
(2015) 10 KL CK 0075
In the High Court Of Kerala
Case No : C.R.P. No. 1479 of 2004

State Bank of India

APPELLANT

Vs

Ramakrishnan Babu and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 7 Rule 10
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1(4),
17, 18, 2(g), 31

Citation : (2015) 4 KLJ 525

Hon'ble Judges : K.T. Sankaran, J.

Bench : Single Bench

Advocate : K.K. Chandran Pillai, Senior Advocate, for the Appellant; P.C. Haridas, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The question of law involved in these Revisions is whether a suit filed before the Civil Court for realisation of money by SBI Home Finance Ltd., a Company registered under the Companies Act and which is not a bank or financial institution within the purview of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, would cease to be maintainable before the Civil Court when the assets and liabilities of the plaintiff Company were transferred after the institution of the suit by registered assignment deed to the State Bank of India, which is a bank coming within the purview of the said Act? Or, whether it is necessary for the civil court to return the plaint holding that it has no jurisdiction to try the suit? All these Revisions arise out of similar orders passed by the I Additional Subordinate Judge, Ernakulam rejecting the applications filed by the State Bank of India to return the plaint in five different suits. Since the questions involved in all the cases are the same, the Revisions are being disposed of by this common order. The suits were filed by the SBI Home Finance Ltd., which is a Company registered under the Companies Act. SBI Home Finance

Ltd. is not a bank or financial institution within the meaning of The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) (hereinafter referred to as the "Recovery of Debts Act"). The suits were filed for realisation of amounts exceeding Rupees Ten lakhs in each case, after the commencement of the Recovery of Debts Act. It is admitted by all parties that the suits filed by SBI Home Finance Ltd. were maintainable before the Civil Court.

2. The assets and liabilities of SBI Home Finance Ltd. were transferred to the State Bank of India, subsequent to the institution of the suits. The State Bank of India filed applications in the suits to substitute it as the plaintiff. The court below allowed the applications in part and permitted the State Bank of India to continue to prosecute the suits, the Bank being an assignee who came on record under Rule 10 of Order XXII of the Code of Civil Procedure. While allowing the applications, the court below held in the orders passed in November, 2004 that even though the State Bank of India was permitted to prosecute the suits along with the original plaintiff on record, the Civil Court will not lose its jurisdiction and that the Debt Recovery Tribunal would have no jurisdiction.

3. The applications from which the Revisions arose were filed praying to return the plaint for presentation before the Debt Recovery Tribunal. The court below held that in view of the orders passed by it on an earlier occasion permitting the State Bank of India to continue to prosecute the suits, it was not necessary to return the plaint. The applications for return of the plaint were accordingly dismissed. While dismissing the applications, the court below also held that return of plaint can only be done if the Court finds that it has no territorial or pecuniary jurisdiction.

4. I shall first deal with the question whether return of plaint could be only on the ground of lack of territorial or pecuniary jurisdiction. Rule 10 of Order VII of the Code of Civil Procedure provides that the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The Rule does not restrict the return of plaint only to a case of lack of pecuniary or territorial jurisdiction. No distinction is made under Rule 10 of Order VII of the Code of Civil Procedure between jurisdiction over the subject matter and the territorial and pecuniary jurisdiction. On a plain reading of Rule 10 of Order VII of the Code of Civil Procedure, it would cover even cases where the Court lacks jurisdiction over the subject matter of the suit. There is nothing in Rule 10 to indicate that in a case where the Court lacks jurisdiction over the subject matter, a return of the plaint cannot be had. In *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, , the Supreme Court held that when the Court had no jurisdiction over the subject matter of the suit, it cannot decide any question on merits. It can only decide on the question of jurisdiction and if it comes to the conclusion that it has no jurisdiction over the matter, the Court was bound to return the plaint.

5. There is no case for any of the parties that at the time when the suits were instituted before the Civil Court, the suits were not maintainable. The suits were

filed after coming into force of the Recovery of Debts Act. Had the suits been filed by the State Bank of India, the suits would not have been maintainable before the Civil Court. The question that would arise for consideration is whether in view of the transfer of assets and liabilities by the original plaintiff to a bank which comes within the purview of the Recovery of Debts Act, the Civil Court which otherwise had jurisdiction to entertain the suits, would lose its jurisdiction.

6. It would be apposite in this context to refer to the relevant provisions in the Recovery of Debts Act. The Recovery of Debts Act is an Act 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. The Recovery of Debts Act would not apply where the amount of debt due to any bank or financial institution is less than Rs. 10 lakhs or such other amount, being not less than Rupees One lakh, as the Central Government may, by notification, specify, Section 2(g) defines "debt" as follows:

"(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

7. Sections 17 and 18 of the Recovery of Debts Act read as follows:

"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 for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made, by a Tribunal under this Act."

"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 ."

8. Section 31 of the Recovery of Debts Act provides that every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under the Act, being a suit or proceeding the cause of action where on 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. However, if a suit is filed before the

civil court after the commencement of the Recovery of Debts Act in respect of a subject matter which should have been instituted before the Tribunal, there is no provision for transfer of the suit to the Tribunal. In such a situation, a question would arise as to whether the plaint is liable to be returned by the civil court. Rule 10 of Order VII of the Code of Civil Procedure contemplates return of plaint for presentation of the same in a court where it should have been instituted.

9. In *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*, the Supreme Court held thus:

"Although some arguments have been advanced before us whether having regard to the provisions of Ss. 17 and 18 of the Act the civil court jurisdiction is completely ousted, we are of the view that the jurisdiction of the civil court would be ousted only in respect of the matters contained in S. 18 which has a direct co-relation with S. 17 thereof, that is to say that the matter must relate to a debt payable to a bank or a financial institution. The application before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt..... The Act, although, was enacted for a specific purpose but having regard to the exclusion of jurisdiction expressly provided for in Ss. 17 and 18 of the Act, it is difficult to hold that a civil court's jurisdiction is completely ousted. Indisputably the banks and the financial institutions for the purpose of enforcement of their claim for a sum below Rs. 10 lakhs would have to file civil suits before the civil courts. It is only for the claims of the banks and the financial institutions above the aforementioned sum that they have to approach the Debt Recovery Tribunal."

The Supreme Court also held in *Nahar Industrial Enterprises Ltd.*'s case that the Recovery of Debts Act have not created any new rights or liabilities but it has only provided a new forum.

10. Section 31 of the Recovery of Debts Act, which provides for transfer of pending cases, contemplates transfer of a suit or proceeding the cause of action of which is such that it would have been, if it had arisen after the establishment of a Tribunal under the Act, within the jurisdiction of such Tribunal. A suit which was maintainable before the civil court since the plaintiff is not a bank or financial institution, would not cease to be a suit cognizable by the civil court only on the ground that the plaintiffs rights subsequently came to vest in a bank or financial institution within the meaning of the Recovery of Debts Act. The relevant question to be considered is whether on the date of filing of the suit before the civil court, it had jurisdiction to entertain the suit. If the civil court had jurisdiction to entertain the suit, since the suit is not in respect of a matter exclusively coming within the jurisdiction of the tribunal under the Recovery of Debts Act, it cannot be said that the civil court would lose its jurisdiction in the circumstances mentioned above. If it were to be held that on the transfer of the assets and liabilities of the plaintiff to the State Bank of India the civil court will cease to have jurisdiction and only the Tribunal would have jurisdiction, what will happen if the rights of the State Bank of India are subsequently transferred to a

person or an institution which is not a bank or a financial institution within the meaning of the Recovery of Debts Act? State of affairs subsequent to the filing of the suit, where the suit is otherwise maintainable before the civil court, would not normally be relevant in considering the question of jurisdiction of the civil court.

11. Section 17 of the Recovery of Debts Act contemplates the jurisdiction of the Tribunal to entertain and decide applications from the banks and financial institutions. Since the Tribunal had no jurisdiction to entertain and decide the applications of the SBI Home Finance Ltd., the same being not a bank or financial institution within the meaning of the Recovery of Debts Act, the Tribunal would not get exclusive jurisdiction to entertain and decide such a case only on the ground that after institution of the suit by the SBI Home Finance Ltd., its assets and liabilities were transferred to the State Bank of India.

12. In *Abdul Khader Vs. Catholic Syrian Bank*, , a contention was put forward that the decree being for an amount of above Rupees Ten lakhs, the civil court had no jurisdiction to pass the decree and the decree was void. In that case, the suit was filed for realisation of a sum of Rs. 6,52,445/-. However, at the time when the suit was disposed of, the principal amount together with the interest exceeded Rupees Ten lakhs. When the decree was put in execution, the judgment debtor filed a Writ Petition for a declaration that the decree is a nullity. Negating that plea, it was held thus:

"5. The contention of the petitioner that a suit competently filed after the appointed day before a civil court, being below the limit provided for in S. 1(4) of the Act, shall be transferred to the Tribunal as and when, the amount crosses the said limit due to accrual of interest pendente lite and or cost also cannot be countenanced. The only provision for transfer of the suit is that contained in S. 31 . It is confined only to the "suit or other proceedings pending before any court immediately before the date of establishment of a Tribunal". The suit in which the impugned decree was passed is one instituted far later than such establishment. At the time of filing the suit, it was admittedly maintainable before the civil court. There is no provision in the Act for transferring such suit for trial to a Tribunal on accrual in interest and thus crossing the limit provided in S. 1(4) . When the suit was filed and the suit was continued it was below the prescribed level. Ext. P1 decree cannot be therefore said to be a nullity."

13. In the present case, the suits were perfectly maintainable before the civil court at the time when they were instituted, though the amount claimed in the suits were above Rupees Ten lakhs. The original plaintiff in the respective cases is not a bank or a financial institution. The mere accident of vesting of the assets and liabilities of the plaintiff in the State Bank of India after the institution of the suits would not take away the jurisdiction of the civil court to try the suits. Even when the State Bank of India comes on record under Rule 10 of Order XXII of the Code of Civil Procedure, the suits would be maintainable before the civil court. There is no lack of jurisdiction for the civil court in such a situation and

Section 18 of the Recovery of Debts Act would not apply.

14. Even assuming the State Bank of India did not apply to join as a party in the suits, the original plaintiff could have continued the suit and protected the interests of the assignee, namely, the State Bank of India. Even after the transfer of the assets and liabilities, the right of the SBI Home Finance Ltd. to continue to prosecute the suit would not be hampered since it was bound to protect the interests of the assignee. Therefore, the position would not change even if the assignee, namely, the State Bank of India had applied to substitute itself as the plaintiff. The jurisdiction of the civil court would rest upon the question whether it had jurisdiction on the basis of the cause of action of the suits.

15. The learned counsel appearing for the respondents also submitted that the civil court has jurisdiction to try the suits and the defendants do not have a case that the Debt Recovery Tribunal has jurisdiction to try the suits. In short, there is no case for the defendants that there is any lack of jurisdiction for the civil court to try the suits. For the aforesaid reasons, I am of the view that the court below was right in holding that the return of the plaint was unnecessary. I am of the view that the civil court retains the jurisdiction to try the suits.

The Civil Revision Petitions are accordingly dismissed.