

(2008) 04 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11101 of 2008

Mathew V.D.

APPELLANT

Vs

State Bank of Travancore

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 — Section 2

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 31A

Citation : AIR 2008 Ker 194 : (2008) 2 KLJ 665

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : B. Krishna Mani, for the Appellant; M. Pathoros Mathai and Saji Varghese, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—On 10-12-2004, the respondent Bank obtained a money decree against the petitioner from a civil court. When that decree debt grew beyond Rupees Ten Lakhs, the Bank applied to the Debts Recovery Tribunal Ten Lakhs, the Bank applied to the Debts Recovery Tribunal u/s 19 and other enabling provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the RDB Act. It has to be immediately noticed that the Bank did not invoke Section 31A of that Act. With not much of factual disputes, Ext.P6 order was issued by the Tribunal granting recovery certificate in favour of the Bank. That order is challenged as one issued without jurisdiction.

2. Before the Tribunal and in this writ petition filed invoking Articles 226 and 227 of the Constitution, the contention of the petitioner is that an application on the strength of a decree of a civil court could be sustained only u/s 31A of the RDB Act and that she said provision could be invoked only in relation to a decree passed before 17-1-2000, i.e., the date of commencement of Act 1 of 2000,

whereby, the RDB Act was amended incorporating Section 31A and that therefore, the impugned proceedings, on the basis of a decree passed on 10-12-2004, is without jurisdiction.

3. The Tribunal overruled the petitioner's contention and held that an application lies. In doing so, the Tribunal held that the debt, recovery of which was sought for, was one falling within the definition of the term "debt" as contained in Section 2(g) of the RDB Act and that, by the operation of the provisions of the RDB Act, jurisdiction of the civil court to entertain, applications for recovery of such debts is excluded.

4. Section 2(g) was substituted by Act 1 of 2000 with effect from 17-1-2000 to provide the definition of debt to mean, among other things, "liability payable under a decree or order of any civil court". By such amendment, decree debts could also form the foundation of applications u/s 19 of the RDB Act. By virtue of Section 31A, even decree debts on the basis of decrees which have become final before the date of the said amendment would also fall within the net of the proceedings under the RDB Act. That is essentially an enabling provision, which is intended to exclude any contention that the Tribunal did not have the authority to treat debts on the basis of decrees issued before coming into force of Act 1 of 2000 as also debts for the purpose of Section 2(g) of the Act. It does not, in any manner, and is not intended to, exclude decrees passed or obtained after 17-1-2000 from being decrees within the meaning of Section 2(g) of the RDB Act. To hold otherwise would be to classify debts falling u/s 2(g) into two groups depending upon the date of the act, viz. 17-1-2000, which would be wholly irrational and with no legitimate foundation.

5. At any rate, the decree against the petitioner was passed only after the coming into force of Act 1 of 2000. It was passed only on 10-12-2004. The question would be whether that decree could be foundation of proceedings u/s 19 of the RDB Act. Firstly, that decree has become final. Secondly, that decree is not challenged as one issued without jurisdiction, on the ground that the decree had exceeded the limit of Rupees Ten Lakhs which would have disabled the civil court to pass a decree. If that be so, after the decree was passed, the debt under it remains a decree debt and when the out standings under that decree grew to be beyond Rupees Ten Lakhs, it was amenable to the jurisdiction of the Tribunal, as a cause of action, against the debtor.

6. Hence, the impugned proceedings cannot be found fault with. The writ petition fails. The same is accordingly dismissed.