

(1998) 01 AP CK 0025
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4653 of 1996

Macherla Ravi Kumar and Others

APPELLANT

Vs

Indian Bank, Warangal and Others

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1, 17, 18

Citation : AIR 1998 AP 390 : (1998) 2 ALD 403 : (1998) 1 ALT 571 : (1998) 92 CompCas 607

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; Mr. P. Suresh, for the Respondent

Judgement

1. The petitioners herein were the defendants in O.SNo.361 of 1991 filed by the first respondent herein for recovery of certain amounts in the Court of the I Additional Subordinate Judge, Warangal. The amount sought to recovered was Rs.20,41,238-35 ps. It appears that during the pendency of the suit, the Counsel for the defendants filed a memo dated 16-8-1996 with a prayer not to transmit the suit filed by the first respondent herein ie., the plaintiff in the trial Court, to the Debts Recovery Tribunal at Bangalore on the ground that in the written statement filed by the petitioners-defendants, they have made a counterclaim against the Bank to the tune of Rs. 36,00,000/-. It further appears from the record that on hearing both sides, the memo filed by the petitioners-defendants Counsel dated 16-8-1996 was rejected and the order was passed to transmit the suit record to the Debts Recovery Tribunal at Bangalore. Aggrieved by the aforesaid order, the defendants-petitioners herein have filed the present C.R.P.

2. The learned Counsel Mr. L.Naraimha Reddy appearing on behalf of the petitioners herein submitted at the Bar that the learned Judge wrongly dismissed

the memo filed by the learned Counsel for the defendants-petitioners herein with a request not to transmit the suit record and proceedings to the Debts Recovery Tribunal at Bangalore. The learned Counsel Mr. L. Narasimha Reddy further submitted at the Bar that while filing the written statements, the defendants-petitioners herein had filed the counter-claim to the tune of Rs.36,00,000/- and therefore the Debts Recovery Tribunal has no jurisdiction to entertain the counter-claim made by the defendants-petitioners herein. The learned Counsel further submitted at the Bar that u/s 1 of the Recovery of Debts Due to (sic debts due to Banks and Financial institutions Banks and Financial Institutions Act, 1993 can only be entertained by the Debts Recovery Tribunal and not the counterclaim made by the defendants in their written statements.

3. While rebutting the aforesaid arguments, the learned Counsel for the first respondent-plaintiff Mr. P. Suresh submitted at the Bar that the suit valued above Rs. Ten lakhs cannot be entertained by the Civil Court. There is a specific bar of jurisdiction to entertain the suit filed by the Financial Institutions. My attention was invited to Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which reads as under:

"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 or 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."

Section 17 of the said Act reads as under:

"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."

4. By looking to the above provisions, it is evident that the Civil Court cannot entertain the suits if the claim is made by the Financial Institutions which exceeds Rs.Ten lakhs. Such suits have to be transmitted to the Debts Recovery Tribunal.

5. Then the next question arises as to what will happen to the counter-claim made by the defendants against the Financial Institution?

6. Order VIII Rule 6-A C.P.C. empowers the defendant to file counter-claim. As a matter of fact, counter-claim is an independent claim, which can be made by the defendant by filing a separate suit- But in order to avoid multiplicity of suits. Rule

6-A of Order VIII C.P.C. was inserted by C.P.C. Amendment Act 1976, which came into effect from 1-2-1977. If the counter-claim is filed, it being in the nature of a suit, the original plaintiff has a right to file the written statement denying the claim of the defendant. In other words, the original plaint filed by the plaintiff and the counter-claim filed by the defendant are two different proceedings which are separable. On establishment of Debts Recovery Tribunal, the main claim made by the Financial Institutions is required to be transferred to the Debts Recovery Tribunal and the counter-claim made by the defendant can be entertained by the Civil Court in which the counter-claim is made and both the suits can go independently. As stated earlier, if the claim of the Financial Institutions exceeds Rs. Ten lakhs, then the Civil Court has no jurisdiction, it must be entertained and decided by the Debts Recovery Tribunal at Bangalore. The counter-claim made by the defendants cannot be entertained by the Debts Recovery Tribunal, it has to be entertained and decided by the Civil Court. If such procedure is adopted, then both the suits can be tried before the two different forums having jurisdiction to entertain the same.

7. A similar view appears to have been expressed in a Ruling reported in Cofex Exports Ltd. Vs. Canara Bank, .

8. Taking the above fact into consideration, this Court holds that the learned First Additional Subordinate Judge, Warangal rightly dismissed the Memo filed by the learned Counsel for the defendants. Hence, the present Civil Revision Petition is dismissed holding that there is no merit in this Civil Revision Petition. No costs.