**(1997) 02 P&H CK 0047**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 1891 of 1997

M/s. Agro India Malt Pvt. Ltd. APPELLANT

Vs

Central Bank of India and another RESPONDENT

**Date of Decision :** 07-02-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19, 19(4), 2

**Citation :** AIR 1997 P&H 255 : (1998) 93 CompCas 148 : (1997) 116 PLR 391 : (1997) 2 RCR(Civil) 367

**Hon'ble Judges :** K.S. Kumaran, J;Ashok Bhan, J

**Bench :** Division Bench

**Advocate :** R.S. Mittal and Arti Gupta, for the Appellant;

## Judgement

Ashok Bhan J.—This petition under Art. 226/227 of the Constitution of India, has been filed for issuance of a writ of mandamus restraining the Debt Recovery Tribunal, Jaipur (hereinafter referred to as the Tribunal) from entertaining and proceeding with the application made to it by the Central Bank of India (hereinafter referred to as the Bank) on 22-8-1996 under S. 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act).

2. Petitioner is a Private Limited Company having its Central Office at Delhi. It is engaged in the manufacture of raw material for products like Beer, Whisky, Chocolates, Maltova and Horlicks etc. It is having banking transactions with respondent No. 1 since 16-3-1991 and was initially granted cash credit (hypothecation limit) to the tune of Rs. 1.08 lacs. Limit was extended from time to time on the same terms and conditions and in the year 1992 credit facilities granted to the petitioner came to be to the tune of Rs. 190 lacs petitioner had mortgated its properties for securing the cash credit limits. Petitioner failed to repay the loan as per agreement and as a consequence of that bank stopped the banking operation of the petitioner in March 1995. On a request made by the

 

petitioner, the banking facilities were again resumed but as it failed to fulfil its commitments, the banking operations were again stopped on 30-1-1996.

3. In the month of January 1997, petitioner filed a civil suit in the Court of Senior Sub-Judge Amloh, District Fatehgarh Sahib praying for mandatory injunction as also for rendition of accounts with all consequential reliefs. Bank filed an application under S. 19 of the Act before the Tribunal.

4. It has been averred that petitioner does not wish to submit to the jurisdiction of the Tribunal and, therefore, is avoiding to file a written statement in the application filed by the Bank under S. 19 of the Act so that it may not be taken that filing of the written statement is a step in aid of further progress of the proceedings under S. 19 of the Act. There being no provision for determination and adjudication of the counter claims of the petitioners against the bank, the whole procedure provided under the Act particularly under Ss. 17 and 19 of the Act, is arbitrary and unreasonable; that petitioner has already filed a civil suit in the civil Court at Amloh and, therefore, the determination of application pending before the Tribunal should remain stayed during the pendency of the suit filed by the petitioner.

5. We find no merit in this petition. Constitutional validity of the Act has already been upheld by this Court in M/s. Kundan Rice and General Mill v. Union of India, 1996 DLJ 128. While dealing with a similar plea raised in this petition regarding set off and counter claims by a defendant it was observed:

"25. It was then contended that under the impugned Statute, the Banks or the Financial Institutions can file applications for recovery of debts. The Tribunal cannot adjudicate upon the pleas of set off or adjustment and the counter claim as may be made by the defendant. Therefore, the Act makes an arbitrary provision in favour of the Banks.

26. Even though, on the pleadings in these cases, such a question does not arise in this case, yet the counsel has been heard at length. Section 2(g) defines a ''debt'' to mean "any liability (inclusive of interest) which is alleged as due from any person ..... in cash or otherwise..... and legally recoverable on the date of the application". Under S. 17, the Tribunal exercises the jurisdiction, power and authority to "entertain and decide applications from the Banks and Financial Institutions for recovery of debts" due to them. Section 19(4) requires the Tribunal to "pass such orders on the application as it thinks fit to meet the ends of justice". On a harmonious reading of these provisions, it is clear that the Tribunal has to determine the amount which is ''legally recoverable'' from a person. It is required to pass such orders as would "meet the ends of justice". While deciding the matter, the Tribunal has to afford a due and reasonable opportunity to both the parties to prove their respective cases. In this situation, it cannot be said that a person who has taken a loan cannot claim that he has made certain payments which have not been accounted for or set off. Still further he shall not be debarred from claiming that in fact, nothing is due to the Bank or

the Financial Institution and that if at all he has counter claim. In case, the Tribunal finds that there is evidence which proves that certain payments have been made, it shall be entitled to allow the claim of the respondent. A counter claim is normally based on a separate cause of action. It is founded on a separate transaction. In case, it is found that evidence is required to be recorded the Tribunal may leave the person to seek his remedy in ordinary civil Court. However, if the claim is admitted, nothing should stop the Tribunal from declining the claim made by the Bank. On a reading of the provisions of the Act, it appears that the Act having imposed the duty to determine the amount legally recoverable from a person and to pass orders which meet the ends of justice, the claim made by the petitioners that the plea of set off or counter claim cannot be raised by a person or accepted by the authority, is. untenable."

6. We are of the view that present petition has been filed only to stall the proceedings before the Tribunal, petitioner has not denied the loan taken by it from the Bank or its liability to pay certain sum of money in lieu of the loan taken by it. Filing of the suit for mandatory injunction and for rendition of accounts cannot in any way debar the Tribunal from proceeding with the application filed by the Bank u/s 19 of the Act. It would not lead to the passing of contradictory decrees either. Efforts seems to be to stall the proceedings before the Tribunal. No ground for interference is made out.

7. Petition dismissed.

 