

(1997) 01 DEL CK 0034

In the Delhi High Court

Case No : I.A. No. 8027 of 1994 in Suit No. 2141 of 1991

Risk Capital and Technology Finance Corporation Ltd.

APPELLANT

Vs

Harnath Singh Bapna and others

RESPONDENT

Date of Decision : 14-01-1997

Acts Referred:

Citation : AIR 1997 Delhi 239 : (1997) 89 CompCas 277 : (1997) 65 DLT 527 : (1997) 40 DRJ 521 : (1997) 1 ILR Delhi 406 : (1997) 4 RCR(Civil) 381

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : S.S. Gautam, for the Appellant; Pallav Sisodia and G.N. Aggarwal, for the Respondent

Judgement

1. This is an application filed by the defendant under O. 9, R. 13 read with Section 151, C.P.C.

A question has been raised by the plaintiff-non-applicant regarding the jurisdiction of this Court to deal with the instant application, which has its genesis in the present suit instituted by the plaintiff/non-applicant admittedly a financial institution within the meaning of the Recovery of Debts to Banks & Financial Institutions Act, 1993 -- in respect of money due from the applicant/defendant on account of the loan facility granted by the former to the latter. The brief facts giving rise to the application are as under :

2. The plaintiff extended and disbursed loan facility to defendants 1 to 3 to the extent of Rs. 15,00,000/- in respect of their project to manufacture cotton sewing threads, industrial threads and embroidery threads. In view of the defaults committed in the repayment of the loan, the plaintiff recalled the entire outstanding amount relating to principal sum and service charges from defendants 1 to 3 vide recall notice dated 20th August, 1990. However, the defendants failed to make the payment even after the recall notice which led to the institution of the present suit by the plaintiff for recovery of the aforesaid sum. During the course of the proceedings of the suit, the defendants were given

opportunity to file the writing statement. But, the same was not filed. On 20th January, 1994, final opportunity was granted to the defendants to file the written statement within 4 weeks. However, on the next date viz., Aug. 19, 1994 no one appeared for the defendants and even the written statement was not filed. Court acting under O. 8, R. 10, C.P.C. struck off the defense of the defendant applicant and decreed the suit of the plaintiff. It is this order which the defendants want to be set aside by the instant application under O. 9, R. 13.

3. At the outset, it may be noted that on July 5, 1994 the Debt Recovery Tribunal was established by the Government of India u/s 3(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the Act) vide Notification No. F.18(17)/93 Cord. Govt. of India, Ministry of Finance, Department of Economic Affairs, Bank Dues. On July 25, 1994, a Division Bench of this Court in C.W.P. No. 3050/94 stayed the operation of the Act in its application to the Union Territory of Delhi. On August 19, 1994 when decree in the instant case was passed, the above said stay order was still in operation. But at the present juncture, as conceded by both sides, the stay order stands vacated by the Apex Court. Therefore the position is that the Act is fully operative. Notwithstanding this position, the learned counsel for the defendants, submitted that this Court has the jurisdiction to decide the application as the proceedings under Order 9, Rule 13 are proceedings independent of the suit and are not covered by Section 31 of the Act.

4. In order to appreciate the legal position, it will be necessary to notice the objects and reasons of the Act, its preamble and Sections 1(4) 17, 18, 21.

5. The objects and reasons of the Act, as contained in the Bill No. 59 of 1993 introduced in the Lok Sabha on May 13, 1993, which culminated in the Act, read as follows :

"Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee or the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, Therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981 a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long felt need, but also will be an important step in the implementation of the Report of Narasimham

Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various Courts, recovery of debts involved more than Rs. 5622 crores in dues of Public Sector Banks and about Rs. 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and re-cycling of the funds for the development of the country.

The bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill."

6. As is apparent from above, a large number of cases filed by Public Sector Banks and Financial institutions involving more than Rs. 5,622 crores were pending in various Courts at the time of the introduction of the bill in the Parliament. Therefore, in order to expedite the recovery of this huge sum of public money, Tribunals and Appellate Tribunals were sought to be established.

The preamble of the Act reiterates what was stated in the objects and reasons of the Act. The preamble states, as under :

"An Act to provide for the establishment of Tribunals for expenditure adjudication and recover of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Be, it enacted by Parliament to Forty Fourth Year of the Republic of India as follows;

7. Sections 1(4), 17, 18 and 31 of the Act read 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.

17. Jurisdiction, powers and authority of Tribunals.

(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 from recovery of debts due to such banks and financial institutions.

18. Bar of jurisdiction.-- On and from the appointed day, no 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.

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 whereon 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.

(2) Where any suit or other proceedings stands transferred from any Court to a Tribunal under sub-section (1),--

(a) the Court shall, as soon as may be after such transfer, forward the records of such suit or other proceedings to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceedings, 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.

8. As is evident from conjoint reading of Sections 17 and 18 of the Act, no Court or other authority after the appointed date will be entitled to exercise any jurisdiction in relation to the matters specified in Section 17. The words "appointed date" have been defined by Section 2(c) of the Act which reads as follows :--

"On appointed date in relation to a Tribunal or an appellate Tribunal means the date on which such Tribunal is established under sub-section (1) of Section 3 or, as the case may be, sub-section 1 of Section 8."

Thus, the appointed date is the date of the establishment of the Tribunal.

9. u/s 31 of the Act, a suit or other proceeding instituted and pending in any Court before the date of establishment of a Tribunal under the Act, shall stand transferred to the Tribunal where the cause of action for which is such that it would have been if it had arisen after the date of such establishment, within the jurisdiction of such Tribunal. This clearly implies that any suit or other proceedings pending in any Court before the establishment of the Tribunal under the Act in relation to the matters which fall within the jurisdiction of the Tribunal by the sheer force of the statute automatically stand transferred to the Tribunal on the appointed date. Section 31 opens with the words "every suit or other proceeding pending". As would be seen the words "other proceeding" is preceded by the word "suit" and in between the two expressions, the word "or" occurs. The section not only talks of the suit but also of "other proceeding". The term proceeding is of a very wide connotation. The object of the Act was to take out matters relating to recovery of debts due to the banks and financial institutions from the jurisdiction of the Courts and to provide for their adjudication by Special Tribunals so that they could be realised without delay. This being the philosophy behind the Act, the word "proceeding" has to be given an interpretation which is capable of embracing any adjudication or a legal step in a matter relating to and connected with the recovery of debt due to the financial institutions.

10. Webster's Third International Dictionary at page 1807 describes the meaning of the word "proceeding" inter-alia as a particular step or series of steps adopted for doing or accomplishing something". The Madras High Court in Kochadai Naidu and Another Vs. Nagayasami Naidu and Others, , held that the term "proceeding" is not a technical expression and that it would include all matters which the Courts have jurisdiction to decide under the CPC and accordingly a dispute as to possession which was referred to the District Munsif u/s 146 of the Criminal Procedure Code could be transferred to another Court u/s 24 of the C.P.C. This view of the Madras High Court was noticed by the Supreme Court in Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another, . But the Supreme Court ascribed a still wider connotation to the word "proceeding occurring in Section 24 C.P.C. by holding that a comprehensive meaning must be given to it so as to include within its ambit all matters coming up for adjudication and not to confine it to a civil proceeding alone. The apex Court in this regard held as follows (at pp. 1891-92 of AIR) :

The expression "proceeding" used in this section is not a term of art which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute. Looking to the context in which the word has been used in S. 24(1)(b) of the CPC it would appear to us to be something going on in a Court in relation to the adjudication of a dispute other than a suit or an appeal. Bearing in mind that the term "proceeding" indicates something in which business is conducted "according to a prescribed mode it would be only light to give it, as used in the aforesaid provision, a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone.

11. In the context in which the word proceeding is used in Section 31 of the Act, it must be given wide and comprehensive meaning and cannot be confined to as referring to an original civil proceeding. It would take in its sweep any matter for judicial adjudication and include a: (i) proceeding which is not a original proceeding, (ii) proceeding which is interlocutory in nature; (iii) proceeding during the course of the suit; and (iv) proceeding subsequent to the passing of the decree. The present application is a matter for judicial adjudication. Even otherwise it is a step envisaged by the CPC being an application under Order 9 Rule 13 CPC and Therefore would be a proceeding within the meaning of Section 31 of the Act.

12. However, learned counsel for the defendants submitted that an application under Order 9 Rule 13 CPC is is not an original proceeding and is quite independent of the suit. For this proposition, learned counsel relied on the decision of the Calcutta High Court in Salil Kumar Banerjee Vs. Sailendra Ghose and Others, and decision of the Lahore High Court in Hari Singh v. Mohammad Said, AIR 1927 Lah 200. It may be pointed out that neither the Calcutta High Court nor the Lahore High Court in the aforesaid decisions held that an

application under Order 9 Rule 13 would not amount to a civil proceeding or would not be matter for judicial adjudication. Section 31 of the Act would be attracted. Besides the application under Order 9 Rule 13 is a step in a civil proceeding. There is also a good number of precedents supporting the proposition that a fresh authority is not needed by a counsel for the purpose of appearing in an application for setting aside an ex-parte decree or for an application to restore a suit dismissed for default. This shows that an application under Order 9 Rule 13 is part of the proceedings in a suit. Such a view has also been taken by the Rangoon High Court in *C. W. Mariano v. The Rt. Rev. F. Provost*, AIR 1941 Rang 305, where it was held as follows :--

"An application to set aside an ex parte decree or dismissal order is part of the proceeding in a suit and so in the same way to oppose or consent to such an application is also in my opinion part of the proceeding in a suit."

13. Therefore, from whatever angle one looks at the word proceeding it will cover the application under Order 9 Rule 13 CPC.

14. The Tribunal, as already pointed out, was constituted on July 5, 1995. Undoubtedly on that date, which is the appointed date, the suit was pending before this Court and the same was above Rs. 10 lakhs. This being so, Section 31 of the Act read with Section 1(4) thereof was immediately attracted as the matter fell within the jurisdiction of the Tribunal. But as the above said order staying the operation of the Act was in force, the matter was proceeded with and the suit was decreed. Now the position is different as the stay order stands vacated and the Act is fully operative.

15. In view of the aforesaid discussion. I am of the opinion that Section 31 of the Act would be attracted and the application under Order 9 Rule 13 CPC will have to be considered by the Debt Recovery Tribunal and not by this Court. Accordingly, it is directed that the record of the suit as also the application under Order 9 Rule 13 CPC be transmitted to the Debt Recovery Tribunal for adjudication in accordance with law.

16. Before parting with the matter, I must express my gratitude to Mr. G. N. Aggarwal, Advocate who acted as amicus Curiae and rendered valuable assistance in the case.

Order accordingly.