
(1999) 11 MAD CK 0022

In the Madras High Court

Case No : Transfer Civil Miscellaneous Petition No. 6679 of 1999 and C.M.P. No"s. 6680 and 11591 of 1999

S. Panneer Selvam and Another

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

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

Citation : (2000) 99 CompCas 522

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : B. Mothilal Jain, in C.M.P. No. 6680 of 1999 and M.N. Soundararajan, in C.M.P. No. 11591 of 1999, for the Appellant; B. Mothilal Jain, in C.M.P. No. 11591 of 1999 and M.N. Soundararajan, in C.M.P. No. 6680 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—Tr. C. M. P. No. 6679 of 1999 : This petition is to withdraw T. A. No. 170 of 1997, on the file of the Debt

Recovery Tribunal, Chennai, to the original side of this court.

2. This petition has arisen in this way :

The second respondent-firm represented by the partners--respondents Nos. 3 and 4-incurred a debt with the first respondent, the Indian

Overseas Bank, T. Nagar branch. The petitioners herein and the fifth respondent stood guarantors for the debt and created a mortgage by deposit

of title deeds in favour of the first respondent on December 3, 1987. There had been default in payment and therefore, the first respondent, Indian

Overseas Bank instituted a suit in C. S. No. 1553 of 1992 on the file of this court against respondents Nos. 2 to 5 and the petitioners herein for

recovery of Rs. 16,54,740.25. Pending the suit, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, came into force and the suit was transferred to the Debt Recovery Tribunal, Chennai, and numbered as T. A. No. 170 of 1997. The petitioners, viz., some of the defendants in that case, namely, the guarantors, have come forward with the instant petition for re-transfer of the suit to the file of the original side of this court contending that in the written statement, they have raised a counter claim stating that the first respondent-bank committed certain default, and therefore, the guarantors are released and the title, deeds have been given only for the purpose of verification and no mortgage by deposit of title deeds had been made and claim for return of the documents given to the plaintiff/the first respondent herein. According to the petitioners herein, the Debt Recovery Tribunal is not competent to entertain a counter claim, and therefore, the suit has to be transferred to this court.

3. Learned counsel for the first respondent took several objections to the petition. Firstly, on the maintainability of the petition on the appellate side and secondly, that the petitioners have admitted their liabilities by a letter dated October 12, 1998, and this petition is aimed only to protract the proceedings.

4. Heard both the sides. The first objection raised by learned counsel appearing for the first respondent is answered in *Srirangam Municipality Vs.*

R.V. Palaniswami Pillai, where a Division Bench consisting of their Lordships *Rajamannar C. J.* (as His Lordship then was) and *Viswanatha*

Sastri J. has held as follows (page 807) :

(4) It was argued that the application for transfer must have been made to the original side of this court by means of an original petition bearing the

proper court-fee. The application was made under Sections 24 and 151 of the Civil Procedure Code. In the cause title the application was

described as a civil miscellaneous petition in this court. Learned counsel relied on a ruling in *Srinivasa v. Balakrishna* 22 MLJ 187 and certain

observations of *Ramesam J.* in *Jumna Bai Vs. S. Rm. M. Rm. Ramanathan Chettiar* represented by guardian ad litem *Muthayee Achi alias Chittal*

Achi and Another, in support of his contention that the application should have been made to this court on its original side. In our opinion there is

nothing in the language of Section 24 of the CPC to indicate on which side of this court the application should be made. In dealing with this question it is important to bear in mind that Section 24 of the Civil Procedure Code, gives the power of transfer and withdrawal not only to this court but also to the district court and it gives such power of transfer and withdrawal not only in respect of suits but also in respect of appeals and other proceedings pending in any court subordinate to it. It would therefore be certainly wrong to say that every application u/s 24 when made to this court should be made on the original side. Obviously an application to withdraw an appeal pending before a subordinate court to this court or to transfer it to any other subordinate court cannot be made to the original side of this court. It is also obvious that an application to transfer any suit pending in a subordinate court to another subordinate court for trial cannot be made to this court on the original side because the subordination of courts can only be to this court as such and not to the original side of this court. There is nothing in Section 24 to confine its application to chartered High Courts, which alone have ordinary and extraordinary original civil jurisdiction. According to us, the correct position is that an application u/s 24 of the CPC should be made to this court as such in the same manner as it might be made to the district court and such an application can be validly heard and disposed of by any judge of this court deputed by the Chief Justice to hear such applications. We find actually in the Appellate Side Rules that an application u/s 24 for transfer of any suit, appeal or other proceedings or in execution of a decree from one civil court subordinate to the High Court to another such court or to the High Court can be disposed of by a single judge. As a matter of practice, it is the learned judge sitting in the admission court who deals with these applications. It may be true, as was held in *Alla Subbareddi Vs. Lankireddi Narayanaswamireddi and Others*, ; *Alla Subbareddi Vs. Lankireddi Narayanaswamireddi and Others*, , that an application u/s 24 is in the nature of an original proceeding to which Section 141 of the CPC may apply ; but to say that, is far from saying that the application is one made on the original side of this court.

5. Therefore, it is futile to contend that this court sitting on the appellate side has no jurisdiction to entertain the application u/s 24 of the CPC for a

transfer of proceedings from one forum to another.

6. The next question is whether the Debt Recovery Tribunal has powers to consider a counter claim ? The Debt Recovery Tribunal, a creature of

law to entertain applications filed by the banks and financial institutions only, has no authority to consider the claim made by the defendant in those

proceedings. This has been considered in extenso by the Delhi High Court in Cofex Exports Ltd. Vs. Canara Bank, . The Delhi High Court has

pointed out as under :

... a set-off or a counter claim cannot be entertained by a Debt Recovery Tribunal. A Debt Recovery Tribunal is a tribunal and not a court. It is a

creature of statute vested with a special jurisdiction to try only applications by banks or financial institutions to recover any debt from any person. It

does not exercise any common law jurisdiction. It is only a bank or a financial institution or a consortium of the two which can enter the Tribunal

for enforcement of its claim for recovery. Any one other than those cannot be entertained invoking the jurisdiction of the Tribunal for enforcement

of its claim as a claimant. What cannot be done directly can also not be allowed to be done indirectly. If a claim by a person other than bank or

financial institution is not entertainable before the Tribunal it does not become entertainable merely because it is set out in the written statement or

preferred by way of set-off or counter claim.... The principle of convenience and the mechanics of litigation before the Tribunal (as set out in the

Act)--both exclude set-offs or counter claims being placed before the Tribunal. If set-offs, counter claims and cross-suits were allowed to be

raised before the Tribunal, the very object behind its creation will be lost.

7. With due respect, I am in entire agreement with the view expressed, I am satisfied that the Debt Recovery Tribunal has no power to entertain

counter claims as per the provisions of Section 19(6) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Therefore, in a

case where a counter claim is raised in the written statement, in order to consider the counter claim, the matter must go to the court of competent

jurisdiction.

8. Still a question looms large whether the counter claim is made to take away the matter from the jurisdiction of the Debt Recovery Tribunal ?

That can be easily found out by ascertaining at what point of time, the written

statement has been filed by the defendants/petitioners herein. If the petitioners herein/ defendants in the suit had filed the written statement before the Debt Recovery Tribunal after transfer of the matter to the Tribunal, initially a doubt may arise whether such counter claim is made only to take the matter away from the jurisdiction of the Tribunal. In the instant case, the written statement has been filed as early as December 16, 1994, while the matter was pending on the file of this court. The Debt Recovery Tribunal has been constituted on October 31, 1996, and the matter has been transferred to the Debt Recovery Tribunal only during 1997. It cannot be said that the counter claim would have been made with an intention to oust the jurisdiction of the Debt Recovery Tribunal. Therefore, this transfer civil miscellaneous petition is allowed. Transfer T. A. No. 170 of 1997 on the file of the Debt Recovery Tribunal, Chennai, to the original side of this court to be restored in its original number.

9. In view of the orders passed in the transfer civil miscellaneous petition, Civil Miscellaneous Petition No. 11591 of 1999 is dismissed and Civil Miscellaneous Petition No. 6680 of 1999 is closed.