
(2006) 08 RAJ CK 0008
In the Rajasthan High Court

Punjab National Bank

APPELLANT

Vs

Supreme Transport Organisation

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 19, 31

Citation : (2007) 1 RLW 232

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—At the request of learned Counsel for the parties, this appeal is finally heard and decided.

2. The appellant has challenged the order dated 22.2.2005 which was passed while considering the application under Order 2 Rule 2(2) CPC and the trial Court held that the civil suit for recovery of debt filed by the appellant bank is not triable by the Civil Court and it can be entertained only by Debt Recovery Tribunal (for short "the Tribunal") constituted under Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993").

3. Brief facts of the case are that the plaintiff/appellant bank filed a suit for return of goods which were delivered to the defendant/respondent transporter against which some financial benefits were availed by M/s. Derby Textiles Ltd. and who did not pay the amount to the appellant bank. The appellant also prayed that the money decree, in alternate, of Rs. 43,09,144/- be passed. The suit was filed on 8.12.2000. The respondent submitted written statement on 9.7.2001 before the civil Court wherein the respondent took an objection about the civil court's jurisdiction in entertaining the suit of the financial institutions like the appellant. It appears that an issue about the question of jurisdiction was framed by the trial court, as submitted by learned Counsel for the respondent, but that issue has not been decided by the trial Court. Be it as it may be. The respondent

submitted an application under Order 2 Rule (2) read with Section 151 CPC.

4. Respondent in the application under Order 2 Rule 2 CPC submitted that the appellant submitted a petition u/s 19 of the Act of 1993 against M/s. Derby Textiles Ltd. and Ors. wherein the appellant claimed decree of Rs. 10,61,19,303/- including the amount of Rs. 40,40,375.85 P. with interest. According to the respondent, the amount of Rs. 40,40,375.85p. is the same amount which has been claimed by the appellant in the present civil suit filed before the civil Court. The Tribunal by its order dated 20.1.2004 allowed the appellant's petition u/s 19 of the Act of 1993 against M/s. Derby Textiles Ltd. and other defendants Nand Kishore, Badri Narayan and Sita Ram for total amount of Rs. 10,61,19,303/-. It is also submitted by the respondent in its application that even a certificate for recovery of said decretal amount has also been issued by the Tribunal in favour of the appellant. Since the relief which could have been claimed by the appellant against respondent in the earlier petition of the appellant u/s 19 of the Act of 1993 and has not been claimed, therefore, the plaintiff's/appellant's present suit was not maintainable as it was barred by the provisions of Order 2 Rule 2(2) CPC.

5. While considering the said application filed under Order 2 Rule 2(2) CPC, the Court below reached to the conclusion that the suit filed by the appellant is not maintainable in civil court in view of the bar created by Section 18 of the Act of 1993, therefore, the civil Court neither can entertain the suit nor can proceed with the suit and consequently, cannot decide the application filed under Order 2 Rule 2(2) CPC filed by the respondent. The Trial Court by order dated 27.2.2005 ordered for return of the plaint to the appellant bank for presentation in the proper court/tribunal, obviously, Debt Recovery Tribunal, Jaipur. The trial Court directed both the parties to appear before the Tribunal on 18.3.2005. Learned Counsel for the respondent pointed out that since the appellant did not submit any application which could have been filed under Order 7 Rule 10A(2), therefore, the trial Court could not have fixed the date for appearance of the parties in the transferee court. The respondent, therefore, submitted a review petition before the court below for deleting the direction by which the respondent was directed to appear before the Tribunal. According to learned Counsel for the respondent, that application was allowed and direction issued to the respondent to appear before the Tribunal on 18.3.2005 was recalled and set aside.

6. Learned Counsel for the appellant bank submits that since there was a court's direction to take back the plaint and present it before the Tribunal, obviously before 18.3.2005, which was the date kept by the Court even after allowing the review application of the respondent for appearance of the appellant alone before the Tribunal, therefore the appellant took the plaint and presented it before the Tribunal alongwith the court fees stamps which the appellant submitted before the civil Court. According to learned Counsel for the appellant, the Tribunal before registering the petition u/s 19 of the Act of 1993 on the ground of non-compliance of furnishing the requisite fees by demand draft or postal order as required by Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993 (for

short "the Rules of 1993") by order dated 27.5.2005 held that the plaint returned by the civil Court cannot be presented as such in the Tribunal nor the Court fees stamp can be given credit against the fees payable in the petition filed under the Act of 1993. The reason for not giving credit of the Court fees paid by the appellant in civil suit was that as per Rule 7 of the Rules of 1993, the fees on debt recovery petition u/s 19 of the Act of 1993 only can be paid through crossed Demand Disafts or Indian Postal Order in favour of the Registrar of the Tribunal. In view of the above, the Registrar of the Tribunal passed the order to return the plaint to the appellant with a liberty to present the petition under the provisions of the Act of 1993 by following the procedure prescribed for presenting the petition u/s 19 of the Act of 1993.

7. The appellant thereafter preferred this appeal to challenge the order of the civil Court dated 27.5.2005.

8. According to learned Counsel for the appellant, now the appellant bank, after obtaining the legal opinion, is also of the view that the. appellant could have filed the petition u/s 19 of the Act of 1993 and they earlier under wrong legal opinion bonafidely filed civil suit. It is also submitted in view of the above, the appellant may be permitted to file the petition u/s 19 of the Act of 1993 in place of submitting the plaint itself in Tribunal because of the reason that the appellant complied with the order of the Civil Court dated 22.2.2005 and presented the returned plaint in the Tribunal within the time provided by the order of the civil Court, but the Registrar of the Tribunal by order dated 27.5.2005 returned the plaint and court fees stamps to the appellant.

9. Learned Counsel for the respondent vehemently submitted that the appellant itself withdraw the plaint from the civil court pursuant to the order dated 22.2.2005 and presented it before the Tribunal and thereafter, the Tribunal passed the order that the plaint, as such, cannot be accepted by the Tribunal and the Tribunal directed the appellant to take back the plaint for presentation in proper form. In view of the above, this appeal is not maintainable and further the appellant took the plaint from the civil court on 3.3.2005 and presented the plaint before the Tribunal on 18.3.2005 and the Tribunal passed the order to return the plaint to the appellant on 27.3.2005 and according to learned Counsel for the respondent, in fact, the plaint has already been returned to the appellant on 1.6.2005 and since 1.6.2005, the plaint is lying with the appellant and the plaint is not in any civil court or even in Tribunal. Therefore, no order now can be passed in a case in which the plaint has been given back to the plaintiff.

10. According to learned Counsel for the respondent, the order passed by the Registrar of the Tribunal dated 27.5.2005 attained finality because it has not been challenged by the appellant by preferring the appeal despite the fact that the said order dated 27.5.2005 is appealable order under the Act of 1993. It is also submitted that in this appeal, the validity and legality of the order passed by the Registrar of the Tribunal under the Rules of 1993 cannot be gone into because of the plain and simple reason that order is not under challenge.

11. Learned Counsel for the respondent further vehemently submitted that there is no justification for allowing the appellant to now take benefit of presenting the petition u/s 19 of the Act of 1993. It is also submitted that the respondent raised objection in written statement about lack of jurisdiction of the civil Court in entertaining the civil suit and despite this fact, the appellant did not withdraw the suit from civil Court for presentation in Tribunal. It is also submitted that otherwise also, there is a gross delay as because the suit was filed in the year 2000 in the civil Court and now six years have already passed. In view of the above, the delay cannot be condoned by even the Tribunal.

12. I considered the submissions of learned Counsel for the parties.

13. The facts given in detail clearly reveal that the appellant filed the suit not only for money but for return of goods in the Civil Court and the respondent raised objection about jurisdiction of the civil Court in entertaining the suit by taking a plea in the written statement filed on 9.7.2001. It appears that the civil Court could have decided the objection about jurisdiction of civil Court as a preliminary issue but admittedly, the civil Court did not decide the issue. When the respondent submitted application under Order 2 Rule 2(2) CPC in the civil Court, the civil Court while considering the objection of bar against the maintainability of suit on the ground of not seeking relief by the appellant bank in earlier filed petition u/s 19 of the Act of 1993 before the Debt Recovery Tribunal by the appellant bank, the civil Court instead of deciding it, held the civil Court has no jurisdiction to even decide the application filed by the respondent under Order 2 Rule (2) CPC because of want of civil Court's jurisdiction. The civil Court passed the order to return the plaint for presenting it in the Tribunal. The civil Court directed the plaintiff/appellant to appear before the Tribunal on 18.3.2005, the plaint was taken back by the appellant. Thereafter, the appellant presented the plaint before the Tribunal.

14. It appears that a different procedure is prescribed for presenting the petition before Tribunals u/s 19 of the Act of 1993 by the Financial institutions. That procedure is different procedure than the procedure prescribed in the CPC for presentation and for submitting court fees. As per the procedure provided in CPC, the Court fees paid is treated as court fees paid for the plaint presented in the proper court. In Rule 7 of the Rules of 1993, a specific provision has been made for paying the fees for petition u/s 19 of the Act of 1993. Instead of accepting the fees in the form of Court fee stamps, the fees for the petition under the Act of 1993 is payable through a crossed demand draft or through Indian Postal order. That was the reason for passing the order dated 22.5.2005. Another reason for passing the order dated 27.5.2005 is that as per the procedure prescribed for filing of the petition u/s 19 of the Act of 1993, there is a prescribed format in which the petitions can be filed. The plaint submitted by the appellant before the Tribunal was, therefore, returned to the appellant because of the obvious reason that as per Rule 5 of the Rules of 1993, the Registrar of the Tribunal is authorised to scrutinise the application and in case the petition is

found defective, the Registrar may allow the party to rectify the mistake if the said defect is not formal in nature.

15. It is true that the appellant has not challenged the order of the Registrar dated 27.5.2005 by which the plaint submitted by the appellant was returned to the appellant for being presented in proper form. But that has no effect because of the reason that the Tribunal itself has granted appellant to submit the petitioner in proper form. In view of the fact that the appellant bank is also of the opinion that the claim of the appellant could have been and can be entertained by the Tribunal, therefore, there is no need to challenge the order of the Tribunal dated 27.5.2005 which only allowed the appellant to present the petition in accordance with the procedure as provided under the Act of 1993 and the Rules of 1993. The Registrar of the Tribunal itself could not have decided about the maintainability of the petition of the appellant on merits factually or legally. The Registrar rightly did not look into the merits of the claim of the appellant.

16. It is also vehemently argued that the respondent raised objection in the written statement and the appellant did not withdraw the plaint forthwith, therefore, the act of the appellant in prosecuting the case in civil Court cannot be said to be bonafide and the delay caused by the appellant by adopting faulty procedure of filing the plaint not in proper form and if filed improperly, not moving proper application for giving credit of Court fees paid by the appellant in form of stamps against the claim of the appellant, clearly shows that the appellant was grossly negligent in conducting the proceedings causing harassment to the respondent. Therefore, now there is no reason or justification for allowing the respondent to File the petition against the respondent in the Tribunal as the plaint is lying with the appellant. It is also submitted that in any case, the appeal is allowed or any appropriate order is passed in favour of the appellant, the respondent is entitled to exemplary costs.

17. It appears that the Act of 1993 came into force on 25.6.1993. The Act itself was under challenge before the Hon"ble Apex Court. This Court can take judicial notice of the fact that some procedural difficulties were noticed when the objections were raised about claim and counter claims of private parties/defendants which were pending when the Act of 1993 came into force. The question of jurisdiction of civil Court for entertaining the claim of return of goods coupled with the relief of refund of the value of the goods appears to had confused the appellant and they were not clear in mind whether it is a case of mere recovery of money or a composite suit. The civil Court ordered for return of the plaint and it was in fact submitted before the Debt Recovery Tribunal which is apparent from the facts mentioned above than, it cannot be said by any stretch of imagination that the appellant with any ulterior motive and to take some advantage, instead of adopting the speedy procedure provided for recovery of financial institutes money, opted for longer procedure by filing civil suit. The lack of bonafide and negligence are distinct subjects and to find out whether the act

was bonafide or not, the negligence of party may not be relevant but the bonafides of the party can be found out from the entirety of the facts of each individual case. In this case, there is a serious objection of the respondent that the conduct of the appellant was not bonafide but that appears to be a plea taken out of the situation only because of the reason that the appellant, which is a bank, is dependent upon the advice given by their own legal experts. Despite this fleet of their legal advisors, if the bank has filed the suit for return of the goods and in the alternate, recovery of the amount instead of filing petition u/s 19 of the Act of 1993, by simply this act, it cannot be held that there was lack of bonafides on the part of the Bank.

18. Be it as it may be, presently the fact which is relevant is that the suit was filed in civil Court in time and returned by Court's order while considering the application under Order 2 Rule 2(2) CPC and by not deciding the objection about lack of jurisdiction. The plaint was returned by the civil Court which was promptly taken by the appellant and was filed before the Tribunal. The procedural default by filing the same returned plaint in Debt Recovery Tribunal itself was curable as per the order of the Registrar of the Tribunal because of which reason only, the Registrar passed the order to return the plaint with permission to the appellant to file petition in accordance with the Act of 1993 and the Rules of 1993.

19. It will be relevant to mention here that in the Act of 1993, Section 31 provides for transferring the pending cases by the civil Court to the Tribunal. As per Section 31(2)(b), the Tribunal has been given power to proceed with the suit itself in the same manner as the Tribunal proceeds in a case of application made u/s 19 of the Act of 1993. The Tribunal has also been given the power to start the proceedings from the stage which was reached before the transfer of said suit and has also been given power to start from any earlier stage. Since present suit was filed by the appellant bank after coming into force of the Act of 1993, therefore, the suit filed by the appellant was not a suit pending on the date of coming into force of the Act of 1993 and, therefore, could not have been transferred u/s 31 by the Civil Court to the Tribunal, otherwise, the suit, as such, could have been entertained by the Tribunal. The Civil Court while considering the objection of the defendant raised under Order 2 Rule 2 CPC held that civil Court has no jurisdiction to entertain the suit of the Bank and ordered return of the plaint. The time was fixed by the Civil Court to file the claim before the Tribunal. The appellant bank had short time of less than one month for filing the returned plaint before the Tribunal. The Bank complied with the order of the civil Court. Therefore, all objections raised by the respondent even need not be gone into because of the reason, the appellant is seeking extension of time for filing the petition u/s 19 of the Act of 1993 before the Tribunal and that is within the jurisdiction of the appellate Court (this Court) by virtue of Rule 10B of Order 7 CPC. The appeal has been preferred to challenge the order of the trial Court passed under Order 7 Rule 10 CPC. The order of the trial Court shall stand confirmed because of prayer of the appellant that the Court may dismiss the appeal of the appellant and confirm the impugned order but fix a date (or Tiling

the plaint/petition in Tribunal.

20. If the Registrar of the tribunal by reading literally Rule 7 of the Rules of 1993 observed that the petition u/s 19 , even in pursuance of the Civil Court ordering return of plaint, is required to be filed as per the format provided for filing petition u/s 19 and the fees is required to be paid as provided under Rule 7 of the Rules of 1993, even than this Court being appellate Court has jurisdiction to fix a fresh date for filing the returned plaint before the Tribunal under Order 7 Rule 13 CPC. Not only this but learned Counsel for the respondent also took the plea that when the cases were transferred by the civil Court to the Tribunal, merely on the application of the institutions like appellant, the Tribunal accepted the Court fee stamps as also payment of fees in several cases. This argument nowhere goes against the appellant in any manner. This argument is only to the effect that the Registrar committed mistake in directing the appellant to take back the plaint and present in proper format as required under the Act of 1993. Rule 7 of the Rules of 1993 provides for submitting fees in form of demand draft in case the petition is filed under the Act of 1993. Rule nowhere provides any procedure where the plaint is returned by the Court which was filed after coming into force of the Act of 1993. These all objections which have been raised by the respondent have been referred above to show that all objections are in relation to the procedure adopted by the plaintiff/appellant, which according to the respondent is faulty. The Rules framed under the Act of 1993 do not support the contention raised by learned Counsel for the respondent. At the cost of repetition, it may be stated that as per Rule 7 of the Rules of 1993, the fee payable on petition u/s 19 of the Act of 1993 can be in the form of demand draft or in the form of postal order and Rule 7 nowhere provides for furnishing the fees payable on petition u/s 19 of the Act of 1993 in the form of Court fees stamps. If the Court fees stamps are accepted by the Tribunal because of the fact that the Court fee stamps were submitted in civil Court, then that is also only a matter of procedure and if that has been continued and accepted, there cannot be any illegality in that procedure also but in any case, if the Registrar of the Tribunal, in this particular case, has passed the order of furnishing the court fee stamps in proper form and asked the appellant to present the petitioner in the format as provided under the Rules, the appellant still can file the petition in proper format with proper fees. In the facts mentioned above, it is clear that the appellant's taking the plaint from the civil Court and again taking the plaint from the Tribunal during the pendency of the appeal against the order dated 22.2.2005 is of no consequence because of the reason that the appellant's accepting the plaint from the civil Court in pursuance of the order dated 22.2.2005, shows its intention to comply with the order dated 22.2.2005 passed for presenting the plaint in the Tribunal. The appellant preferred appeal subsequent to that also, which shows that was due to nor clear position about the law on the point in the mind of the officers of the appellant bank but without any ulterior motive or different object.

21. The plaint which was presented in the Court and has been returned to the

party for presentation in another Court can be presented by the party itself and, therefore, the party till the plaint is presented before the Court, possession the plaint lawfully. Time for presentation of the plaint in the Court is also relevant. In this case, the Court fixed the time for presentation of the plaint in the Tribunal. The order of return of the plaint is under challenge in this appeal. Rule 10B of Order 7 CPC very specifically provides that where the order for return of the plaint is under challenge in appeal and the appellate Court confirms the order of the trial Court the appellate Court may direct return of the plaint and direct the appellant to File the plaint subject to the provisions of the Limitation Act, 1963 in the Court in which the suit should have been instituted. Order 7 Rule 10A(2) CPC is well as Order 7 Rule 10B(1) CPC provides for filing application by the plaintiff by mentioning certain facts which are giving under Clauses (a), (b) and (c) of Sub-rule (2) of Rule 10A. That application is required when any intimation is given to the plaintiff under Sub-rule (1). Neither Order 7 Rule 10A(2) CPC nor Order 7 Rule 10B (1) CPC precludes the Court from fixing the date for appearance of the parties before the Court in which the plaint, suit or petition is required to be presented by the order of the Court. The trial Court is its order dated 22.2.2005 directed both the parties to present before the Tribunal on 18.3.2005 suo moto but that order, only to the extent of direction of the respondent was recalled and set aside by the civil Court. Therefore, it is clear that the trial Court did not pass the order under Order 7 Rule 10(3) CPC on application of the plaintiff under Order 7 Rule 10A(2) CPC. In view of above fact, the appeal of the appellant is not barred by Sub-rule (5) of Order 7 Rule 10A CPC.

22. This Court is of the view that under Rule 10A or Rule 10B of Order 7 CPC, the Court itself has power to direct both the parties to appear before the transferee court or tribunal and for that purpose, can fix the date of appearance and that power of the Court is not dependent upon the application of the plaintiff. It is always desirable that in case, the plaint is returned for presentation in proper Court or tribunal, the Court should fix the date of appearance of the parties which will be in the interest of the parties as well as which will certainly avoid the delays in settlement of the dispute before the court or tribunal.

23. Since the appellant itself is of the view that the Tribunal has jurisdiction to entertain the claim of the appellant bank, therefore, this appeal is hereby dismissed. The appellant is allowed to present the proper petition in requisite form as required under the Act of 1993 and the Rules of 1993 and may also submit the original plaint along with the said petition making it part of the petition u/s 19 of the Act of 1993.

24. The appellant may submit the original stamps before the civil Court, i.e. before the Additional District Judge No. 3, Jodhpur, who may pass the appropriate order and certificate for refund of the entire court fees amount to the appellant.

25. The petition may be filed by 18.9.2006. Both the parties are directed to appear before the Tribunal on 18.9.2006.

26. The limitation for subsequent proceedings for taking any steps by the respondent shall be from the date when the Registrar of the Tribunal will register the application.

27. Consequently, the appeal is dismissed with liberty to the appellant to file the petition before the Debt Recovery Tribunal, Jaipur by 18.9.2006.