(1998) 03 MAD CK 0101

In the Madras High Court

Case No : C.R.P. No. 3571 of 1997 and C.M.P. No. 18617 of 1997

N.M. Ahamed Ali APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1(4), 18

Citation : (2000) 101 CompCas 475 : (1998) 2 LW 107

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : R. Krishnamachari, for the Appellant; S. Jayakumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—The revision has been filed against the order of the lower court rejecting the preliminary objection raised by the petitioner

with regard to the jurisdiction of the lower court. The respondent herein filed the suit, O. S. No. 761 of 1987, on the file of the Sub-Court, Trichy,

for recovery of a sum of Rs. 9,93,461.89 on a mortgage against the petitioner herein. A preliminary decree has been passed. The petitioner

preferred an appeal in A. S. No. 756 of 1989 on the file of this court against the said preliminary decree.

2. In the said appeal, the respondent herein filed C.M.P. No. 9881 of 1997, to send back the records of the suit to the trial court in order to

proceed with the final decree proceedings, since there is no stay of the execution of the preliminary decree passed by the trial court. This court by

order dated August 5, 1997, directed the Registry to despatch the records in O. S. No. 761 of 1987, to the lower court with a direction that the lower court has to send back the records immediately after the final decree proceedings are over. A further direction was issued to the lower court

to complete the final decree proceedings within six months from the date of the receipt of the records.

3. The respondent herein filed I.A. No. 140 of 1990, for passing the final decree which was pending all along. Pursuant to the order of this court

dated June 5, 1997, in C. M. P. No. 9881 of 1997, when the lower court took up the said I. A. No. 140 of 1990, for enquiry, the petitioner

herein raised a preliminary objection stating that the lower court has no jurisdiction to proceed with the final decree proceedings in view of the

formation of the Debt Recovery Tribunal. However, the lower court, by order dated November 10, 1997, rejected the petition filed by the

petitioner herein in S.R. No. 2092, dated October 24, 1997, on the ground that the suit claim is only for a sum of Rs. 9,93,461.89, whereas the

Debt Recovery Tribunal has been conferred the power to initiate proceeding''s or to entertain the claim only where the claim from the bank or the

financial institution is above Rs. 10,00,000. As against the said order, now the present revision has been filed.

4. The matter has been posted before this court pursuant to the letter written by the Principal Subordinate Judge, Tiruchirappalli, dated February

20, 1998, in Ref. D. No. 452, which is as follows :

I submit that the High Court in its order dated August 5, 1997, cited in the reference (1) above, has directed this court to dispose of the petition I.

A. No. 140 of 1990, in O. S. No. 761 of 1987, within six months from the date of receipt of the order.

I further submit that after filing of counter by the respondent arguments of both sides have been heard and orders were reserved on February 4,

1998. When the petition was pending for pronouncement of order all further proceedings in the matter has been stayed by High Court by its order

cited in the reference (2) above.

Therefore, I submit this report for want of further direction in this regard.

5. When this court has passed an order directing the lower court to complete the final decree proceedings within six months from the date of

receipt of the records, it is not open to the petitioner to raise any sort of objection before the lower court which may amount to action contrary to the direction issued by this court. If any clarification is necessary, the petitioner ought to have sought for a direction before this court since the

lower court is expected to carry out the direction issued by this court. Hence, I am of the view that the conduct of the petitioner in filing the petition

raising an objection regarding jurisdiction, is nothing but contempt of court. But, however, considering the interest of the respondent, I am of the

view that the civil revision petition can be finally disposed of without any further delay.

6. There is no dispute that the Tribunal had been constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Sub-

section (4) of Section 1 of the said Act deals with the jurisdiction of the Tribunal as follows :

1.(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or

financial institutions is less than ten lakhs rupees or such other amount, being not less than one lakh rupees, as the Central Government may by,

notification, specify.

7. Hence, it is clear that the provision of the Act will not be applicable where the amount of debt due to any bank is less than Rs. 10 lakhs. Section

18 bars the jurisdiction of the civil court to entertain any claim from the bank or the financial institution. The limitation on the pecuniary jurisdiction

specified under Sub-section (4) of Section 1 would refer to the claim of the bank on the date of the filing of the suit and not subsequent to the

dates.

8. In fact, I asked learned counsel to clarify about the pendency of the suits before this court. It is a well known fact that where the suits are filed

for less than Rs. 10 lakhs those suits have not been transferred to the Tribunal. Learned counsel for the petitioner also concedes the same. I also

asked learned counsel for the petitioner, whether if the suit is taken for final disposal after three or four years and by virtue of the accrued interest,

the claim of the bank on that date exceeds Rs. 10 lakhs, this court has jurisdiction or not to try the suit. Learned counsel for the petitioner fairly

conceded that this court has got jurisdiction to try the suit. When learned counsel is very much clear about the jurisdiction of the Tribunal when the

amount exceeds Rs. 10 lakhs and the jurisdiction of the civil court when the amount is less than Rs. 10 lakhs, I am of the view that the preliminary

objection has been raised before the lower court only to delay the proceedings and nothing else. Equally, the revision has been filed only to drag on

the proceedings and to delay the payment. When the statute is very clear, the objection raised by the petitioner''s counsel is unwarranted and

unsustainable.

9. It may be worthwhile to consider the legal position also. It has been held in the judgment reported in Kannayya Chetti v. Venkata Narasayyu40

ILR 1 (DB) as follows :

We are, therefore, of opinion that in every case when the court is seized of jurisdiction it cannot and does not lose it by any change in the value of

the subject-matter of the suit after the institution of the suit or by the precise ascertainment of its value in cases which do not admit of such

ascertainment at the time of institution, except when the plaint is allowed to be amended ; and that is not really an exception,

On the same principle we think the court can award such sum as it finds due to the plaintiff although such sum is above the pecuniary limits of its

jurisdiction. This can happen only in suits for accounts or mesne profits, as in all other cases the plaintiff without amending his plaint can not get

more than what he claims ; even in suits for accounts or mesne profits, the plaintiff does not really get more than what he asks, for the relief prayed

for in those suits is not for a particular sum, but to whatever sum the plaintiff is found ultimately entitled to, and the amount fixed approximately is

for the purpose of determining the court which has jurisdiction to try the suit.

10. Similarly a Full Bench of the Patna High Court, after elaborately referring to various judgments, has held in the judgment in Shyam Nandan

Sahay and Others Vs. Dhanpati Kuer and Others, , as follows (page 249) :

On a consideration of the authorities referred to above my concluded opinion is that where, on the valuation given in the plaint a particular court

has jurisdiction to entertain the suit, a transfer of the same to another court under the provisions of Section 24 of the CPC is competent even

though subsequently it is found that its real valuation was beyond the pecuniary jurisdiction of that court.

11. In the judgment in Mahadeo Vs. Hanumanmal and Others, the learned judge had elaborately discussed the question of inherent lack of

jurisdiction and the defect in the jurisdiction as follows (page 309) :

In this connection I may refer to the observations made in Shyam Nandan Sahay and Others Vs. Dhanpati Kuer and Others, . In that case a

distinction was drawn between the cases where there is inherent lack of jurisdiction apparent on the face of the record and the case where it is

doubtful, or at least not so apparent, whether the court possesses jurisdiction or not. Where there is total lack of jurisdiction, nothing can confer the

same on the court, and an objection to jurisdiction cannot be waived. Therefore, even if such objection has not been raised by any party, the entire

proceeding of the court from the very initial stage is without jurisdiction and void. Where, however, there is no total lack of jurisdiction, but on the

contrary, the averments in the plaint, if not challenged manifestly bring the case within the jurisdiction of the court in which it is filed, its proceedings

are perfectly with jurisdiction, and want of jurisdiction in such a case can rightly be waived. In other words this kind of defect in jurisdiction is not

fundamental in character and does not amount to anything more than a mere irregularity in the exercise of jurisdiction. The lack of pecuniary

jurisdiction, it was observed, comes under the latter of the above two kinds of defects, and, therefore, is not fundamental in character. It can be

waived by any of the parties, and if not challenged at the proper time, it cannot be questioned subsequently. This is apparent from Section 11 of

the Suits Valuation Act which clearly indicates that there is no apparent defect in the frame of a suit due to low valuation and it does not take away

the inherent jurisdiction of the court to entertain it. In the present case on the valuation given in the plaint, it cannot be disputed that the Court of

Civil Judge, Ratangarh had jurisdiction to try the suit. The defendant raised an objection that the subject-matter of the suit had been under-valued

and the valuation of the suit was above Rs. 10,000 but none of the parties wanted to pursue the objection regarding jurisdiction but on the other

hand made an application for reference to arbitrators. Learned counsel for the petitioner has failed to show that there was a complete lack of

jurisdiction in the court of Civil Judge, Ratangarh, to try the suit, or that there was any defect of fundamental character in the exercise of

jurisdiction. The utmost that can be said is that there was under valuation of the subject-matter of the suit but the decree of the trial court on that account is not liable to be set aside unless the appellate court was satisfied that the under valuation of the suit had prejudicially affected the disposal

of the suit on merits. Learned counsel did not at all contend that his client had been prejudicially affected on merits. As observed by their Lordships

of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, , the objection regarding territorial or pecuniary jurisdiction of a

court is only technical. In this view of the matter, I hold that the decree passed by the Civil Judge, Ratangarh for partition of the joint Hindu family

property belonging to the parties is neither without jurisdiction nor otherwise null and void. Consequently, I overrule this objection also.

12. From the above well-laid principles, it is clear that the objection with regard to jurisdiction has to be raised at the initial stage. If the court lacks

total jurisdiction, then the conduct of the party in not raising any objection would not confer jurisdiction. But, on the other hand, if the jurisdiction

issue is only a defect, then if no objection has been raised with regard to such issues then the court has got jurisdiction. The objection with regard

to the jurisdiction cannot be raised at a later point of time.

13. There is no gainsaying the fact that the plaint as framed by the plaintiff was triable by the Sub-Court, Trichy. The valuation as the plaintiff has

fixed in the plaint was within the pecuniary jurisdiction of the Sub-Court, Trichy. It is well established that the ""value of suit"" for the purposes of

jurisdiction is to be determined by the valuation in the plaint. The valuation which the plaintiff has given in the present case is only a sum of Rs.

9,93,461.89, and therefore, the suit was clearly within the jurisdiction of the Sub-Court, Trichy. The formation of the Tribunal does not take away

the jurisdiction of the court where the value of the suit, as stated in the plaint, is less than Rs. 10 lakhs. In view of the above principles, I am of the

view that the objection raised by the petitioner cannot be countenanced.

14. Hence, the civil revision petition is dismissed with costs of Rs. 5,000.

15. C. M. P. No. 18617 of 1997 is dismissed.