
(2002) 07 AP CK 0069
In the Andhra Pradesh High Court
Case No : C.M.A. No. 24 of 2002

S. Ramabrahmam

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Constitution of India, 1950 — Article 323A, 323B

Citation : (2002) 07 AP CK 0069

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : M.V. Durga Prasad, for the Appellant; P. Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—This appeal is filed against the order dated 17.7.2001 in I.A.No.1659 of 2001 in O.S.No. 9 of 2001 on the file of II Additional District Judge, Vijayawada.

2. Necessary facts for the disposal of this appeal briefly are as follows:

The first defendant in O.S.No.9 of 2001 on the file of II Additional District Judge, Vijayawada, claiming himself to be the power of attorney holder of the plaintiff was said to have borrowed various amounts from the Indian Bank, Vijayawada Branch. The said bank is the fourth defendant in the above suit. The said bank filed an application before the Debt Recovery Tribunal to recover a huge sum borrowed by first defendant. The said application is now pending as O.A.No. 217 of 1999 on the file of Debt Recovery Tribunal, Hyderabad. It also appears that the bank authorities gave a police complaint against its Manager Sri C. Narayana Rao and some others stating that they have cheated the Indian Bank to a tune of more than Rs.27,00,000=00. It also appears that the police, after investigation, filed a charge sheet against the said Manager and others before a Criminal Court. The present appellant filed the above suit in O.S.No. 9 of 2001 seeking the

declaration that the general power attorney dated 19.10.1990 in favour of the first defendant is void as being forged and also seeking consequential relief of injunction restraining the bank - 4th defendant from proceeding against the plaintiff in O.A.No.217 of 1999 on the file of the Debt Recovery Tribunal. He filed a petition under Order XXXIX Rules 1 and 2 C.P.C., seeking temporary injunction restraining the bank, which is the respondent herein, from proceeding against him in O.A.No.217 of 1999. The said petition was dismissed on merits by the trial court. Aggrieved by that order, he filed the present appeal.

3. In my considered opinion the present proceeding launched by the appellant is an abuse of the process of law. When the application for recovery of the debt is pending before the Debt Recovery Tribunal and if the said debt is not binding on the present appellant for any reason whatsoever, the only remedy left to the present appellant is to take such a plea and prove the same in the proceeding pending before the Debt Recovery Tribunal and then get the said application dismissed against him. It is the contention of the learned counsel for the appellant that the contents in the F.I.R., lodged by the bank authorities disclose that there is a collusion between its Manager and the first defendant and some others, lodging of the F.I.R., was suppressed by the bank authorities at the time of filing O.A., to recover the debt before the Debt Recovery Tribunal and therefore it is necessary, pending disposal of the suit filed by him in the Civil Court, that all further proceedings before the Debt Recovery Tribunal shall be stayed. I see no force in that contention.

4. He cited a decision of the Supreme Court in Bheru Singh Vs. State of Rajasthan, and contended that the contents of F.I.R. amounts to admission and are binding on the Bank concerned. If such a principle of law was laid down by Apex Court in the above decision, appellant can make use of the said principle of law before the Debt Recovery Tribunal in the application pending before it.

5. There is a latest decision of the Supreme Court of India in Union of India and Another Vs. Delhi High Court Bar Association and Others, . In this decision the Supreme Court categorically held that there is no absolute right in any one to demand that his dispute is to be adjudicated upon only by a Civil Court. It further held that by reason of the provisions of C.P.C., the Civil Court had the right prior to the enactment of Debt Recovery Act to decide the suits for recovery filed by the banks and financial institutions. It categorically held as follows:

"This forum, namely, that of a Civil Court, now stands replaced by a Banking Tribunal in respect of the debts due to the bank. When in the Constitution Articles 323-A and 323B contemplate establishment of a Tribunal and that does not erode the independence of the judiciary, there is no reason to presume that the Banking Tribunals and the appellate Tribunals so constituted would not be independent, or that justice would be denied to the defendants or that the independence of the judiciary would stand eroded".

There is no dispute that the suit filed by the bank before the Debt Recovery

Tribunal is maintainable before the Debt Recovery Tribunal. The jurisdiction of that Tribunal to entertain the suit is not questioned before this Court by the present appellant in any manner whatsoever. When such is the position, he is not entitled to file any civil suit relating to a matter validly pending before the Debt Recovery Tribunal and then seek any injunction restraining the bank from pursuing the matter before the Debt Recovery Tribunal till the disposal of the suit filed by the appellant. It is the Debt Recovery Tribunal which has exclusive jurisdiction to decide the dispute. Civil Court has no such jurisdiction. In the civil suit, the validity and binding nature of power of attorney in favour of 1st defendant alone falls for consideration. It is a dispute to be exclusively decided by the Debt Recovery Tribunal alone at the time of final disposal of the O.A. pending before it. It cannot be separately decided by a Civil Court before whom the petition to recover the debt is not pending. Regarding Civil Court's jurisdiction, after establishment of Debt Recovery Tribunals, in the above decision (2nd supra) the Supreme Court in para 26 held as follows:

" Now that exclusive jurisdiction is vested in the Banking Tribunal, it is only in that forum that bank cases can be tried and, therefore, a provision like Section 31 was enacted".

6. As I have stated supra, in my considered opinion, the proceedings launched by the present appellant before the Civil Court at Vijayawada is nothing but abuse of the process of law. I do not find any merits in the appeal.

7. In the result, the appeal is dismissed. No costs.