

(1998) 03 MAD CK 0179
In the Madras High Court

Ms. Nivedita, represented by mother Ms. Asha Raja Kumar
and Ors

APPELLANT

Vs

South Indian Bank Limited, Industrial Finance Branch and
Others

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1998) 2 MLJ 465

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—This revision is filed under Article 227 of the Constitution of India. An application was filed before the Debts Recovery Tribunal, Chennai, by South Indian Bank Ltd. against five respondents. The 1st respondent is a private limited company. Respondents 3 and 5 are man and wife and respondents 2 and 4 are their sons. For the purpose of giving financial assistance to the company, the 3rd respondent in the O.A., along with respondents 2, 4 and 5 executed mortgages for securing the loan. When default was committed, the application was filed before the Debts Recovery Tribunal, for recovery of an amount of nearly Rs. 66 lakhs, with future interest and costs. The said original application is pending consideration before the Said Tribunal, While so, an application was also filed by the revision petitioners herein who are the younger children of respondents 4 and 6 herein that the mortgage executed by their father is not for necessity or consideration and the same is without taking into consideration the benefit of the family. According to them, the property offered as security is a joint family property and the mortgage is not binding on them, and their shares are not liable to be proceeded with. They wanted to get themselves impleaded in the original application and to have their rights adjudicated in the case. By the impugned order, the Tribunal rejected it, which is challenged in this revision under Article 227 of the Constitution.

2. The Tribunal held that the petitioners are not necessary parties, and their

father was competent to mortgage the property. It also found that all the adult members of the family jointly executed the document in favour of the Bank, and therefore, even without them the original application could be proceeded with.

3. When the matter came up for admission, I ordered notice of motion and granted an order of interim stay. After the counsel for the Bank entered appearance, the matter was heard. In the various grounds in the revision it is contended that even to contend that the loan is not for the benefit of the family or that is for illegal purposes, the minors are necessary parties. The father has acted against the interest of the minors, and there is no necessity for borrowing the huge sum for the purpose of business, which is not a family business, and the father has neglected to safeguard their interest. The question whether the loan was contracted for necessity or not would arise during the trial of the original application and without impleading them the finding that the father who is the kartha is competent to execute the documents is wrong.

4. Learned Counsel for the 1st respondent/Bank supported the order of the Tribunal and he prayed for dismissal of the revision.

5. After having considered the rival contentions, I feel that the petitioners' contention cannot be accepted. The reasons for the said conclusion are hereunder. Admittedly the petitioners are not parties to the original application before the Debts Recovery Tribunal. The preamble of the Recovery Of Debts Due to Banks and Financial Institutions Act, 1993 (in short "Act"), says that "An Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto". The Act was passed pursuant to the recommendations of a High Level Committee. The reasons for establishment of Debts Recovery Tribunal are stated thus:

Banks and Financial Institutions at present, face considerable difficulties in recovering the dues from the clients and enforcement of security charged to them due to the delays in legal processes. A significant portion of the funds of the Banks and Financial Institutions is thus blocked unproductive assets, the values of which keep deteriorating with the passage of time. Banks also incur substantial amounts of expenditure by way of legal charges which add to their overheads. The question of speeding up the process of recovery was examined in great detail by a committee set up by the Government under the chairmanship of Late Sri Tiwari. The Tiwari Committee recommended, inter alia, the setting up of special Tribunals which could expedite the recovery process.

Section 3 of the Act provides for Establishment of Tribunal. Section 3(1) of the Act reads thus:

The Central Government shall, by notification, establish one or more Tribunals to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Section 17 of the Act deals with jurisdiction, powers and Authority of Tribunals. Section 17(1) reads thus:

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.

From a reading of Section 17 of the Act, it is clear that the Tribunals are established for the purpose of entertaining and deciding applications from the banks and financial institutions. Section 19 of the Act deals with "Application to the Tribunal". It says that "(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction..

Sub-section (6) of Section 19 of the Act deals with the powers of the Tribunals in passing the interim order and Sub-section (7), authorises the Presiding Officer to issue a certificate under his signatures on the basis of the order of the Tribunal, to the Recovery Officer for recovery of the amount of debt specified in the certificate. Section 22 of the Act deals with procedure and powers of the Tribunal and the Appellate Tribunal. It says that neither the Tribunal nor the Appellate Tribunal shall be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules, the Tribunal and the appellate Tribunal shall have powers to regulate their own procedure." Chapter V of the Act deals with recovery of debt determined by Tribunal.

6. The scope of the Act came up for consideration in the decision reported in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, . In paragraph 10 of the judgment, an argument was put forward that earlier, recovery procedure used to block a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time and an urgent need was, therefore, felt for successful implementation of the financial sector reforms," to work out a suitable mechanism through which dues to these institutions could be realised without delay. The said argument was accepted by their Lordships of the Hon"ble Supreme Court, which could be seen from paragraph 13 of the judgment, wherein it has also been said that "while exercising this power we have no doubt that the company court would also bear in mind the rationale behind the enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to which reference has been made." The purpose of establishing the Tribunal is to recover the amount due to the banks and financial institutions without any delay. The procedure before the Tribunal is also summary and the same is not that of civil court. Again the Tribunal is constituted only to receive applications from the banks or from other financial institutions, and the power is limited only to adjudicate and recover the amount due to it. Being a Tribunal formed under a Statute, its powers are also limited.

7. In this case, the petitioner wanted to get themselves impleaded for the

purpose of getting a declaration that the mortgages executed by their parents are not binding on them. Admittedly, the minors are not parties to the original application. A suit for such a declaration is not barred. Under the above circumstances, I do not think that the petitioners should be impleaded in the original application pending before the Debts Recovery Tribunal, when the jurisdiction of the Tribunal is also limited. If the petitioners cannot file a suit or cannot file an application before the Tribunal to have a declaration as sought for, that cannot be circumvented by filing an interlocutory application in the original application filed by the Bank for recovery of the amount due to it. If original application by the petitioners is not maintainable, the interlocutory application cannot be made maintained in a original application filed by the Bank.

8. After adjudication, the Tribunal only issues certificate as to the amount due to the bank or financial institutions. That is the only power given to the Tribunal. Therefore, in the adjudication inter se between the respondents also, no certificate could be issued as to the binding nature of the debt, or whether the mortgage is binding on the family or not. In a recent decision of the Delhi High Court, reported in *Cofex Exports Ltd. v. Canara Bank* AIR 1977 Del. 355, the question that came up for consideration was whether the counter-claim against the bank is maintainable. In that case, a Division Bench of the Delhi High Court held thus:

A set-off or a counter-claim cannot be entertained by a Debt Recovery Tribunal. A Debt Recovery Tribunal is a Tribunal and not a court. It is a creature of Statute vested with a special jurisdiction to try only applications by bank or financial institutions to recover any debt from any person. It does not exercise any common law jurisdiction. It is only a bank or a financial institution or a consortium of the two which can enter the Tribunal for enforcement of its claim for recovery. Any one other than those cannot be entertained invoking jurisdiction of the Tribunal for enforcement of its claim as a claimant. What cannot be done directly can also not be allowed to be done indirectly. If claim by a person other than "bank or financial institution is not entertainable before Tribunal it does not become entertainable merely because it is set out in the written statement or preferred by way of set-off or counter-claim. The principle of convenience and the mechanics of litigation before Tribunal (as set out in the Act)-both exclude set-off or counter-claim being placed before the Tribunal. If set-off, counter-claims and cross suits were allowed to be raised before the Tribunal the very object behind its creation will be lost.

The principles enunciated by the Division Bench of the Delhi High Court fully applies to the facts of this case.

9. The said decision of the Delhi High Court was followed by the Andhra Pradesh High Court, in a decision reported in *Macherla Ravi Kumar and Others Vs. Indian Bank, Warangal and Others*, , wherein it has been held that "the counterclaim made by the defendants cannot be entertained by the Debts Recovery Tribunal and it has to be entertained and decided by the civil court." In this case, the

question as to the binding nature of the debt and whether the loan was borrowed for the family necessity or otherwise cannot be adjudicated by the Debts Recovery Tribunal. A separate suit is also not barred. In the application before the Tribunal the applicant is always the bank or the financial institution. The application or suit against the bank or financial institution is not maintainable before the Tribunal. If a suit or application against the bank is not maintainable, naturally the application by the minors as to the binding nature of the debt, in which the bank is the respondent also cannot be maintained. The remedy, is only by way of filing a separate suit.

10. Learned Counsel for the petitioners relied on the decision reported in Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board v. Haji Daud Haji Harun Abu and Ors. 89 C.C. 710. That is a case under the Consumer Protection Act. In that case their Lordships said that when power is given to the commission to adjudicate upon a claim that power also includes and enables the forum to decide the rival claim and also incidental and ancillary. It is held thus:

The jurisdiction of the National Commission on under the Consumer Protection Act, 1986, to entertain and decide complaints necessarily means that where plurality of persons claim the same relief, simultaneously disputing each other's right to claim the said relief, the commission has the necessary power to adjudicate the rival claims and decide the said dispute also. This power flows from and is incidental and ancillary to the substantive power conferred by Section 21(a) (i) read with Section 22 which "applies Sub-sections (4), (5), and (6) of Section 13 to the National Commission as well. It is well-settled that where a substantive power is conferred upon a court or Tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred.

I do not think that the said decision will have any assistance to the petitioner. As I said earlier, the application before the Tribunal can only be by a bank or a financial institution and for the purpose of exercising those powers, it may have incidental or ancillary powers. The substantive power conferred upon the Debts Recovery Tribunal is only to adjudicate the application of the bank or financial institution, and to issue certificate to the bank. The relief sought for in the application by the petitioners is neither incidental nor ancillary to the substantive powers of the Tribunal. Hence, on the basis of the judgment of the Hon'ble Supreme Court, cited supra, the petitioners are not going to get any benefit.

11. The Tribunal has given findings which are unnecessary. It is held that the father is kartha and competent to mortgage and he will take interest for the benefit of the minor. According to me, all these findings are unnecessary. However, the order of the Tribunal is confirmed, though for different reasons. The impleading application filed by the petitioners was rightly dismissed by the Tribunal. The Civil Revision Petition is dismissed, however without any order as to costs. The connected C.M.P. is also dismissed.