**(1998) 05 CAL CK 0024**

**In the Calcutta High Court**

**Case No :** Civil Revisional Jurisdiction C.O. No. 1015 of 1998

M/s. Spectrum Electronics and Others — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

**Date of Decision :** 14-05-1998

**Acts Referred:**

Banks and Financial Institutions Act, 1993 — Section 1(4), 17, 18, 19, 20
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 3(2)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151, 24, 24(1)
Constitution of India, 1950 — Article 226, 227
West Bengal Land Reforms Act, 1955 — Section 9(6)

**Citation :** (1998) 2 CALLT 351 : (1999) 97 CompCas 451

**Hon'ble Judges :** Altamas Kabir, J

**Bench :** Single Bench

**Advocate :** Mr. Subhro Kamal Mukherjee and Mr. Kamal Hamid, for the Appellant; Mr. Jyotinmoy Bhattacharyya, for the Respondent

# Judgement

A. Kabir, J.—This combined application under Article 227 of the Constitution, read with sections 24 and 151 of the Code of Civil Procedure, has been moved with notice to the State Bank of India and has been taken up for consideration in the presence of the learned advocates for the petitioners and the Bank.

2. At the very outset the question of maintainability of the application was raised on the ground that the suit pending before the Debts Recovery Tribunal, Calcutta, could not be transferred to a Civil Court, as prayed for on the petitioners'' behalf.

3. Appearing for the petitioners, Mr. Subhro Kamal Mukherjee submitted that in 1995 the petitioner No. 1 filed a suit against Kerala State Electronic Development Corporation, the Opposite Party No. 2 herein, being Money Suit No. 113 of 1995, in the Court of the Assistant District Judge, Siliguri, for a decree for a sum of Rs. 21,34,890.20 palse, and the same is still pending adjudication.

4. Thereafter, on 8th August, 1996, the State Bank of india, the Opposite Party No. 1 herein, filed an application before the Debts Recovery Tribunal u/s 19 of the Recovery of Debts Due to Banks and Financial institutions Act, 1993, hereinafter referred to as the "1993 Act" being C.A. No. 144 of 1996 claiming a sum of Rs. 22,60,799.22p against the petitioners.

5. In as much as, according to the petitioners they had suffered loss of business and goodwill because of the failure of the Bank to advance credit facilities and additional advance, the petitioners filed an application under Order 1 Rule 10 of the CPC for adding the Bank as defendant in Money Suit No. 113 of 1995 filed by the petitioners against Kerala State Electronics Development Corporation, hereinafter referred to as "KELTRON"

6. The said application was rejected by the learned trial court. The petitioners'' subsequent writ application under Article 226 of the Constitution challenging the proceedings initiated by the Bank before the Debts Recovery Tribunal, being W.P. No, 1967(W) of 1997, was disposed of by a learned Judge of this court on 20th February, 1997, with the observation that the plea of promissory estoppel and counter-claim could be raised by the petitioner in the pending application before the said Tribunal and that the petitioners could also raise all contentions in the suit filed by them before the Tribunal and it would be open to the Tribunal to consider the same.

7. The petitioners were advised to file a separate suit against the Bank in support of their claims against the Bank and the same instituted by the petitioners in 1997 (Money Suit No. 91 of 1997) in the Court of the Civil Judge, Senior Division, Siliguri, for damages and interest against the Bank for a sum of Rs. 77,41.276.50 paise.

8. Mr. Mukherjee urged that since the issues involved in the two pending suits and the pending application before the Debts Recovery Tribunal, Calcutta, were dependant upon each other and the same set of facts were also involved in the three proceedings, a finding in respect of any common issue in any of the said three proceedings would operate as res Judicata in the other two.

9. That in such circumstances all the three matters were required to be heard analogously, and since the Debts Recovery Tribunal had no Jurisdiction to entertain a suit, other than those indicated in section 17 of the 1993 Act, the application pending before the Tribunal should be transferred to the court of the Assistant District Judge. Silliguri before whom both the Money Suits filed by the petitioners against the Opposite Parties were pending.

10. Mr. Mukherjee also contended that from section 4 of the 1993 Act it would be apparent that the Tribunal was to be a one man Tribunal and the Central Government did not even have the power to appoint more than one Presiding Officer for such Tribunal. in the event of any prejudice or bias, the litigants would not be able to have their matter decided by another Presiding Officer of Tribunal at Calcutta.

 

11. Mr. Mukherjee submitted that even if section 24 of the CPC did not strictly apply, this court, in exercise of its jurisdiction under Article 227 of the Constitution, could transfer the matter pending before the Debts Recovery Tribunal, Calcutta, to the court of the Assistant District Judge, Sillguri.

12. In support of his contentions, Mr. Mukherjee referred to a decision of the Punjab High Court in the case of Maharaj Kumar Gajbir Singh and Another Vs. Maharaja Satbir Singh and Others, wherein in connection with the transfer of a criminal case. It was held that, although, section 24 of the CPC would have no application to such a case, the High Court in pursuance of its powers under Article 227 of the Constitution had ample power to effect such transfer.

13. Mr. Mukherjee then referred to a Bench decision of the Karnataka High Court in the case of Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another, where it was, inter alia, held that since the Claims Tribunal under the Motor Vehicles Act, 1939, was a court subordinate to the High Court, within the meaning of section 24 of the Code of Civil Procedure, the High Court could transfer a case from one Tribunal to another,

14. The aforesaid decisions were followed in the case of 1) Amar Kaur and Another Vs. Kulbir Singh and Others, (2) Kanniammal and Another Vs. P. Narayanan and Another, and (3) Raju Das Vs. Sushil Kumar Das and Others, to which reference will be made, if necessary.

15. Mr. Mukherjee also referred to a Full Bench decision of the Hyderabad High Court in the case of Mohamed Abdul Raoof v. State of Hyderabad, reported in AIR 1951 Hyd 50, wherein the court''s powers to transfer a criminal case under Article 227 fell for consideration and as in the case of Maharaj Kumar Gajbir Singh (supra) it was held that in exercise of its powers under Article 227 of the Constitution, the court was empowered to direct such transfer.

16. Mr. Mukherjee then urged that similar principles had been applied to the Family Courts and it had been held by the Madras High Court in the case of K.R. Srinathi Vs. H. Ramakrishnan, and by the Allahabad High Court in Munna Lal Vs. State of U.P. and another, that the Family Court Acts as a Civil Court subordinate to the High Court and, as such, there was no legal impediment for the transfer of any proceedings pending before the Family Court to any of the competent Civil Courts subordinate to the High Court and from one Family Court to another.

17. Mr. Mukherjee lastly referred to a Full Bench decision of the Bombay High Court in the case of Shripatrao Dajisaheb Ghatge v. The State of Maharashtra, reported in AIR 1977 Bom 389, wherein amongst other things, the Full Bench was considering the extent of the High Court''s power of judicial superintendence. It was observed that the High Court''s powers of judicial superintendence covers Judgments of all courts and also extends to tribunals, bodies or authorities, whatever be their label, provided two conditions are satisfied (a) such tribunal, body or authority is basically a court and performs judicial functions of rendering definitive judgments having finality and

 

authoritativeness to bind the parties litigating their rights before it in exercise of sovereign Judicial power transferred to it by the State and b) such tribunal, body or authority is subject to the High Court''s appellate and revisional jurisdiction.

18. Mr. Mukherjee urged that having regard to the aforesaid Judicial pronouncements, this court had Jurisdiction under Article 227 of the Constitution to transfer the application pending before the Debts Recovery Tribunal, Calcutta, to the court of the Assistant District Judge, Siliguri.

19. Appearing for the State Bank of India, Mr. Jyotirmoy Bhattacharyya submitted that from the scheme of the 1993 Act, it would be quite clear that it was the intention of the legislature to exclude the jurisdiction of the Civil Courts in relation to matters indicated in section 17 of the said Act and to vest the same in a special forum.

20. Mr. Bhattacharyya submitted that section 22 of the above Act makes it clear that the Tribunal would not be bound by the procedure laid down in the CPC but is to be guided by the principles of natural justice with power to regulate its own procedure with the object of providing a summary procedure before a special forum for speedy recovery of debts due to banks and financial institutions.

21. Mr. Bhattacharyya then submitted that section 20 of the 1993 Act provides for an appeal to the Appellate Tribunal from an order of the Debts Recovery Tribunal and a procedure has been laid down in that regard. in the event the pending application was transferred to the Civil Court, the said provisions would be rendered otiose.

22. Referring to the different provisions of the 1993 Act, Mr. Bhattacharyya urged that the said Act was a complete code by itself in relation to debts due to banks or financial institutions above Rs. 10 lakhs or such other amount, being not less than Rs. 1 lakh, as the Central Government may, by notification, specify, and it was the specific intention to exclude the jurisdiction of the Civil Courts in such matters.

23. Mr. Bhattacharyya urged that in view of the above, a proceeding pending before the Debts Recovery Tribunal could not be transferred to a Civil Court either u/s 24 of the CPC or under Article 227 of the Constitution.

24. In support of his submission, Mr. Bhattacharyya firstly referred to a Bench decision of this court in the case of Paresh Nath Mondal v. Bijon Behari Mondal, reported in 1982(1) CHN, Page 215, wherein in respect of an appeal in a pre-emption proceeding under the West Bengal Land Reforms Act, 1955, it was held that, inasmuch as, section 9(6) of the said Act confers a right of appeal and also fixes the forum, namely, the court of the District Judge, which in view of section 3(2) of the Bengal, Agra and Assam Civil Courts Act, 1887, may include, an assignment, the court of the Additional District Judge appointed for the District, the appeal could not be transferred to any other court subordinate to the District Judge such as the court of the Subordinate Judge, u/s 24 of the Code of Civil

 

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25. Reference was then made to a Full Bench decision of the Allahabad High Court in the case of Kanyal Das and Others Vs. Har Prasad and Others, , where having regard to the provisions of sub-section (1-A) of section 4 of the U.P. Civil Laws Amendment Act, 1970. It was held that since the powers of the High Court were excluded in respect of appeals pending before it which were valued between ten and twenty thousand rupees and were to be transferred to the District Judge concerned, the High Court could not restrain such category of first appeals in order to try and dispose of the same in exercise of its powers u/s 24(1)(b) of the Code of Civil Procedure.

26. Mr. Bhattacharyya urged that the decisions cited by Mr. Mukherjee regarding the High Court''s power to transfer cases under Article 227 of the Constitution, were all in connection with transfer of matters from one Tribunal to another and not from a Tribunal to a Civil Court, and no reliance could, therefore, be placed thereupon for the purposes of this case.

27. As to the cases cited by Mr. Mukherjee in respect of the Family Courts Act, Mr. Bhattarcharyya urged that the Family Court functioned as a court subordinate to the High Court, and there could, therefore, be no difficulty in applying the provisions of section 24 of the CPC in such cases.

28. In this regard, Mr. Bhattacharyya referred to an unreported decision of a learned single Judge of this court in several matters relating to suits which had been transferred to the Debts Recovery Tribunal where Rules had been issued under Clause 13 of the Letters Patent read with section 24 of the CPC (ALP 14/95-- Chatterjee Brothers & others v. United Bank of India and various other matters). Considering the provisions of the 1993 Act in relation to Clause 13 of the Letters Patent read with section 24 of the Code of Civil Procedure, the learned Judge concluded that he had no authority to transfer any proceeding pending before the Debts Recovery Tribunal either under Clause 13 of the Letters Patent or u/s 24 of the Code of Civil Procedure.

29. Mr. Bhattacharyya urged that having regard to the above, the instant application was not maintainable and was liable to be dismissed.

30. Replying to Mr. Bhattacharya''s submissions, Mr. Mukherjee submitted that the powers of the High Court under Article 227 of the Constitution could not be taken away by statute, inasmuch as, such power flowed from the Constitution itself.

31. In this connection, Mr. Mukherjee placed reliance on the decision of the Hon''ble Supreme Court in Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, , wherein it was held, inter alia, that the High Court''s powers under Article 227 of the Constitution could not be curtained by section 146 of the Criminal Procedure Code.

32. The answer to the question raised in this application regarding the

 

maintainability of an application under Article 227 of the Constitution and section 24 of the CPC for the purpose of transfer of a proceeding pending before the Debts Recovery Tribunal to the Civil Court finds expression in the 1993 Act itself.

33. The aforesaid Act was enacted with the object of providing for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions.

34. Section 17 of the Act defines the jurisdiction, powers and authority of such Tribunals and provides as follows:--

"17. (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."

35. Section 18 of the Act provides for exclusion of the jurisdiction of the Civil Courts in the following terms:--

"18. Bar of jurisdiction. On and from the appointed day, on 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."

36. It is apparent from the provisions of sections 17 and 18 of the 1993 Act that the jurisdiction and powers of the Tribunal have been confined to recovery of debts due to banks and financial institutions. Consequently, even if a counter-claim is made by the Opposite Party and the same is upheld in favour of the Opposite Party by the Tribunal, it cannot pass a decree pursuant thereto. But at the same time, however, the Act creates a complete code for the adjudication of matters referred to in section 17 and provides for the procedure in respect thereof. in view of the provisions of sub-section (4) of section 1 read with sections 17 and 18 of the Act, the Jurisdiction of the Civil Courts to try cases in respect of debts due to banks and financial institutions, as stipulated in sub-section (4) of section 1, stands ousted. The saving of the High Court''s powers under Article 227 of the Constitution u/s 18 does not, in my view, entitle the High Court to lift the bar as imposed under the aforesaid provisions and vest a Civil Court with jurisdiction to try a matter which falls within the jurisdiction of the Tribunal.

37. Section 22 of the Act makes it clear that the Tribunal would not be bound by the rigours of the procedure laid down in the CPC and makes provision for summary disposal of applications filed u/s 19 of the Act. The said intention of the legislature will be frustrated if the pending application is transferred to the Civil

 

Court, which is bound by the procedure laid down in the Code.

38. For the self-same reason, the provision for appeal, as provided in section 20 of the Act and the procedure in respect thereof provided in section 21, will be rendered nugatory, if the pending application is transferred to the Civil Court,

39. The decisions cited by Mr. Mukherjee with regard to transfer of cases from one Claims Tribunal under the Motor Vehicles Act to another such Claims Tribunal cannot be applied to the facts of a case of this nature, since the said cases entail transfer of cases between Tribunals exercising the same jurisdiction and not different jurisdictions.

40. The principles enunciated in the other decisions cited by Mr. Mukherjee regarding the High Court''s powers to transfer cases under Article 227 of the Constitution where section 24 of the CPC did not apply, cannot be faulted, but again the said principles do not have application in the peculiar facts of this case.

41. As to the decisions under the Family Courts Act, since the Family Courts function as subordinate courts under the High Court, there can be little or no difficulty in applying the provisions of section 24 of the CPC or even Article 227 of the Constitution in such cases, which however, is not the case, as for as the present case in concerned.

42. On the other hand, the decisions cited by Mr. Bhattacharyya are of relevance to the facts of this case. When a specific forum has been created or named in an enactment, a case cannot be transferred to any other forum other than the forum so created or so named.

43. This application, accordingly, fails and is dismissed.

There will be no order as to costs.

However, since it is submitted on behalf of the petitioners that the tribunal has closed the evidence and has fixed the matter for arguments, the Tribunal is directed to give the petitioners herein an opportunity for producing and examining their witnesses, if necessary, and thereafter to fix the matter for arguments.

If an application for supply of urgent xerox certified copy is made, the same is to be supplied to the applicant within 72 hours from the date of making of such application, subject to compliance with all the required formalities.

44. Application dismissed

 