
(1997) 07 MAD CK 0045
In the Madras High Court
Case No : C.R.P. No. 1320 of 1997

R.S. Senthamarai Kannan and Another	APPELLANT
Vs	
Debts Recovery Tribunal and Others	RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 10

Citation : (2001) 103 CompCas 312 : (1997) 2 CTC 695 : (1997) 3 LW 11

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; P.A. Deivasigamani, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—This revision is under Article 227 of the Constitution of India filed by respondents Nos. 4 and 7 in Original Application

No. 41 of 1996, on the file of the Debt Recovery Tribunal at Chennai.

2. The State Bank of India, Tiruppur branch, filed the above application for recovery of Rs. 10,51,791.10 p. under two different heads, namely,

medium-term loan Rs. 98,485 and cash credit account Rs. 9,53,306.10. It is the case of the bank/applicant that on the basis of an application filed

by the first respondent before the bank, they were provided with two facilities, (1) medium term loan and (2) cash credit facility. It was on the

basis of a single application, the above two facilities were availed, and when there is a breach of the obligations arising thereunder on availing the

facilities, they are entitled to seek enforcement thereof by filing a single application.

3. When the above application was filed, the petitioners herein filed a counter taking various contentions, one of which was that the application is

defective since one application is filed wherein more causes of action than one are clubbed together. It is also contended that the claim of medium

term loan also cannot be entertained and the same is added in this proceeding only for the purpose of jurisdiction of the Tribunal. Otherwise, both

these claims could be entertained only by a civil suit since in each transaction the claim will be less than Rs. 10 lakhs.

4. They also filed an application to hear the aspect of jurisdiction as preliminary issue. By the impugned order, the Tribunal held that it has

jurisdiction and the application is not bad for misjoinder of causes of action. It is challenging the said order, the present revision petition is filed.

5. Main reliance is placed on Rule 10 of the Debt Recovery Tribunal (Procedure) Rules, 1993, which reads thus--[1994] 79 Comp Cas 28 :

An application shall not seek relief or reliefs based on more than a single cause of action in one single application unless the reliefs prayed for are

consequential to one another.

6. Learned counsel for the revision petitioner submitted that two different heads of claim form part of different causes of action, and one is not

consequential of the other. The finding of the Tribunal that one is consequential to the other and, therefore, the application is maintainable before

that court is not correct.

7. Sub-section (1) of Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Ordinance, [1993] 77 Comp Cas 763 , which

was later passed as an Act, reads thus :

The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but

shall be guided by the principles of natural justice and subject to the other provisions of this Ordinance and of any rules, the Tribunal and the

Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

8. Section 19(8) says that an application made to the Tribunal under Sub-section (1) shall be dealt with by it as expeditiously as possible and

endeavour shall be made by it to dispose of the application finally within six months from the date of receipt of the application.

9. While reading the ""Statement of Objects and Reasons"" of the Act, the then Finance Minister, at the time of introducing the Bill, [1993] 78 Comp

Cas 97 said thus :

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 on the financial system headed by Shri M.

Narasimham has considered the setting up of the Special Tribunal 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 fulfil a long-felt need, but also will be an important step in the

implementation of the Report of the Narasimham Committee. Whereas on September 30, 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. 5,622

crores in dues of public sector banks and about Rs. 391 crores of dues of the financial institutions. The locking up of such huge amounts of public

money in litigation prevents proper utilisation and re-cycling of the funds for the development of the country.

2. 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. The Notes on Clauses explain in detail the provisions of the Bill.

10. In the preamble portion, it is further said thus [1993] 77 Comp Cas 763 :

An Ordinance to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial

institutions and for matters connected therewith or incidental thereto.

Whereas the Recovery of Debts Due to Banks and Financial Institutions Bill, 1993, has been introduced in the House of the People and is pending

in that house ;

And whereas Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take

immediate action to give effect to the provisions of the Bill ; . . .

11. Though the references are to the Ordinance, it is not disputed that it was for the very same reason that the Act has also been passed. One thing

that is clear from these provisions is that the long-drawn process of a civil litigation and the technical arguments are not to be encouraged, and

every endeavour should be made to recover the amounts due to the banks as expeditiously as possible. The only compliance is that the Tribunal

should act in accordance with the principles of natural justice and the Rules.

12. In Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, , their Lordships of the Supreme Court took

into consideration the purpose of the above enactment. In paragraphs 10 and 13, their Lordships took note of the impending need of the financial

sector to have a Recovery Tribunal for easy recovery of the amounts due to it. The purpose of the enactment as put forward by counsel was

recognised by the court. In paragraph 10, the argument is incorporated, that ""Earlier, recovery procedure used to block a significant portion of

their funds in unproductive assets, the value of which deteriorates with the passage of time. An urgent need was, therefore, felt for successful

implementation of the financial sector reforms, to work out a suitable mechanism through which dues to these institutions could be realised without

delay. To achieve this purpose, the aforesaid Act visualises establishment of the Debts Recovery Tribunal (s) by the Central Government, with its

own procedure which is speedy in nature"". In paragraph 13, their Lordships recognised and approved the rationale behind the enactment.

13. Now, let me consider the contention of learned counsel for the petitioner, whether the claim or application is barred from misjoinder of cause

of action, and whether more than one cause of action is the subject-matter of the proceeding.

14. A cause of action means, ""every fact which it is necessary to establish to support a right or obtain judgment. To put it differently, it means a

bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the case. It can as well be said to be the media

upon which the court arrives at a conclusion in the suit in favour of the plaintiff. It means, every fact which will be necessary for the plaintiff to prove

if traversed in order to support his right to the judgment". In this case, it is not disputed that the petitioners herein moved a single application to get

financial assistance by way of two facilities, namely, (1) medium term loan and (2) cash credit facility, with certain conditions. Those conditions

were violated. Naturally, to enforce the claim, the bank instituted the present proceedings. In such a case, the plaintiff will have to prove that there

is a single application. That application was processed by the bank and they gave two facilities on certain conditions. Those conditions have been

violated. It is the proof of the above facts that constitutes the cause of action for the plaint. It is only one cause of action though the plaintiffs will be

entitled to two reliefs, since the loan is under two heads. Both the facilities availed of by the defendant are also the same, and they were intended to

be used for the first defendant-firm. The facts narrated above will make it clear that there was only one application and two facilities were given to

enable the defendant, for easy repayment.

15. In *Food Corporation of India v. Mayavardm Financial Syndicate* [1993] 2 LW 453, a similar question came for consideration. There, the

plaintiff filed a suit wherein three items of claims were put forward. In paragraph 13 of the judgment, their Lordships said that it will not amount to

mis-joinder of cause of action. In that case, there were various transactions which were ultimately crystallised into three items, and in such a case,

the Bench said that it is not a misjoinder of cause of action. Here, there is only one transaction, but under two different claims arising out of the

same transaction. Naturally, it cannot be doubted that it is the same cause of action.

16. In *Deva Ram and Another Vs. Ishwar Chand and Another*, , the question that came for consideration was, whether the second suit is barred

under Order 2, Rule 2, Civil Procedure Code. In paragraph 12 of the judgment, their Lordships said that if under the same cause of action, several

reliefs could be claimed, the plaint must contain all the reliefs and the second suit cannot be said to be barred by cause of action under Order 2,

Rule 2, CPC if only the subsequent suit is based on a different cause of action. Their Lordships further went on and said in that case that when the plaintiff is entitled to larger reliefs based on the same cause of action, the plaintiff is not entitled to have the same split up. The principle behind this is, that the defendant should not be dragged to court twice, and that will amount to harassment. On the above legal principles, it cannot be doubted that if on the same transaction, the plaintiff is entitled to more reliefs than one, he is bound to put forward all those claims, and should not split the case to his convenience. If that principle is accepted, there can be no doubt that the present suit is not bad for misjoinder, nor does it violate Rule 10 of the Procedure Rules.

17. Learned counsel for the revision petitioner also submitted that with intent to bring the application within the jurisdiction of the Tribunal, the amount due under the medium term loan is also added, and that too by manipulating the accounts. In fact, according to learned counsel, no amount is due under that head.

18. I do not agree with the said submission. Merely because a claim is made, it does not follow that the Tribunal is going to pass a decree in its favour. Since the Tribunal is discharging judicial functions, which affects the rights of parties, and the statute also mandates the compliance with the principles of natural justice, it goes without saying that it will pass a decree only for the amount actually due to the plaintiff. If any exaggerated claim is made, that is not going to affect the petitioner in any way. The question whether any amount is due under that head will also be taken into consideration by the Tribunal while disposing of the application. The civil revision petition is without merit and the same is accordingly dismissed.

No costs. C. M. P. No. 6805 of 1997 for stay is also dismissed consequently.