

(2000) 12 MAD CK 0037

In the Madras High Court

Case No : Transfer Application No. 1601 of 2000 and A. No. 1602 of 2000 in C.S. No. 558 of 1995

Mrs. Varsha S. Metha and Another

APPELLANT

Vs

Day Mar Apparels Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 24, 3, 4, 9

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 3(1), 31, 34

Citation : (2003) 115 CompCas 936

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : T.P. Sankaran, for the Appellant; M. Dhandapani, for S. Mohamed Yousuf and L. Jayakumar, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Mrs. Varsha S. Metha, proprietrix, Vam Exports and Michael B. Goldman, the defendants in C S. No. 558 of

1995 have filed this application u/s 24 of the Code of Civil Procedure, 1908, praying for transfer of the suit in O. A. No. 222 of 1997 now

pending on the file of the Debts Recovery Tribunal at Chennai to this court and try the same jointly along with the suit in C. S. No. 558 of 1995

pending on the file of this court.

2. The short facts leading to the filing of this transfer application are these :

(a) Day Mar Apparels Pvt. Ltd. represented by its managing director Mr. Dayanidhi Maran availed of a loan from Canara Bank, Mount Road,

Chennai, for the purpose of exporting their leather garments. However, after

export of goods, the buyer in the foreign country refused to take delivery. Due to that, there was a loss caused to the leather company. Mrs. Varsha S. Metha, proprietrix of Vam Exports and Michael B.

Goldman, the applicants herein were the agents for the American buyer. Since the goods were not taken delivery, Day Mar Apparels Pvt. Ltd.

filed a suit in C. S. No. 558 of 1995 before this court against both the applicants for recovery of Rs. 21/70,262 contending that the applicants

being the agents for the American buyer were responsible for the loss.

(b) Pending the suit, this court ordered the goods to be sold to a third party. They were accordingly sold and the sale proceeds were duly

deposited towards the credit of the suit. At that stage, Canara Bank filed an impleading petition and got impleaded in order to enable them to apply

for payment of the amount deposited towards the credit of the suit. Canara Bank filed an application in O. A. No. 222 of 1997 before the Debts

Recovery Tribunal against Day Mar Apparels and Vam Exports represented by Mrs. Varsha S. Metha being the guarantors, for a decree for a

sum of Rs. 29,43,960.60.

(c) In the said application, written statement was filed. The bank witness P. W. 1 was examined in chief. The first respondent cross-examined the

witness. When the matter was posted for cross-examination by the respondents, the applicants herein, the present application has been filed

seeking for transfer of O. A. No. 222 of 1997 pending before the Debts Recovery Tribunal to this court to try the same along with the suit in C. S.

No. 558 of 1995.

3. Mr. T.P. Sankaran, learned counsel for the applicants would make the following grounds in justification of the transfer sought for :

(1) This court u/s 24 of the CPC may, at any stage, transfer or withdraw any suit pending in any court subordinate to it and to try and dispose of the same.

(2) The subject matter and the parties involved in both the suits are one and the same. The issues to be decided in both the suits are substantially

the same. Consolidation and joint trial are necessary to avoid multiplicity of trials and conflicting decisions,

(3) Apart from the powers u/s 24 of the Civil Procedure Code, this court can independently invoke Article 227 of the Constitution to withdraw the

case pending before the Tribunal for the purpose of joint trial by this court in the interest of justice.

4. In reply to the above submissions, counsel for both the respondents by filing two separate counters would oppose this application. Their

contentions urged in the counters are as follows :

(i) This application is not maintainable, since the Debts Recovery Tribunal is not a court subordinate to the High Court. Therefore, Section 24 of

the CPC cannot be invoked. For recovery of the debts due to banks under Act 51 of 1993 banks can file applications for recovery of the dues

only before the Debts Recovery Tribunal u/s 17 of the Act. Section 18 of the Act would provide a bar on any civil court to have a jurisdiction for

trial to these cases. Therefore, the application for transfer is totally misconceived and not sustainable in law.

(ii) The issue relating to the liability of defendants Nos. 1 and 2 in the suit, the applicants herein, to the plaintiff, the first respondent herein, is

entirely different from the claim made by the bank, the second respondent herein, before the Debts Recovery Tribunal. The proceedings before the

Debts Recovery Tribunal have nothing to do with the proceedings before this court in C. S. No. 558 of 1995. The dispute between the parties

inter se are entirely different and the cause of action is entirely different. Not only that, the claims of the bank as well as the parties in the suit are

entirely different. The powers under Article 227 can be invoked only in exceptional cases. This is not such a case in which the said powers can be

invoked, more so, when the present application has been filed only u/s 24 of the Civil Procedure Code.

(iii) These applicants are not bona fide for more than one reason :

(a) The applicants have filed an application before the Debts Recovery Tribunal u/s 10 of the CPC for stay of proceedings. The same has been

argued and the matter is posted for orders. At this stage, this application has been filed seeking for transfer suppressing the above fact.

(b) In 1995, the suit was filed by the first respondent against the applicants in C. S. No. 558 of 1995. The written statement has already been filed

by the applicants/defendants. Thereafter, Canara Bank filed a payment out petition after getting impleaded. The bank also filed application in O. A.

No. 222 of 1997 on August 22, 1997. In O. A. No. 222 of 1997 filed by the bank

before the Debts Recovery Tribunal, the first applicant as well as the first respondent filed a counter. Thereafter, trial commenced. Having kept quiet all along, the present application seeking for transfer has been filed belatedly, that too, after the commencement of the trial. This Act would show that the proceedings are being protracted for the reason which is mala fide.

5. In the light of the rival submissions made by counsel for the parties, the first issue to be decided in this application as to whether this application is maintainable u/s 24 of the Civil Procedure Code.

6. Let us now quote Section 24 of the Civil Procedure Code.

24. General power of transfer and withdrawal.--(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notices, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or

(b) Withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and

(i) try or dispose of the same ; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same ; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

7. The relevant provision in Section 24 to decide the issue is 24(1)(b)(i) and (ii). As per this provision, the High Court may, at any stage, withdraw any suit pending in any court subordinate to it and try or dispose of the same or to transfer the same to any court subordinate to it which is competent to try or dispose of the same.

8. The reading of the provisions would clearly reveal that no court has got jurisdiction to transfer a suit from one court to another court unless both the courts are subordinate to it.

9. To invoke Section 24 to file an application for transfer, it is implicit that the two conditions should be satisfied : (i) proceedings to be transferred

should be pending in a court and (ii) the said court should be subordinate to the High Court or the District Court which is competent to try and

dispose of the same. Therefore, the applicants have to satisfy these two aspects, namely (a) any court subordinate to it and (b) competent to try

and dispose of the same. In other words, it has to be established that the Debts Recovery Tribunal is the subordinate court to the High Court and

that the High Court would be competent to try the suit filed by the bank for recovery of the debt by transferring the said case from the court

specially constituted.

10. Section 3 of the CPC deals with the subordination of courts. It prescribes that for the purposes of this Code, the District Court is subordinate

to the High Court, and every civil court of a grade inferior to that of a District Court and every court of small causes is subordinate to the High

Court and District Court.

11. In the light of what is stated above, to decide the question as to whether the Debts Recovery Tribunal, specially constituted, is a civil court

subordinate to the High Court, it is but necessary to refer to certain provisions contained in the Act.

12. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, has been introduced by Act No. 51 of 1993 giving special powers

to Special Tribunals for adjudication for the speedy recovery of the loans given by the banks. The banks and financial institutions experience

considerable difficulties in recovering loans and enforcement of securities charged with them. The cumbersome procedure in civil courts for

recovery of debts due to the banks has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the

passage of time. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks could be realised

without delay. Therefore, a committee was specially formed and as per the suggestion of the committee, the Special Recovery Tribunal with the

special powers of summary trial and speedy recovery was constituted by introducing a new Act.

13. The preamble to the Act itself would provide that this Act is introduced for establishment of Tribunals for expeditious adjudication and

recovery of debts due to banks and financial institutions and for matters

connected therewith or incidental thereto.

14. The underlying object of the Act is to protect and promote the interest of banks and financial institutions, who are always in disadvantageous position, when pitted against the vast army of wilful defaulting borrowers. The pith and substance of the Act is recovery of debts due to banks and financial institutions.

15. It is indicative from the preamble that the Tribunal so constituted under the Act will not only have the authority to adjudicate recovery of ""debts due"" but also to settle any other matters connected with or incidental thereto while adjudicating such claims or directing recovery.

16. The only distinguishing features against existing laws on the subject are that it has made provisions for expeditious adjudication of recovery cases, since it was felt that the same was not possible due to the existing cumbersome procedure to be followed by the civil courts.

17. The reading of the history leading to the introduction of this Special Act would show that the banks and financial institutions had considerable difficulties in recovering loans and advances through the civil courts and the existing procedure was not conducive as the ordinary system was burdened with public litigation which had led to locking up of their funds in unproductive assets and that therefore, periodical committees were constituted and on their recommendation the bill was introduced in Parliament and the same came to be published on August 27, 1993. By virtue of the powers conferred u/s 3(1) of the Act, the Tribunal has been constituted.

18. Chapter 3 of this Act deals with the jurisdiction powers and authority vested with the Tribunal. In this context, Section 17 is relevant to be noted :

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.

19. On a perusal of Section 17, it is clear that the Tribunal only is competent to exercise powers and authority, when it assumes jurisdiction,

consequent upon establishment of Debts Recovery Tribunal indicating the area of jurisdiction by the Central Government notification in its Official

Gazette. It means, from the date of notification in the Official Gazette establishing Debts Recovery Tribunal, the Tribunal alone shall have the

authority to entertain applications from banks and financial institutions for recovery of debts due and powers to decide on such claims for recovery.

After the orders passed by the Tribunal deciding the issue, the party aggrieved can approach the Appellate Tribunal who shall exercise all the

powers conferred on the Tribunal under this Act.

20. Further, Section 18 bars the jurisdiction of any other court from exercising the powers conferred on the Tribunal. It is true that exception has

been given to Articles 226 and 227 of the Constitution. But, a reading of Section 18 would clearly show that the High Court functioning under

Article 227 cannot act as a trial court or appellate court. The Section is 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

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.

21. Under this section, jurisdiction of all the courts is barred in relation to matters specified in Section 17 of the Act. Though this section does not

apply to Supreme Court and High Court, the jurisdiction Of the High Court which is saved under Articles 226 and 227 is no substitute for trial of

the suit for recovery of debts in the High Court, or the High Court hearing an appeal in such a matter from a subordinate court.

22. As noted earlier, the Act specifically provides powers only to the Tribunal and the order of the Tribunal is appealable only to the Appellate

Tribunal. Therefore, it cannot be contended that the Tribunal is a subordinate court as provided u/s 3 of the CPC and the High Court is competent

to try the application filed by the bank before the Tribunal as a suit along with the other suit pending before the said High Court.

23. Thus, the ""jurisdiction"" is stated without any ambiguity. The caption

contained in Section 18, viz., "Bar of jurisdiction" would itself indicate that it expressly excludes the jurisdiction of the "civil court" in relation to the matters specified under the Act.

24. Admittedly, the respondent/third defendant filed an application for recovery of the debt due to it from the applicants/plaintiffs only after

constitution of the Tribunal as per the Special Act which was introduced in the year 1993. In other words, since there was bar of jurisdiction on

civil courts/the bank had to necessarily approach the Tribunal by filing an application for recovery of dues.

25. As a matter of fact, Section 9 of the CPC provides that the civil courts have jurisdiction to try only suits of civil nature excepting suits of which

their cognizance is either expressly or impliedly barred.

26. Similarly, as noted above, Section 18 of the Act also would put a bar of jurisdiction on other courts except the Tribunals in regard to the

recovery of the claims lay the banks as specified in Section 17 of the Act.

27. It is also noticed that Section 4 of the CPC would provide that in the absence of any specific provision to the contrary, the CPC shall not be

deemed to limit or affect any special law made, any special jurisdiction conferred or any special form of procedure by any other law.

28. Yet another provision contained in Chapter 6 of the Act would clarify this position further. Section 31 is the relevant section which is as follows

:

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:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under Sub-section (1).-

(a) the court shall, as soon as may be after such transfer forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit

or other proceeding, so far as may be, in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

29. A reading of the above section would reveal that every suit or other proceeding pending before any court shall stand transferred to the Tribunal even though trial has already commenced before the civil court and the Tribunal thereafter can deal with such suit from any earlier stage or de novo as it may deem fit.

30. Section 34 also is to be noted in this context :

34. Act to have overriding effect.--(1) Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

31. As per this section, the entire Act has overriding effect on any other law for the time being in force and which are contrary but inconsistent with the provisions of the Act.

32. These sections would clearly show that immediately after the constitution of the Tribunal in the area under the Act, cases relating to the debts to

be recovered by the banks and financial institutions shall be transferred and shall be tried only by the Tribunal.

33. Thus, a combined reading of Sections 4, 9 and 10 of the CPC and Sections 3(1), 17, 18, 31 and 34 of the Act would clearly indicate that the

jurisdiction of the civil court has been specifically ousted by special statute. Therefore, Section 24 of the CPC can never have any application so as

to transfer the proceedings pending before the Tribunal to the High Court sitting in the original civil jurisdiction,

34. Thus, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The Act requires the Tribunal alone to decide applications for

recovery of debts due to banks. The jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions

of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal.

35. While dealing with a similar situation in regard to the issue whether the jurisdiction of the civil court or the company court is ousted, the apex

court has held in *Allahabad Bank v. Canara Bank* [2000] 101 Comp Cas 64 ; AIR 2000 SC 1535 that the provisions of Sections 17 and 18 of

the Act are exclusive. The relevant observation of the apex court is as follows (page 78) :

Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of

the Tribunal and the Recovery Officer and no other court or authority much less the civil court or the company court can go into the said questions

relating to the liability and the recovery except as provided in the Act.

37. This observation would make it obvious that the Tribunal alone will have jurisdiction to go into the liability and recovery of the debts due to the

bank and not by the civil court.

38. When such is the legal situation, the applicants cannot contend that the High Court is competent to try the suit filed by the bank for recovery of

the debt and the Tribunal is a subordinate court to the High Court u/s 34 of the Code of Civil Procedure.

39. Learned counsel for the applicants would cite the following authorities :

(1) *P. Madhavan Unni Vs. M. Jayapandia Nadar*, .

(2) *Krishna Kumar Damani Vs. Ramnarain Agarwal and Another*, .

(3) *Kanniammal and Another Vs. P. Narayanan and Another*, .

(4) *Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another*, .

(5) *Rajeswari Vs. United India Insurance Co.*, .

(6) *Engineering Investments P. Ltd. v. Bharat Heavy Electricals Ltd.* 95 L.W. 404.

(7) *K.R. Srinathi Vs. H. Ramakrishnan*, .

40. These decisions would highlight and interpret the scope of the power u/s 24 of the Civil Procedure Code. In these decisions, it is held that the

language of Section 24 is very general and it gives power to two superior courts, viz., the High Court or the District Court to withdraw, at any

stage, any suit, appeal or other proceedings pending in any court subordinate to it and either try and dispose of the same, or transfer the same for

trial or disposal to any court subordinate to it and competent to try or dispose of the same. In terms, Section 24 confers a very wide power, and it

is intended to enable the two superior courts mentioned in it, in their general power of superintendence over subordinate courts, or in the interest of

justice to redistribute all civil work of whatever nature pending in subordinate courts for the purpose of disposal.

41. The power of transfer or withdrawal recognised in the statute is the vested right to continue an action in a competent court of jurisdiction in

which it was instituted is subject to the power of transfer or withdrawal given to the High Court and the District Court by Section 24 of the Civil

Procedure Code.

42. For this proposition, there cannot be any quarrel as it is a settled principle of law. But, it shall be noticed that none of the decisions referred to

above has dealt with the exclusive jurisdiction and the bar by virtue of Section 17, 18 and 31 of the Recovery of Debts Due to Banks and

Financial Institutions Act, 1993. In other words, the question as to whether the powers of transfer u/s 24 of the CPC have been destroyed or

taken away by reason of Sections 17 and 18 of the Act, has not at all been considered in those decisions.

43. Some of the decisions have dealt with only relating to the powers of Tribunal dealing with the Motor Vehicles Act and Rent Control Act. In

those decisions, it is held that those courts are subordinate to the High Court and the cases can be transferred u/s 24 of the CPC to the court

which has got jurisdiction to try them.

44. But in the present case, as indicated above the Act provides exclusive jurisdiction for trial of the cases dealing with the recovery of debts only

before the Tribunal under the Act and there is no indication that the said Tribunals are subordinate to the District Court or the High Court by virtue

of Section 24 of the Civil Procedure Code.

45. Learned counsel in the alternative would submit that even assuming that Section 24 of the CPC is not applicable to the present case, this court

has got power of transfer under Article 227 of the Constitution of India. He would cite the decisions in Allahabad Bank, Calcutta Vs. Radha

Krishna Maity and Others, , State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., , Kanniammal and Another Vs. P.

Narayanan and Another, and The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, to

substantiate the above statement.

46. It is true that the High Court has got powers under Article 227 as a power of superintendence as laid down in the above decisions. For this

proposition, no decision is necessary, in view of the fact that Section 18 of the Act which provides bar of jurisdiction would itself give exemption

for the powers of the Supreme Court and the High Court exercising jurisdiction under Articles 226 and 227. Even assuming that the powers are

there, whether those powers under Articles 226 and 227 can be invoked by the High Court sitting in the original civil jurisdiction to transfer the

application pending before the Tribunal which has got an exclusive jurisdiction to try along with the pending suit ?

47. For this question, my answer is, this extraordinary power should not normally be invoked so as to usurp the exclusive jurisdiction to the

Tribunal specially constituted by the Special Act and so as to confer the jurisdiction to the civil court which is not normally competent to try the

said application.

48. Let us now see whether at least this is a case for transfer on the merits.

49. Before deciding the said question, it is necessary to find out what are the guidelines for exercise of power of transfer and withdrawal of the

suits.

50. It is settled law that where there are suits which raise certain common questions of fact and law, having a substantial bearing on the decision of

each of the cases, it is obviously desirable, that they should be tried at the same place and by the same judge.

51. This is paramountly a matter involving the satisfaction of the court which exercises the power. When certain common questions of fact having a

substantial bearing on the decision of both the cases they should be tried together. If the facts of the suits sought to be tried together are intertwined

with cause of action in each suit the transfer of suit may not be refused provided the parties and subject-matter of the suits are one and the same.

52. This principle governing the general power of transfer and withdrawal is that the plaintiff is the dominus litis and, as such, entitled to institute his

suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent

increase in inconvenience and expense of prosecuting his suit. A mere balance of

convenience in favour of proceedings in another court, may not always be a sure criterion justifying transfer. Whether it is expedient or desirable in the interest of justice to transfer a proceeding to another court is a question which depends on the circumstances of the particular case.

53. In the light of the above principles, on going through the plaint filed by Day Mar Apparels Pvt. Ltd. the first respondent herein against the applicants (defendants Nos. 1 and 2) and the application in O. A. No. 222 of 1997 filed by Canara Bank against the applicants and the first respondent, I am of the view that the issues involved in O. A. No. 222 of 1997 are not identical in C. S. No. 558 of 1995. In other words, judgment on the issues involved in C. S. No. 558 of 1995 by this court will not put an end to the controversy between the parties on the issue raised in O. A. No. 222 of 1997.

54. Moreover, the parties involved in both the suits are not the same. The second defendant Michael B. Goldman, the second applicant herein is not a party to the recovery proceedings in O. A. No. 222 of 1997. The suit in C. S. No. 558 of 1995 relates to a claim made by the plaintiff the first respondent herein against defendants Nos. 1 and 2 the applicants, in respect of the amounts due for goods exported through them for which they are responsible.

55. On the other hand, the claim by the bank in the Tribunal for recovery of the loan amount sanctioned to the first respondent for which the first applicant stood as guarantor would raise the different issue. In other words, according to the plaintiff in C. S. No. 558 of 1995, the goods were exported to the foreign country by the plaintiff on the request of defendants Nos. 1 and 2, the applicants as agents for the American buyer. But, the American buyer did not take delivery as a result of which the plaintiff sustained loss and consequently, defendants Nos. 1 and 2 were liable for the loss and damages. However, Canara Bank in the application filed before the Tribunal has sought for decree for the loan sanctioned to the first respondent herein and the first applicant who stood as a guarantor.

56. Therefore, the subject matter, the issue, the transaction and the parties are entirely different. Under those circumstances, even on the merits, the applicants have not made out any case.

57. As pointed out by learned counsel for the respondent, this court cannot but notice a disturbing feature.

58. The records would reveal that on April 17, 1995, the plaintiff Day Mar Apparels Pvt. Ltd. filed a suit in C. S. No. 558 of 1995 against the

applicants showing them as defendants Nos. 1 and 2. On service of notice, the defendants filed a written statement. On August 22, 1997, Canara

Bank, on coming to know about the litigation, filed application in O. A. No. 222 of 1997 before the Tribunal for recovery of money from the first

respondent, the plaintiff in C. S. No. 558 of 1995 and the first applicant and two others.

59. Thereafter, on coming to know that the goods have been sold and some amount has been deposited in the credit of the suit as per the orders

of this court, Canara Bank for enabling it to file the payment-out application got it impleaded in the suit on June 22, 1998.

60. In the meantime, written statement was filed in O. A. No. 222 of 1997 also. Before the Tribunal, the matter was posted on a number of

occasions. After the pleadings were completed, Canara Bank filed an affidavit on which cross-examination was commenced on February 3, 2000.

The first defendant in O. A. No. 222 of 1997 completed the cross-examination on February 3, 2000, itself and the matter was posted for cross-

examination by the applicants herein on February 15, 2000. However, the applicants did not cross-examine. They were going on taking

adjournments.

61. Thus, it is clear that the applicants never thought of filing an application for transfer on the basis that issues in both the proceedings are the

same. Ultimately, when the turn came to cross-examine the witnesses of the bank, they thought to file this application on April 10, 2000, seeking

for the transfer u/s 24 of the Civil Procedure Code.

62. It is also brought to the notice of this court that the applicants have also filed an application u/s 10 of the CPC for stay of the trial in O. A. No.

222 of 1997 pending disposal of C. S. No. 558 of 1995 on the file of this court. The said application also was heard by the Tribunal and orders

have been reserved.

63. It is significant to note that the applicants herein have not chosen to mention the same in the application. On the other hand, the applicants

somehow or other to stall the proceedings have resorted to filing applications in both the forums. This act of the applicants is nothing but an attempt

to defeat the entire purpose for which the special Tribunal has been constituted. Moreover, the conduct of the parties who filed this application

belatedly after having waited for three years would clearly show that they are not bona fide.

64. Under those circumstances, while deciding that there is no case made out for transfer even under Article 227 of the Constitution, it would be

appropriate to dismiss the application by imposing suitable costs.

65. Therefore, the applicants are directed to pay Rs. 25,000 towards costs which shall be paid to Canara Bank, who is the second respondent

herein. Time for payment one month.

66. With the above observation, the application is dismissed. Consequently, A. No. 1602 of 2000 is also dismissed.