
(2000) 03 PAT CK 0086
In the Patna High Court
Case No : C.R. No. 1243 of 1999

National Rubber Industries and Another	APPELLANT
Vs	
State Bank of India and Another	RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31

Citation : AIR 2000 Patna 203 : (2000) 2 PLJR 757

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—The defendant-applicants are the petition is in this Civil revision application which arises out of an order dated 2-6-1999 passed in Misc. Case No. 8 of 1998, whereby the learned Subordinate Judge, Deoghar, has transferred the record of the aforesaid Misc. case to the Debt Recovery Tribunal, Patna, in view of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act").

2, The relevant facts for the disposal of the instant civil revision application, which are not in dispute, are that Opposite party No. 1 State Bank of India, filed a suit being Money Suit No. 24 of 1995 against the defendants-petitioners as well as Opposite party No. 2 for a decree of Rs. 9,22,357/- and other reliefs Including interest arising therefrom. The said suit was decided ex parte on 26-9-1996 and the defendants, thereafter, appeared on 17-11-1996 and filed a petition under Order IX, Rule 13, CPC for setting aside the ex parte decree which was registered as Misc. Case No. 8 of 1998. During the pendency of the said proceeding the plaintiff-Bank put the decree in execution which was registered as Execution Case No. 9 of 1998. The said execution case was subsequently withdrawn and filed a fresh execution case being Ex. Case No, 2 of 1999 which is pending before the Debts Recovery Tribunal. The initiation of the Misc. proceeding on the petition filed by the defendants under Order IX, Rule 13, CPC was challenged by the

plaintiff-bank on the ground that the same is not maintainable in view of the provisions of the Act. Learned Subordinate Judge after having accepted the contentions of the Bank, transferred the proceeding before the Tribunal which is under challenge in this Civil revision application as stated above. Learned counsel for the petitioners has challenged the order impugned mainly on the ground that the instant Misc. proceeding may not be treated as a suit and/ or appeal but it is just a proceeding for setting aside the ex parte decree which will not come within the mischief of Section 31 of the Act. In opposition, however, the learned counsel for the Bank has supported the order of the learned Subordinate Judge and submits that on coming into force the said Act, all the suits, including any proceeding pending before the Court will stand automatically transferred to the Tribunal immediately after its constitution in terms of Section 31 of the Act. In support of his contention, learned counsel has relied upon a decision in the case of Ranjeet Kumar Tebriwal v. State Bank of India reported in (2000) 1 PLJR 497. Learned counsel for the petitioners had, however, placed his reliance upon a decision in the case of Arbind Kumar Vs. State Bank of India and Others, and submits that the words "other proceedings" mentioned in Section 31 of the Act apply to such proceedings pending before the authority other than the civil Courts. In order to appreciate the rival contention of the parties, Section 31 of the Act is to be noticed which reads thus : "31. Transfer of pending cases.-- (1) Every suit or other proceedings 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 whereon it is based is such that it would have been if it had arisen after such establishment, within the jurisdiction on 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 transferred from any Court to a Tribunal under Sub-section (1).-

(a) the Court shall as such 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 or de novo as the Tribunal may deem fit."

3. In this context, reference may also be made to Sections 17 and 18 of the said Act. Section 17 deals with the jurisdiction, power and authority of the Tribunal which clearly envisages that the Tribunal shall exercise its power on and from the appointed day, and to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 bars the jurisdiction of the civil Court and other authority on and from appointed day except the jurisdiction of the Supreme Court and the

High Court in relation to the matter specified in Section 17 aforesaid. Admittedly the aforesaid proceeding was pending before the Court below on the appointed day. The Tribunal was established on 4th November, 1996, Reference may also be made to a decision of the Kerala High Court reported in the case of Kunju Beevi v. Syndicate Bank 1999 Ban 1092: 1999 AIHC 1095, wherein it has been held that the application under Order IX, Rule 13, CPC for setting aside the ex parte decree is a proceeding in terms of Section 31 of the Act and the application filed in pending matter before the Court which is liable to be transferred to the Tribunal u/s 31 of the Act. Admittedly the money suit was pending on the appointed day and the instant Misc. proceeding was initiated after coming into force the said Act. In the premises, therefore, I am of the view that the instant proceeding for setting aside the ex parte decree stands transferred before the Tribunal In view of the provision as quoted above.

4. After having heard the learned counsel for the parties and going through the materials on record including the decisions cited at the bar, it is to be held that the Court below has rightly passed the impugned order strictly in accordance with the mandate of the Act and as such I am not inclined to interfere with the same. Accordingly, this civil revision application is dismissed.