the other courts is barred u/s 18 of the RDB Act. It was therefore submitted on behalf of respondent No. 1 that the order passed by the learned single judge was the correct one and there was no need to interfere with the same.

6. Thus the main point for determination arising in this appeal is whether the suit claim is for recovery of a debt due to a bank or a financial institution. An answer on this point will decide whether this court has jurisdiction to try and entertain this suit.

7. Before we deal with the rival submissions on these points, it would be desirable to refer to the relevant provisions of the RDB Act :

(i) Firstly, as the preamble of this Act declares, it is an Act "to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto".

(ii) Thereafter, Section 1(4) of the Act lays down the application of the Act:

"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."

(iii) Section 2(g) defines what is a "debt" under this Act:

"debt means any liability (inclusive of interest) which is claimed as due from any person by a bank or 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 institutions or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."

(iv) Section 17 gives the jurisdiction of the Tribunal:

"17. Jurisdiction, powers and authority of Tribunals.--(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.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

(v) Lastly, Section 18 provides for bar of jurisdiction and it reads as follows :

"18. Bar of jurisdiction.--On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers, authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

Submissions on behalf of the appellants :

8. Respondent No. 1--IDBI, which is the plaintiff, is a body corporate constituted under the Industrial Development Bank of India Act, 1964 (hereinafter referred to as "the IDBI Act"). In view of Section 34 of the IDBI Act, nothing contained in the Banking Regulation Act, 1949, except Section 34A and Section 36AD thereof, shall apply to the IDBI. Therefore, respondent No. 1 is not a banking company within the meaning assigned to it u/s 5(c) of the Banking Regulation Act, 1949 or Section 2(e) of the RDB Act and also not a bank as defined u/s 2(d) of the RDB Act. It is however a financial institution as defined u/s 2(h)(i) of the RDB Act inasmuch as it is a public financial institution within the meaning of Section 4A of the Companies Act, 1956. Therefore, inasmuch as the RDB Act covers banks and financial institutions, respondent No. 1 is covered thereunder. Section 9 of the IDBI Act lays down the business of the Development Bank (i.e., IDBI). This section lays down the kinds of business which IDBI may carry on and transact. Section 9(1)(gc) thereof provides for the following permissible business :

"Acting as the trustee for the holders of debentures or other securities."

9. Thus, it is completely legitimate for respondent No. 1 to act as a trustee for the debenture holders as in the present case.

10. The appellant is defendant No. 1 in the suit. It is the party from whom money is due to respondent No. 1, and respondents Nos. 2 to 5 (original defendants Nos. 2 to 5) are parties who may have an interest in part or in whole of the assets of the appellant which are mortgaged, hypothecated/ charged in favour of respondent No. 1. When we see the prayers of the suit, prayer (a) is for claiming an amount of Rs. 79,92,08,074 as stated above. Prayer (b) is for a declaration that the dues of respondent No. 1 as set out in prayer (a) are fully secured by valid and subsisting mortgage of immovable properties. Prayers (c) and (d) are for enforcing the securities of mortgage by selling the immovable properties, and prayer (g) is for distribution of the amount recovered from the sale. Mr. Kotwal, learned senior counsel appearing for the appellants, submits that the present suit is essentially between respondent No. 1 on the one hand and the appellants on the other. The debenture holders were not parties to the suit nor were they parties to the debenture trust deed executed between the appellant and respondent No. 1, and which document had led to the filing of the suit. Under Clause (4) of this debenture trust deed dated October 23, 1997, the repayment in respect of the debentures was secured by mortgage and charge in favour of the trustees on all the company's immovable and movable properties. There was no mortgage in favour of the debenture holders. Clause (2) of the trust deed contains the covenant to pay the principal amount of the debentures and the premium payable on redemption with interest to the debenture holders. However, no right in favour of the debenture holders was recorded authorising them to call upon the appellants to make the payment. That authority has been restricted only in favour of the debenture trustees. This Clause (2)(ii) of the debenture trust deed reads as follows :

"2. Amount of debenture and covenant to pay principal and interest,--...

(ii) The company covenants with the trustees that it shall pay to the debenture holders the principal amount of the debenture and premium payable on redemption thereof, if any, on the date mentioned in financial covenant and condition No. 3 and shall also pay interest (including liquidated damages on default amounts where applicable) on the debentures in accordance with the financial covenant and condition No. 2 :

Provided that if so called upon by the trustees, the company shall make payment as aforesaid to or to the order of or for the account of the trustees at Mumbai, and such payment shall be deemed to be in protanto satisfaction of the aforesaid covenant of the company to make such payments to the debenture holders."

11. Thus, if there is any default in payment to the debenture holder, he cannot get the money either from the appellant or from respondent No. 1, but he will have to wait until respondent No. 1 files a suit and recovers the amount for him. The fourth schedule to the debenture trust deed contains a form of the debenture certificate. The form incorporates the following clause at the end of it:

"The trustees will act as trustees for the holders for time being of the debentures

(hereinafter referred to as debentures holders) in accordance with the provisions of the trust deed whereby all remedies for the recovery of the principal amount and interest are vested in the trustees on behalf of debenture holders. The debenture holders are entitled to benefit of, are bound by and are deemed to have notice of all provisions of the trust deed."

12. Thus, the remedies of the debenture holders are vested in respondent No. 1 and they will have no independent remedies. Of course under Clause 18 of the third schedule (which contains the financial covenants and conditions) it is provided that where the holders of debentures representing % of the nominal amount of the debentures request the trustees, the trustees are required to enforce the repayment by instituting appropriate proceedings. However, if they fail to do so, the procedure for the removal of the trustees is cumbersome. They can be removed only by a special resolution under Clause 39(b) of the trust deed which resolution requires 75 per cent, of the voters to vote for that purpose as seen from Clause 22(vi) read with Clause 23 of the fifth schedule to the trust deed (which provides for the meetings of the debenture holders).

13. Therefore, having cited these relevant clauses, Mr. Kotwal submitted that the present suit was for enforcing a liability by a financial institution during the course of its business activities undertaken by it under the law for the time being in force. It was therefore a suit to recover a debt within the meaning of Section 2(g) of the RDB Act. He submitted that the definition of "debt" u/s 2(g) was not restricted to merely the claims arising out of banking as defined u/s 5(b) of the Banking Regulation Act, 1949, which section defines "banking" to mean accepting for the purposes of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawal by cheque, draft, pay order or otherwise. The definition of "debt" under the RDB Act included claim for any liability arising during the course of any business activity undertaken by banks or financial institutions under the law for the time being in force. As far as various forms of business which a banking company may engage in are concerned, they are laid down in Section 6 of the Banking Regulation Act, 1949. Mr. Kotwal submitted that any claim arising out of those business activities would be a claim for the recovery of debts. He emphasised the fact that the definition was not restricting claims for debts to any money, but was encompassing within it any claim arising out of any such liability.

14. Mr. Kotwal then referred to the judgment of the apex court in the case of Allahabad Bank Vs. Canara Bank and Another, . That was a matter wherein the question with respect to jurisdiction of the Debt Recovery Tribunal (DRT) and Recovery Officer vis-a-vis the company court came up before the apex court. The Supreme Court held in that matter that even when a winding up petition is pending or a winding up order has been passed against a debtor company, the adjudication of liability and execution of the certificate in respect of the debt payable to the banks and financial institutions are respectfully within the exclusive jurisdiction of the DRT and the Recovery Officer. In such cases, the

company court's jurisdiction under Sections 442, 537 and 446 of the Companies Act stands ousted. The Supreme Court applied the principle of purposive interpretation for considering the provisions of the Companies Act and held that the jurisdiction and powers of the company court had to be excluded in view of the superior powers of the Debt Recovery Tribunal. Mr. Kotwal emphasised paragraphs 20, 22 and 25 of the said judgment to submit that no other court can go into the questions of adjudication of liability and recovery of the amount which were within the exclusive jurisdiction of the Tribunal. This judgment undoubtedly indicates the approach of the Supreme Court. However, in the present case, we are concerned with the question as to what constitutes a debt in the context of a suit by a debenture trustee, for which we will have to look into the provisions and the facts of the matter as they stand. Mr. Kotwal then referred to the judgment of the apex court in the case of *United Bank of India Vs. The Debts Recovery Tribunal and Others*, . That was a matter where a suit for damages and compensation was filed by a bank and the amount was yet to be quantified. The apex court in the facts of that case held that on looking at the plaint as a whole, the suit was for recovery of a debt due to the bank. It is however material to note that this judgment dealt with the definition of "debt" as it stood prior to the amendment thereof which came into force with effect from January 17, 2000, by virtue of Act No. 1 of 2000. In the present matter, we are concerned with the amended definition. However, what is material for our purpose is the dicta of the court in para. 15 of that judgment where the court observed as follows (page 608 of Comp Cas):

"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."

15. To counter the submission that the money claimed in the present matter belonged to the debenture holders, Mr. Kotwal relied upon a judgment of the Privy Council in the case of AIR 1931 196 (Privy Council) , which was a judgment in the context of a will and law of limitation. In that context, the Privy Council observed as noted at page 202 of the report :

"The trustee is, in their Lordships opinion, the "owner" of the trust property, the right of the beneficiary being in a proper case to call upon the trustee to convey to him."

16. We do not think that there is any similarity between the situation before the Privy Council and the present one.

Submissions on behalf of the respondents :

17. Mr. Kadam, learned counsel for respondent No. 1, submitted that if we look to the relevant clauses of the trusteeship deed and the agreement, even as

pointed out by Mr. Kotwal, it would be seen that the role of respondent No. 1 is only that of a facilitator. Respondent No. 1 comes into the picture so that in view of its support various persons can gather confidence to contribute to the debentures and this helps the company which is raising the capital. On the other hand, in the event there is any default, the debenture trustee sees to it that the amounts invested are recovered. There is no money of respondent No. 1-bank invested by it in this transaction. As far as its own claim is concerned, it is only towards the remuneration and the interest thereon. The principle contribution was from the debenture holders to the company which was raising the capital and it is essentially their claim which is being canvassed by respondent No. 1. It is their money which is principally at stake. If there is no default by the company or where the payment is made to the debenture holder regularly, the bank does not come in the picture. In a given case, suppose the company returns the principal amount, then the debenture holder cannot say that he wants the money to be retained by the company and wants to receive the interest for five years. Similarly, if the debenture holders so opt, the entire amount can be converted into shares and the prospectus governing the public issue of the OFCDs provided for the conversion thereof. Thus, in either of the two cases, namely in the event of repayment or in the event of conversion, the debt can get extinguished and the bank will have no role to play. The money claim or the liability arising is not that of the bank or of a financial institution.

18. Then, it is also possible that for different series of debentures, there can be different debenture trustees and until 1993 it was permissible for anybody to be debenture trustees. After the Securities and Exchange Board of India (Debenture Trustees) Rules, 1993, coming into force, under Clause 7 thereof the eligibility for being debenture trustees is restricted only to four bodies. The said clause reads as follows :

"(7) Eligibility for being debenture trustee.--No person shall be entitled to act as a debenture trustee unless he is either :

- (a) a scheduled bank carrying on commercial activity ; or
- (b) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 ; or
- (c) an insurance company ; or
- (d) body corporate."

19. Even under this rule, an insurance company or a body corporate can also be a debenture trustee.

20. Then, it is material to note that a bank can be a trustee for any purpose. Thus Clauses (h) and (i) of Section 6 of the Banking Regulation Act provide for the following businesses, which a banking company may undertake :

"6. Forms of business in which banking companies may engage.--(1) In addition

to the business of banking, a banking company may engage in any one or more of the following forms of business, namely,-- . . .

(h) undertaking and executing trusts ;

(i) undertaking the administration of estates as executor, trustee or otherwise."

21. A bank can be a trustee for any purpose, for example to collect rent. In a trust like that, it will be collecting accretions for the property. Similarly when it is an executor under a will, it would be collecting the amounts due to the estate. These amounts cannot be said to be any liability which is claimed by a bank and, in any case, it cannot amount to recovery of debt due to a bank within the meaning of Section 17 of the RDB Act. Any such interpretation would mean that all such claims, where the bank is acting on behalf of somebody else, whether to collect the rent for a property or to recover the amount due to an estate, would go to the Debt Recovery Tribunal. Mr. Kadam submits that this was not the intention while passing the RDB Act.

22. Then it was pointed out that a "debenture" is defined u/s 2(12) of the Companies Act, 1956, to include debentures, stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not. "Black's Law Dictionary was referred to wherein a "debenture" is defined as an instrument acknowledging a debt. That is also the view taken by a Division Bench of this court in the case of Laxman Bharmaji v. Emperor [1946] 16 Comp Cas 31; AIR 1946 Bom 18, and also by a Full Bench of the Karnataka High Court in Chief Controlling Revenue Authority Vs. Manager, State Bank of Mysore and Others, . Once it is held that it is an instrument acknowledging a debt, then comes the question--debt to whom ? The answer will have to be of course debt to the debenture holders and not to the debenture trustees.

23. Mr. Kadam then referred us to the Report of the Committee on the Financial System which was set up by the Central Government under Shri M. Narasimham, paragraph 16 of the Report reads as follows See [1992] 73 Comp Cas 69 :

"Banks, at present, experience considerable difficulties in recoveries of loans and enforcement of security charged to them. The delays that characterise our legal system have resulted in the blocking of a significant portion of the funds of banks and DFIs in unproductive assets, the value of which deteriorate with the passage of time. The Committee, therefore, considers that there is urgent need to work out a suitable mechanism through which the dues to the credit institutions could be realised without delay and strongly recommends that a Special Tribunal on the pattern recommended by the Tiwari Committee on the subject be set up to speed up the process of recovery. The introduction of legislation for this purpose is long overdue and should be proceeded with immediately."

24. He also referred to the other relevant paragraphs of the Report including recommendation No. 3 in Chapter V of the Report.

25. The Narasimham Committee's Report and the Tiwari Committee's Report

ultimately led to the passing of the RDB Act. The Statement of Objects and Reasons See [1993] 78 Comp Cas 97 of this Act reads as follows :

"STATEMENT OF OBJECTS AND REASONS

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981 a Committee under the chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on September 30, 1990, more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs. 5,622 crores in dues of public sector banks and about Rs. 391 crores of dues of financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill."

26. Mr. Kadam, therefore, submitted that when one wants to know the intention of the Legislature, one has to look at the circumstances under which the law was enacted as also observed by the apex court in paragraph 15 in U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, . In that matter, the question came up whether the traders, who have properties in the cities but who do not have lands in the villages, would come within the definition of "landless persons" and obviously the answer was no. Mr. Kadam referred to a judgment in the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, . That was a matter wherein the question came up as to whether the phrase "any person" occurring in the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947, would mean anybody and everybody in the world. The question was whether the dispute in relation to a person, who is not a workman within the meaning of the Act, would still fall within the scope of

Section 2(k). The court noted that the definition had three parts; firstly there had to be a real or substantial dispute, secondly the subject-matter must relate to either of the two matters, employment or non-employment or terms of employment or conditions of labour and this has to be of any person. The court held that where the person was of a category altogether different from the workmen concerned and the workmen and the establishment had no direct or substantial interest in his employment or non-employment, it could not be said that such a person would be a workman within that definition. In that context, the court observed :

"The definition clause must be read in the context of the subject matter and the scheme of the Act and consistently with the objects and other provisions of the Act."

27. The court quoted from Maxwell on Interpretation of Statutes (ninth edition) and observed :

"It is well-settled that the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."

28. Mr. Kadam therefore submitted that the definition of "debt" under the Act has to be read in the context of the statute and the purpose for which it is enacted. It is true that the definition of "debt" has a wide sweep, but it is to be seen that it is a debt claimed by a bank or a financial institution. Section 17, which lays down the jurisdiction of the Tribunal, in terms says that it is constituted for recovery of debts due to banks and financial institutions. The present suit is principally not for recovery of any amount due to the bank. It is essentially a suit for recovery of the amounts due to the creditors of the company. Respondent No. 1 is only a facilitating financial institution though it is also claiming the remuneration meant for it which is absolutely a paltry amount. The claim for remuneration is an incidental prayer, the principal claim being the amount meant for the debenture holders and therefore the suit would not come within the compass of either Section 2(g) or Section 17 of the RDB Act.

29. Mr. Vahanvati, learned Advocate General appearing for respondent No. 2, supported the submissions of Mr. Kadam. He submitted that the Act was passed to establish the Tribunal for expeditious adjudication and recovery of debts due to banks and financial institutions. The forum was not meant to prosecute the claims of others. u/s 18 of the Act, it is only the matters which are specified in Section 17, which are barred from the jurisdiction of the civil court and Section 17 in terms referred to the recovery of debts due to the banks and financial institutions. He submitted that as far as the debentures are concerned, there is no precise definition of debentures and pointed out that even in Halsbury's Laws

of England, a "debenture" is defined as a document which either creates or acknowledges a debt. In the present case, the debt was owed to the debenture holders and not to the debenture trustees. The learned Advocate General also submitted that the phrase "during the course of any business activity" occurring in Section 2(g) of the RDB Act is essentially an explanatory one and could not be read as an expanding one. He referred to a judgment in the case of Dhruv Green Field Ltd. Vs. Hukam Singh and Others, to submit that the jurisdiction of civil courts to try all suits of a civil nature u/s 9 of the CPC is a very expansive jurisdiction and that the exclusion of the jurisdiction of civil court is not to be easily inferred. He therefore submitted that the order passed by the learned single judge was correct one and there is no need to interfere with it.

30. We have considered the rival submissions carefully. In this matter, we are concerned with the points as to whether the suit claim can be said to be one for a "debt" within the meaning of the RDB Act and due to a bank or a financial institution. Now, as laid down in the United Bank of India Vs. The Debts Recovery Tribunal and Others, in the context of this very RDB Act in ascertaining the question whether any particular claim would come within the purview of the Tribunal, it is imperative that the entire averments made by the plaintiff in the plaint have to be looked into. That the plaintiff in this proceeding (i.e., respondent No. 1 herein) is a financial institution is an accepted position. It has acted as a trustee for the subscribers to the debentures of the appellant-company. Respondent No. 1 has filed the suit in that capacity to recover an amount of Rs. 79,92,08,074 on the date of filing of the suit with further interest thereon at the contractual rates and other charges from April 1, 2000, till payment and/or realisation. The principal outstanding amount of the debenture holders out of this claim amount is Rs. 62,24,37,400 and the remuneration claimed by respondent No. 1 for its services as per the trust deed is Rs. 55,252 which is not even 0.1 per cent, of the principal amount. Thus there is no dispute that practically the entire claim is on behalf of the debenture holders for the amounts that they have subscribed to the debentures. The amount claimed (except the paltry amount of remuneration) is undoubtedly not meant for respondent No. 1 financial institution, but is due to the subscribers of the debentures. The other prayers in the suit are for enforcing the security of mortgage by selling the immovable properties and for distribution of the amounts recovered from the same. It was submitted that the debenture holders were neither parties to the debenture trust deed nor were they plaintiffs. It was pointed out that there was no mortgage created in their favour nor had they any right to call upon the company to make the payment. Thus, it was submitted that they do not have any independent remedy though of course on 3/4ths of them coming together they can call upon the trustees to take appropriate action in the event of default and by a resolution of 3/4ths they can remove the trustees if the trustees do not discharge their duties properly. It was therefore submitted that the debenture holders had hardly any effective right.

31. On the other hand, it was pointed out that the fact remains that the amount

contributed to the debentures was that of the subscribers and the debenture trustees had an obligation to act faithfully. It was submitted that this arrangement was made principally to secure the capital required by the company. At the same time, it was not required to face a litigation by each and every debenture holder. On the other hand, the debenture holders were given a protective mechanism by mortgaging the property of the company to the financial institutions and giving them the power, impliedly coupled therewith a duty to act in the interest of the debenture holders. In the present case, the predominant debenture holders were either banks or financial institutions or mutual funds or insurance companies. Respondent No. 1 was acting on their behalf. Having considered the kind of arrangement that is created, it is very clear that though certain rights and responsibilities are given to the debenture trustees, that does not mean that they become the owners of the amounts contributed. They continue to remain trustees and the amounts contributed continue to be the claims of the contributors. There can be no doubt that the suit is not for recovery of any debt due to a financial institution. An emphasis was led on behalf of the appellant on the aspect as to who has lodged the claim in the suit and on a part of the definition of "debt" u/s 2(g) of the RDB Act which states that it is a liability claimed by a bank or a financial institution. It was also emphasised that the transaction has arisen during the course of a business activity which is undertaken under a law for the time being in force. As far as this aspect is concerned, there can be no dispute about this. However, if the phrase "any liability claimed by a bank or a financial institution" is read to mean any claim by such a body even for others, then in that case all sorts of claim by such bodies would get covered under this definition. It was, therefore, rightly emphasised on behalf of respondent No. 1 that u/s 6(h) of the Banking Regulation Act undertaking and executing trusts and Section 6(i) thereof undertaking the administration of estates as executor, trustees or otherwise is a permissible business for the banking companies. Thus, if a bank is collecting rents as a trustee or if it is an executor under a will and it would be collecting the amount due to the estate, such claims would also come under the definition of a "debt".

32. Therefore, it would become relevant to examine as to what was the intention in creating the Tribunal. Was it created as a forum for all sorts of claims by banks and financial institutions or whether it was meant for claims where the recovery was due to the bank or financial institution ? The reference to Maxwell on Interpretation in the judgment of the apex court in the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, is quite apt in this behalf. There the apex court has emphasised that the words of a statute are to be understood in the sense in which they best harmonise with the subject or the Act and the object which the Legislature had in its mind. It is not the grammatical or the popular sense of the words which is material, but the subject of the occasion for which they are used and the object which is sought to be achieved. If we look at the Act, the preamble thereof itself declares that it is

enacted to establish the Tribunals for expeditious adjudication and recovery of debts due to the banks and financial institutions. The phrase "debts due to banks and financial institutions" also occurs in Section 17 of the RDB Act. Therefore, when Section 2(g) uses the phrase "any liability claimed by a bank or a financial institution", it will have to be read as a liability claimed by the bank on its own behalf and for itself. Otherwise, as stated above, all other types of suits filed by banks to recover rents and accretions to the estate as executors will also get covered.

33. To further understand the intention of the Legislature, if we look to the Reports of the Committees cited before us and the Statement of Objects and Reasons, it is clear that the Legislature was faced with the problem of large number of bank suits pending wherein Rs. 5,622 crores of the public sector banks and Rs. 391 crores of the financial institutions were blocked as on September 30, 1990. The Reports of the Committees and the Statement of Objects and Reasons emphasise that a separate Tribunal to recover these amounts was required to be set up so that these funds are realised for productive purposes. These documents do not in any way emphasise the role of the banks in discharge of their other activities. Besides, just as banks can be debenture trustees, under the SEBI Regulations referred to above, even the insurance companies or body corporate can be debenture trustees. Similarly, just as banks can take the responsibility of administration of estate as executors, trustees or otherwise, other individuals and body corporate can as well take such responsibility. Suits and claims by such other organisations and individuals for administration of estate as executor, trustees or otherwise would go to the normal civil courts. The Legislature has not enacted that it wanted to treat suits by banks and financial institutions for such purpose differently only because the claims were by banks and financial institutions. The intention as seen from all the aforesaid documents in setting up of the Tribunals was only to release the blocked assets of the banks. From this point of view, the phrase "any liability claimed by a bank or a financial institution" occurring under the definition of a "debt" u/s 2(g) will have to be read down to mean any liability due to a bank or a financial institution. That is also clear when we read Section 17 of the RDB Act and the jurisdiction thereunder is clearly restricted for recovery of debts due to banks and financial institutions.

34. Coupled with Section 17, we have Section 18 which creates the bar of jurisdiction. Whenever there is any such bar of jurisdiction, the apex court has laid down that it has to be read strictly. As rightly emphasised by the learned Advocate-General and as held in *Dhruv Green Field Ltd. Vs. Hukam Singh and Others*, by the apex court, the exclusion of the jurisdiction of the civil courts is not to be easily inferred. That has been emphasised once again by the apex court very recently in the case of *Ramesh Chand Ardawatiya Vs. Anil Panjwani*, the court observed as follows ;

"Where there is a Special Tribunal conferred with jurisdiction or exclusive

jurisdiction to try a particular class of cases even then the civil court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the civil court is not to be readily inferred. (see Dhulabhai and Others Vs. The State of Madhya Pradesh and Another,)."

35. In the facts of the present case, we cannot take a view that jurisdiction of this court is excluded.

36. For the reasons stated above, the claim of respondent No. 1 cannot be said to be for recovery of a debt due to a financial institution within the meaning of the term "debt" under the RDB Act. We cannot hold that the suit for recovery of these amounts would amount to an application for recovery of debts due to a financial institution u/s 17 of the RDB Act or that this court will have no jurisdiction to try and entertain the suit. We answer the points which arise for determination accordingly. We find no error in the conclusion reached by the learned single judge. The appeal is therefore dismissed with costs.