(2011) 03 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5718 of 2009 (O and M)

Naresh Kumar Kalra — APPELLANT

Vs

Bank of India and Others — RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 9 Rule 13
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31, 31A, 34

Citation : (2011) 163 PLR 455

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—CM No. 27320-CII of 2009

Learned counsel for the applicants does not press this application. Dismissed being not pressed.

Civil Revision No. 5718 of 2009

This petition assails the order dated 27.072009 (Annexure P-8) passed by the Civil Judge (Senior Division), Jagadhri, dismissing the objection petition filed by the JD- petitioner.

2. The facts of the case are that the plaintiff-respondent Bank of India (hereinafter referred to as ''the respondent) had obtained a decree for a sum of Rs. 1,68,326.18 paise alongwith interest at the rate of 15.50% per annum from the Civil Court on 01.02.1991. The appeal against the said judgment, preferred by the petitioner-JD (hereinafter referred to as ''the petitioner'') was dismissed on 27.07.1993. Thereafter, the respondent Bank filed the execution petition on 12.04.1994. The petitioner had also filed an application under Order 9 Rule 13 CPC for setting aside the ex parte decree, which was also dismissed. The property was put to attachment and sale. The sale was effected on 03.05.2008

and it was confirmed later on. The petitioner had preferred an objection petition, which was dismissed.

3. It is not in dispute that the execution of the decree is for more than Rs. 10 Lakhs. The decree has been executed as much as the sale has been confirmed.

4. The prime question raised by the counsel for the petitioner at this stage is that since the proceedings against the petitioner are pending before the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as ''the Act''), and the execution of the decree is for more than Rs. 10 Lakhs, therefore, Civil C6urt has no jurisdiction to try the execution and as such, execution cannot be proceeded and is liable to be transferred to the Debts Recovery Tribunal for adjudication. In this regard, he has referred to Section 31 and 31-A of the Act. Section 31 of the Act 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.

31-A. Power of Tribunal to issue certificate of recovery in case of decree or order.- (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been" executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under Sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act.

5. A bare reading of the aforesaid Sections indicates that execution application is also a proceeding pending in a Civil Court. It also cannot be disputed that this execution is of the value of more than Rs. 10 Lakhs. Thus, by taking support of these two features, the counsel for the petitioner has contended that this execution requires to be transferred to the Debts Recovery Tribunal and the Civil Court has no jurisdiction in the matter. In order to support this contention, counsel for the petitioner has placed reliance on the judgment of Punjab National Bank Dasuya v. Chajju Ram and others AIR 2000 SC 2671 and Allahabad Bank Vs. Canara Bank and Another, and has contended mat execution proceedings are also covered by Section 31 of the Act. He has also relied on Risk Capital and Technology Finance Corporation Ltd. Vs. Harnath Singh Bapna and others, ,

wherein it was observed mat application for setting aside exparte proceedings is also covered by the other proceedings as mentioned in Section 31 of the Act.

6. Having perused the aforesaid judgments, this Court is of the view that any suit or proceedings including the execution proceedings or decree passed by the Court before the commencement of the Amendment Act, which have not been executed, then on amendment of the Act, it is only the Tribunal which would have the jurisdiction of entertain the application for execution of the decree in as much as amount due for which, decree was sought to be executed is over Rs. 10 Lakhs. Similar observations were made by the Hon''ble Apex Court in Punjab National Bank''s case (supra), wherein it was observed as under:

6. A bare reading of the aforesaid Section shows mat execution application being a proceeding pending in a Civil Court when the Act came into force was liable to be transferred to the Tribunal because the amount for which the execution application had been filed as per the decree which had been passed, was over Rs. 10 Lakhs.

7. While referring to the provision of Section 31-A of the Act, as inserted by the Amendment Act of 2000, the Hon''ble Apex Court further held as under:

9 The aforesaid Section 31-A is clearly applicable in the present case. The decree was passed by Court before the commencement of the Amendment Act and the same has not yet been executed. At least after the amendment, it is only the Tribunal which would have the jurisdiction of entertaining the application for execution of the decree in as much as the amount due for which the decree was sought to be executed is over Rs. 10 Lakhs. We are also unable to agree with the High Court that because the original decree which was passed was for principal sum of Rs. 6,19,250/- the Tribunal would get no jurisdiction. It is to be seen that decree was for a sum of Rs. 6,19,250/-plus interest at the rate of 16-1/2 per cent per annum from the date of filing of the suit till the recovery of money. As and when the amount due to the bank under the decree became more than Rs. 10 Lakhs and an application for execution was filed, it could only be entertained by the Tribunal and not by the Civil Court. It is clear that in view of the provisions of Section 34 of the Act, the provisions of Order 21 Rule 10 CPC would have no application.

8. From the principle as laid down in the judgment delivered in case of Punjab National Bank, Dasuya (supra), one thing which could be driven is that if the decree was passed even before the commencement of the Amendment Act and the same has not yet been executed, then it was only the Tribunal which would have the jurisdiction to try the same. Same is the intent and purport of Section 31 and 31-A of the Act.

9. In this case the suit was filed on 14.06.1985 and the decree was passed on 01.02.1991. The execution was filed on 12.04.1994. Initially the objections were dismissed on 11.11.1997. No objection with regard to Section 31 and 31-A of the Act has been raised before the executing Court Therefore, the executing Court

proceeded to auction the property. Now after the sale has been confirmed for satisfaction of the decree, the petitioner has raised this objection for the first time in this Court.

10. As such, since the decree has been executed, the provisions of Section 31 and 31-A of the Act are not applicable.

11. Consequently, the objections as raised by the petitioner for the first time in this Court, cannot be maintained. The order dismissing the objection petition on 11.11.1997 has also not been challenged.

Resultantly, finding no merit in the petition, the same is hereby dismissed.