(2013) 09 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2425 of 2010

M/s. Special Machines and Another — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2014) 173 PLR 599

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—The petitioners before us availed of loan facilities originally from the Hindustan Commercial Bank Limited (which got amalgamated into the respondent-Bank) from 1979 onwards. At some stage, the petitioners started defaulting in meeting their financial commitments and consequently the respondent-bank filed a civil suit in the Court of the learned Civil Judge, Karnal, for recovery of Rs. 1,36,13,919.23 alongwith future interest with effect from 10.12.1988 on 14.12.1988 under Order 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as ''the CPC). The defence by way of written statement was filed by the petitioners (original defendants in the suit) only on 12.12.1991. Alongwith their defence incorporated in the written statement, the petitioners filed a counter claim of Rs. 52,50,88,849/-. However, after the enactment of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (hereinafter referred to as ''RDDBFI Act''), the papers of the suit were transferred to the Debt Recovery Tribunal, Jaipur and thereafter subsequently in March 2000 to the DRT at Chandigarh. The respondent-bank also initiated proceedings against petitioners under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the ''SARFAESI Act'').

2. It appears that during the course of final arguments, an issue arose on account of the fact that on the counter claim effectively, no court fees has been paid (learned counsel for the petitioners states that Rs. 10/- had been paid as

court fees which was deficient). The petitioners filed an application praying for decision on certain applications filed earlier as well as the decision on the counter claim. The DRT on 4.12.2009 opined that the counter claim in the written statement had been filed before the civil court without payment of court fees and thus, in the absence of the court fees, no claim in the shape of counter claim could be entertained at that stage.

3. The petitioners aggrieved by this order preferred an appeal before the DRAT being Miscellaneous Appeal No. 314 of 2009.. The appellate Tribunal noticed the fact that no court fees had been paid by the petitioners in accordance with law and though 18 years had elapsed, since specifically the attention of the petitioners had not been drawn to the fact of deficiency of court fees, they may be permitted to make up the deficiency.

4. The present writ petition has been filed by the petitioners under Article 226 of the Constitution of India assailing this aspect of the order. We may note that in the impugned order, there is also discussion qua the issue of the claim of the petitioners to cross-examine the witnesses, but no argument has been urged on that aspect and the sole issue raised before us is as to whether the court fees, which is payable on the counter claim, is as per the amount payable when the counter claim was filed or it has to be deposited as per the DRT Act.

5. Learned counsel for the petitioners concedes that if the counter claim is taken as if it is instituted on the date when counter claim could be filed before the DRT, the same would undoubtedly be grossly barred by time. His contention is, however, that when the proceedings of the civil court were transferred to the DRT and those proceedings included the pending counter claim, the deficiency in payment of counter claim has to be made with correlation to the amount liable to be deposited as court fees under the DRT Act and not under the Court Fees Act.

6. We had put to the learned counsel for the petitioners that either the counter claim is properly instituted before the civil court in accordance with law i.e. with the apposite court fees paid, then that counter claim could be transferred to the DRT. However, if the counter claim was not in accordance with law and no court fees or nominal court fees of Rs. 10/- paid though really speaking, there was no counter claim before the civil court which could have been transferred, it would not help the petitioners by claiming that the counter claim could be treated as having been filed when such counter claims were permitted to be filed before the DRT as by that time, the period of limitation had elapsed long time back. Infact, as noticed in the impugned order, the request has been made after 18 years.

7. We did not get any satisfactory answer to this query posed to the learned counsel for the petitioners. Learned counsel for the petitioners, however, still insists that he be permitted to further canvass his point without effectively answering this query.

8. His submission is that in terms of Section 31 of the RDDBFI Act, every suit or other proceeding pending before any court immediately prior to the date of

establishment of the Tribunal is liable to be transferred to the Tribunal and the records of such suit or other proceedings are consequently liable to be sent to the Tribunal. Section 31 reads as under:--

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 where on 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 3[***] as the Tribunal may deem fit.

9. In our view, this section does not aid the petitioners because what should be pending is a suit or proceeding. However, the counter claim without the requisite court fees cannot be said to be something which can be categorised as a proceeding pending since it was never properly instituted.

10. The second limb of the submission of the learned counsel for the petitioners is that the nature of levy under the Court Fees Act, 1870 (hereinafter referred to as ''the Court Fees Act'') and under the RDDBFI Act are different. In this behalf, learned counsel has invited our attention to Section 25 of the Court Fees Act, which reads as under

25. Collection of fees by stamps.--All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

11. He thus submits that court fees has to be paid as per stamps. Insofar as what is payable under the RDDBFI Act is concerned, learned counsel submits by reference to Section 34 that while that act is to have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but as per Sub-section 2, the provisions of the Act or Rules made thereunder are to be in addition to and not in derogation of the acts mentioned in that sub-section. The Court Fees Act is not one of the enactment mentioned in that sub-section. This coupled with the fact that Rule 7 of the Debt Recovery Tribunal (Procedure), Rules, 1993 requires the fee to be remitted through a crossed bank demand draft or postal order in favour of the Registrar of the Tribunal would imply that what was recoverable under the Court Fees Act

cannot be recovered under the DRT Act read with Rules aforesaid by an order of the DRAT.

12. We again find no merit in this contention for the reason that all what the DRAT was doing was giving an indulgence to the petitioners despite being conscious of the fact that the petitioners have failed to do anything to bring their counter claim in accordance with law before the civil court for years together. It is this indulgence which is apparently being misused to canvass a point that the DRAT did not have jurisdiction to direct payment of the court fees as would have been payable before the civil court. The DRAT did not go into this issue and really speaking, there was no counter claim in accordance with law which was available before the DRAT to adjudicate the same.

13. Learned counsel for the petitioners has also drawn our attention to Order 6 Rule 1 to contend that pleadings include plaint or written statement and the counter claim was part of the written statement. In this connection, he submits by reference to Order 8 Rule 6C that it was open to the respondent-bank to have sought segregation of the counter claim if it was of the view that the counter claim was not liable to be decided alongwith principal payment in the suit. Rule 6-C reads as under:--

6-C. Exclusion of counter-claim.--Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

14. We find the aforesaid Rule 6-C has no application to the facts of the case as it is not the plea of the respondent-bank that the claim of the petitioners ought to be tried separately. The plea is that there was no counter claim which was required to be tried as no court fees had been paid on the same.

15. Another aspect urged by the learned counsel for the petitioners is based on Article 246 read with 7th Schedule. It is contended before us that Entry 3 of List II (State List) would govern the payment of court fees. The said entry reads as under:--

3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

16. It is submitted that on the other hand Entry 96 List I would govern the fee qua the DRT payable in the proceedings of DRAT. The said entry reads as under:--

96 Fees in respect of any of the matters in this List, but not including fees taken in any court

17. The submission thus, is that there are two different kinds of fee to be paid i.e. one has to be paid to the DRT under List I Entry 96, while the other one has

to be deposited with the Sub Treasury and court fee stamped under Entry 3 List II.

18. At the cause of repetition the aforesaid would have no application to the controversy in question where there is no properly instituted counter claim before the DRT, there having been no counter claim instituted in accordance with law before the civil court.

19. In our view, the endeavour of the petitioners was a desperate one at the stage when finally proceedings instituted in 1988 were coming to an end after more than two decades. Infact, we are informed that the matter is still at the final hearing stage and we call upon the DRT to conclude the proceedings and pronounce judgment not later than one month from the date of receipt of communication of this order and if required, day-to-day proceeding should be held for the said purpose. The writ petition is dismissed with cost of Rs. 10,000/- to be deposited with the Mediation and Conciliation Centre of the High Court.