

**(2000) 11 MAD CK 0080**

**In the Madras High Court**

**Case No :** Writ Petition No's. 4942 and 6381 of 1999 and W.M.P. No's. 7145 and 9191 of 1999

K.V.S. Salammal and Others

APPELLANT

Vs

Debt Recovery Tribunal and Another

RESPONDENT

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**Date of Decision :** 07-11-2000

**Acts Referred:**

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31

**Citation :** (2001) 106 CompCas 691

**Hon'ble Judges :** K. Narayana Kurup, J;E. Padmanabhan, J

**Bench :** Division Bench

**Advocate :** J. Raja Kalifulla, for the Appellant; Jayesh B. Dolia, for Aiyar and Dolia, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Narayana Kurup, J.—The legal heirs of the sole defendant in C.S. No. 107 of 1998 of this Court, which has since been transferred to

the Debt Recovery Tribunal, Chennai, are the writ petitioners in both the writ petitions.

2. The suit in question was filed by the second respondent/Indian Bank in the year 1993 as C.S. No. 107 of 1993. During the pendency of the suit

the sole defendant died on June 14, 1993, even before the service of summons. Even though the sole defendant died, the legal heirs were not

impleaded and the suit was lying on the original side of this Court and eventually, it abated on November 13, 1993. Meanwhile, the Recovery of

Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993), was notified on June 24, 1993, and the Debt Recovery Tribunal for

Chennai came into force on November 1, 1996. After the constitution of the

Tribunal, the suit has been transferred from the Original Side of this Court to the Tribunal in terms of Section 31 of the said Act. Before the Tribunal the second respondent moved an application as I.A. No. 44 of 1997 in T.A. No. 186 of 1997 (C.S. No. 107 of 1993) to implead the legal representatives of the sole defendant stating that they were not aware of the factum of the death of the defendant and they came to know about the same only recently. The application was resisted by the writ petitioners contending that the factum of death was known to the second respondent/Bank in the year 1993 itself and the petition has been filed belatedly. They further contended that the proceeding before the Tribunal was without jurisdiction. The Tribunal, however, repelled the contentions of the writ petitioners and allowed the application as prayed for impleading the legal representatives of the deceased/sole defendant, who are the writ petitioners in these writ petitions. The writ petitions are directed against the aforesaid order of the Tribunal in I. A. No. 44 of 1997 in T. A. No. 186 of 1997 impleading the legal representatives of the deceased and also seeking a writ of prohibition prohibiting the Tribunal from proceeding further with the transferred application, namely, T.A. No. 186 of 1997.

3. Heard learned Counsels on both the sides. Learned Counsel for the petitioners reiterated the contentions advanced before the forum below.

According to him, the Tribunal has no jurisdiction to entertain the suit in C.S. No. 107 of 1993 on the file of this Court u/s 31(1) of the said Act (51 of 1993) on transfer and deal with the same. The specific case put forward by learned Counsel is that it is not a suit pending before the High Court on the date of the establishment of the Tribunal. Having bestowed our anxious consideration to the aforesaid contention, we are afraid we cannot accede to the same. In our considered opinion, the proceeding now pending before the Tribunal is in substitution of the proceeding which could have been initiated by the second respondent/Bank before the High Court and in continuation of the same. In other words, the suit in question stands transferred by virtue of the statutory provision from one forum to another and hence, it is a continuation of the same proceeding. At any rate, the petitioners cannot be said to have been prejudiced by the order now assailed in the present writ petitions. On a perusal of the impugned order, we find that the Tribunal has passed the same after complying

with the principles of natural justice. There is no jurisdictional defect, nor any error of law apparent on the face of the record. On the whole, we are of opinion that these are cases in which no interference is called for in exercise of the extraordinary jurisdiction of this Court and, accordingly, we decline jurisdiction, since we are satisfied that, any other view will result in miscarriage of justice.

4. In the result, was dismiss both the writ petitions. No costs. Consequently, W.M.P. Nos. 7145 and 9191 of 1999 are also dismissed.

5. However/we make it clear that dismissal of the writ petitions will be without prejudice to the rights of parties to move the second respondent/Bank seeking waiver of interest under the scheme in question framed by the Reserve Bank of India.