

(2010) 08 MAD CK 0053

In the Madras High Court

Case No : CRP. PD. (MD) No. 1351 of 2009

State Bank of India

APPELLANT

Vs

A. Kuttalingam and V. Mahendran

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Constitution of India, 1950 — Article 226

Income Tax Rules, 1962 — Rule 11

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

Citation : (2010) 08 MAD CK 0053

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Muthugeethayan, for the Appellant; R. Vijayakumar, for R2, for the Respondent

Judgement

R.S. Ramanathan, J.—The first Defendant in O.S. No. 195 of 22008 on the file of the District Munsifcum-Judicial Magistrate Court,

Kodaikanal is the revision Petitioner. The first Respondent herein filed the above suit for a declaration that the common order passed in I.A. Nos.

819 to 821 of 2008 in R.P. No. 280 of 2007 in DRC No. 15 of 2005 in TA No. 698 of 2007 dated 25.8.2008 by the Recovery Officer, Debt

Recovery Tribunal, Madurai is in contravention of the provision of Rule 11 of the Second Schedule to the Income Tax Act 1961 consequentially

set aside the said order and other consequential proceedings.

2. The revision Petitioner is a Nationalized Bank, filed O.S. No. 76 of 1987 on the file Subordinate Court, Periyakulam against the first

Respondent and others for recovery of Rs. 37,64,328.55/- on the basis of the loan availed by the Defendants and mortgage executed by the

Defendant and in that suit, preliminary decree was passed on 20.3.1991 and final decree was passed on 19.7.1996 in I.A. No. 543 of 1993 in

O.S. No. 76 of 1987 and as per the final decree, mortgaged properties are directed to be sold for the purpose of realization of the amount

payable to the revision Petitioner bank. Therefore, for the realization of the said amount, the revision Petitioner filed O.A. No. 406 of 1999 before

the Debt Recovery Tribunal, Chennai for issuance of Recovery Certificate based on the final decree, as in the meanwhile, Act 51 of 1993 Recovery

due to Banks and financial Institutions Act 1983 came into force and in respect of any matter covered under the Act proceedings are to be initiated

only before the Tribunal as per the Act. The said O.A. No. 406 of 1999 was transferred to Debt Recovery Tribunal II, Chennai and renumbered

as O.A. No 717 of 2001 and the Presiding Officer, Debt Recovery Tribunal II, Chennai passed final order on 4.7.2001 and declared that the

applicant bank is entitled to a Recovery Certificate as per the said Act for a sum of Rs. 76,59,904.98/-with interest at the rate of 6% per annum

with quarterly rests.

3. Thereafter, due to change of jurisdiction the said O.A. was renumbered as T.A. No. 1912 of 2002 on the file of Debt Recovery Tribunal,

Coimbatore and the Recovery Certificate was issued vide D.R.C. No. 15/2004 dated 9.2.2004 and Recovery Proceedings were initiated and

thereafter jurisdiction was conferred on the Debt Recovery Tribunal, Madurai and therefore, the case was transferred to Debt Recovery Tribunal,

Madurai and renumbered as T.A. 698 of 2007. The Presiding Officer, the Debt Recovery Tribunal, Madurai drawn up proclamation of sale by

proceedings dated 31.8.2007 in D.R.C. No. 15/2004/RP 280/2007. Earlier when the case was pending before the Debt Recovery Tribunal

Coimbatore in T.A. No. 1912 of 2002, the first Respondent filed I.A. Nos. 842 and 843 of 2006 to reopen the case and pass suitable orders on

the basis of the facts stated in the affidavit and by common order, both the applications were dismissed by the learned Presiding Officer,

Coimbatore by order dated 3.1.2007. The first Respondent challenged the order passed in I.A. No. 843 of 2006 in T.A/ No. 1912 of 2002, the

Debt Recovery Tribunal, Coimbatore in CRP(NPD) No. 3274 of 2007 and the Principal Bench of this Court dismissed the Revision holding that

the Petitioner has to avail appeal remedy as per Section 30 of the Act and granted liberty to the Petitioner therein to file appeal as provided u/s 30

of the said Act. The first Respondent herein who was the revision Petitioner in the above revision did not file any appeal and filed I.A. Nos. 379,

380, 488, 489 and 490 of 2007 for various reliefs before the Debt Recovery Tribunal Chennai in T.A. No. 698 of 2007. All those applications were dismissed by order dated 5.6.2008.

4. Thereafter, the Defendants herein filed I.A. Nos. 819 to 821 of 2008 in R.P. No. 280 of 2007 in DRC No. 15 of 2004 in TA No. 698 of 2007

on the file of the Debt Recovery Tribunal, Madurai against the said proclamation under Rule 61 of Second Schedule of the Income tax Act and

challenging the same on the various grounds before the Recovery Officer, the Debt Recovery Tribunal, Madurai and the Recovery Officer even

though held that there is no merits in those applications and the applications filed by the Defendants cannot be allowed, however gave final chance

to the Defendants to show their bona fide in settling the account and directed the Defendants namely, the first Respondent and others to deposit

Rs. 45 lakhs within one week from the date of order namely, 1.9.2008 and deposit another sum of Rs. 45 lakhs within one week thereafter and

the Defendant namely, the first Respondent should settle the account with the applicant bank within fifteen days failing which the sale will be held on

9.9.2009. This order was passed on 25th August 2008. The first Defendant without challenging the said order, in the manner known to law, filed

the above suit in O.S. No. 195 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal for a declaration that the order

passed in I.A. Nos. 819 to 821 of 2008 in R.P. No. 280 of 2007 dated 25.8.2008 is contrary to Rule 11 of the Second Schedule of the Income

Tax Act and to set aside the said order.

5. The revision Petitioner filed the above revision under Article 227 of the Constitution of India challenging the suit filed by the first Respondent

herein stating that the suit is a clear abuse of process of Court and Civil Court has no jurisdiction to entertain the suit and as per Section 30 of the

Act 51 of 93 against the order of Recovery Officer an appeal lies before the Debt Recovery Tribunal and the Civil Court has no jurisdiction in

respect of the matter and therefore, the suit is a clear abuse of process of Court

and is liable to be struck off.

6. The first Respondent filed a counter affidavit stating that the bar of jurisdiction as per Section 18 of the said Act is only with reference to matters

specified in 17 of the said Act and there is no prohibition for the borrower to file the suit before the Civil Court and Section 30 of the Recovery of

Debts due to Banks and Financial Institution Act, is only against the orders of the Recovery Officer passed in exercise of his power under Sections

25 - 28 of the said Act and no appeal is provided against the order passed u/s 29 of the said Act and therefore, there is no bar for filing a suit and

Section 30 of the Recovery of Debts due to Banks and Financial Institution Act, cannot be invoked.

7. The learned Counsel for the Petitioner submitted that the Hon"ble Division Bench of this Court has held in the judgment reported in 2009 (3)

LW 792 (in the case of Nazims Continental rep. by its partners and Ors. v. The Indian Overseas Bank, Triplicane Branch, Madras -5 and others)

that Recovery Officer has also jurisdiction to entertain an application under Rules 60,61 and 62 of Part-III of 2nd Schedule to the Income Tax Act

and any person is aggrieved against such order, may prefer appeal u/s 30 of the Act, 1993. Therefore, the learned Counsel submitted that without

challenging the order passed by the Recovery Officer, the suit will not lie and the suit is an abuse of process of Court and is liable to be struck off.

8. The learned Counsel for the first Respondent reiterating the contentions raised in the counter affidavit relied upon the judgment rendered in 2009

(4) CTC 74 in the matter of Nagar Industrial Enterprises Limited v. Hangko Corporation and submitted that the civil suit is maintainable and the

Hon"ble Supreme Court has held that the jurisdiction of Civil Court would be ousted only in respect of matters connected in Section 18 as direct

relation to the Section 17 of Civil Court has jurisdiction to entertain claims of Dectorts and therefore, the suit is maintainable. The learned Counsel

also relied upon the judgment reported in 2009 (5) CT 642 in the matter of Raghunath Roy Bareja and Anr. v. Punjab National bank in support of

his contention.

9. Therefore, we will have to see

1. whether the revision filed by the revision Petitioner invoking the jurisdiction of Court under Article 227 of Constitution of

8 India is maintainable?

2. Whether the Civil Court has got jurisdiction in respect of matters covered by the RDDB Act?

10. Under the Provision of CPC order 7 Rule 11, any person can apply before the Civil Court for rejection of plaint on the ground that Court has

no jurisdiction to entertain the suit and the Plaintiff has abused the process of Court by filing the suit.. When such application, is filed after giving

notice to the Plaintiff the Civil Court will pass an order and against that an appeal or revision is provided under the code. But in this case, without

following that procedure the revision Petitioner has filed this revision under Article 227 of Constitution of India for striking the plaint on the ground

that it is a clear case of abuse of process of Court and having regard to the Provision of the RDDB Act, the Civil Court has no jurisdiction and

hence, the revision is maintainable.

11. While interpreting Article 227 of Constitution of India the Hon''ble Supreme Court held in various Judgments that the jurisdiction to be

exercised under Article 227 is supervisory and in the judgment reported in Surya Dev Rai Vs. Ram Chander Rai and Others, the Hon''ble

Supreme Court observed the distinction between the powers to be exercised by the High Court under Articles 226 and 227 and held as follows:

Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction,

when a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the

jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

12. As stated supra, in this case, the first Respondent having submitted to the jurisdiction of the Tribunal filed various applications and having failed

in all his attempts filed the applications in I.A. Nos. 819 to 821 of 2007. In view of the above the above judgment reported in Surya Dev Rai Vs.

Ram Chander Rai and Others, , when those applications were dismissed without invoking the appellate remedy u/s 30 of the Act, filed the suit to

set aside the order passed by the Recovery Officer in R.P. No. 280 of 2007 in

D.R.C. No. 15 of 2004. It is true that the suit was filed in the year 1991 at that time and the Debt Recovery Tribunal Act was not enacted and the Act came into force in the year 1993 and as per Section 19 of the said Act, the Tribunal shall exercise, from the appointed day, jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 specifically provides that no Court or other Authority shall have or to be entitled to exercise any jurisdiction powers or authority except the Supreme Court and the High Court exercise jurisdiction under Articles 226 and 227 of Constitution of India in relation to the matters specified in Section 17. Therefore, in relation to matter specified in Section 17 no Civil Court has got jurisdiction. Section 17 deals with the jurisdiction and powers and authority of the Tribunal to entertain and decide applications from the Banks and financial institutions in Recovery of debts due to such banks and financial institutions and a controversy arose whether the suits pending before the civil court prior to the passing of the Act can be transferred to the Debt Recovery Tribunal and whether after passing of the decree by the Civil Court such proceedings can be transferred to the Debt Recovery Tribunal and to settle that controversy Section 319A was introduced whereby a decree or order passed by any Court before the commencement of the amendment of Act 2000, and has not been executed then the decree holder may apply to the Tribunal to pass an order for recovery of the amount. As per Section 31(A)(2), on receipt of an application the Tribunal may issue a Certificate for recovery to the Recovery Officer and as per Section 31(A)(3) on receipt of Certificate under Sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was the Certificate in respect of a debt recoverable under this Act.

13. u/s 31, suit or other proceedings pending before any Court immediately before the date of establishment of the Tribunal shall stand transferred to the Tribunal.

14. In this case, as per Section 31(A), the decree holder is entitled to apply to the Tribunal to pass an order for recovery of amount on the basis of the decree passed by the Civil Court. Admittedly the final decree was passed on 19.7.1996 which is prior to the passing of amendment Act 2000

Recovery of debts due to Banks and Financial Institutions (amendment Act 2000) namely 17.1.2000 and when an application is filed before the

Tribunal which has a jurisdiction to issue a Recovery Certificate and on receipt of the Certificate, the Recovery Officer shall proceed as if it is a

Certificate in respect of debt recoverable under the Act. Therefore, by reason of the power conferred u/s 31(A), the Tribunal shall exercise the

power and authority to entertain and decide applications from the banks for recovery of debts and in exercise of that power Recovery Certificate

was issued by the Debt Recovery Tribunal and thereafter, proceedings are initiated by the Recovery Officer to recover the amount. Hence, in my

opinion the bar of jurisdiction as per Section 18 of the Act comes into operation as soon as an application is filed by the bank seeking for issuance

of a recovery certificate to recover the amount.

15. In this case, it is not in dispute that an application was filed before the Debt Recovery Tribunal, Chennai to issue the Recovery Certificate on

the basis of the final decree, in O.S. No. 76 of 1987 by filing O.A. No. 717 of 2001 and the Recovery Certificate was issued by the Debt

Recovery Tribunal, Chennai. Therefore, the Tribunal has got the exclusive jurisdiction to entertain such matters and the first Respondent was also

aware of the same and submitted to the jurisdiction of the Tribunal by filing various applications. As a matter of fact against the order passed in I.A.

No. 843 of 2006 in T.A. No. 1912 of 2002, the first Respondent filed the CRP. No. 3274 of 2007 on the file of the Principal Bench of this Court

and that revision was dismissed on the ground that appeal remedy is available u/s 30. Therefore, in my opinion, the filing of the suit against the

order passed in I.A. No. 820 of 2007 before the Civil Court for a declaration that the said order is null and void is not maintainable.

16. Further, the Hon"ble Supreme Court in the judgment reported in Punjab National Bank Vs. O.C. Krishnan and Others, held as follows:

The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is

a hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast-track procedure cannot be allowed to be derailed either

or by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though

a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitutions, nevertheless, when

there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said

constitutional provisions.

17. Therefore, in view of the above judgment of the Hon''ble Supreme Court invoking of jurisdiction of the Civil Court to set aside the order

passed by the Recovery Officer passed under the provisions of the DRRB Act is not maintainable. The judgment relied upon by the learned

Counsel for the first Respondent namely, 2009 4 CTC 74 and 2007 (5) CTC 642 cannot be applied to the facts of the case. In 2009 (4) CTC

724, the Hon''ble Supreme Court dealt with the issue whether the High Court or Hon''ble Supreme Court has power to transfer a suit pending in

Civil Court situate in one State a Debt Recovery Tribunal situate in another and in that context observations were made about the power of the

Civil Court. Similarly, in the judgment reported in 2007 (5) CT 642, the Hon''ble Supreme Court dealt with the power of the High Court in

Transferring Execution Petitions filed by the bank to the Tribunal.

18. As stated supra, in this case, we are not concerned with the Recovery Certificate issued by the Debt Recovery Tribunal on the applications

made by the Bank and we are concerned with the jurisdiction of the Civil Court in entertaining a suit to set aside the order passed by the Recovery

Officer as per the provisions of the DRRB Act. In my opinion, having regard to the alternative remedy provided u/s 30 of the Act the civil suit is

not maintainable and further as per Section 18, the Civil Court is prohibited from taking cognizance of any matters which are triable by the Tribunal

and as per Section 31(A) the Tribunal can issue Recovery Certificate in respect of the decree passed by the Civil Court and the revision Petitioner

applied for Certificate and without challenging the same, the first Respondent cannot challenge the order of the Recovery Officer by filing a suit.

19. According to me, it is a clear case of abuse of process of Court and the Civil Court has no jurisdiction to entertain such suit and therefore, the

suit is liable to be struck off and it is struck off and the revision is allowed. No costs. Consequently, connected M.P.s are closed.