(2000) 01 PAT CK 0036

In the Patna High Court

Case No : L.P.A. No. 92 of 1999

State Bank of India — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 3, 31

Citation : (2000) 1 PLJR 1075

Hon'ble Judges : B.P. Singh, Acting C.J.;Aftab Alam, J

Bench : Division Bench

Advocate : S.D. Sanjay and Suraj Samdarshi, for the Appellant; A.N. Singh and Mr. Mallika Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard counsel for the parties and with their consent we are disposing of this appeal at the admission stage itself. It is not disputed before us that a suit was filed by the State Bank of India against respondent no. 3 praying for a decree for a sum of Rs. 10,82,000/- and odd which was advanced to respondent no. 3 by way of loan. The said suit was tried by Subordinate Judge II, Kishanganj being Title Mortgage Suit No. 43 of 1982 and by judgment and decree dated 18.3.1997 the said suit was dismissed. The appellant Bank preferred a writ petition before this court being CWJC No. 4888 of 1997 challenging the said decree on the ground that the court was left with no jurisdiction to pass the judgment and decree on 18.3.1997 in view of the provisions of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 (hereinafter referred to as ''the Act''). A learned Judge dismissed the writ petition holding that the appellant Bank could seek its remedy by filing an appeal challenging the judgment and decree, and therefore no relief could be granted in writ jurisdiction. The said judgment and order dismissing the writ petition has been impugned in this appeal.

2. A few dates are relevant. The suit was filed in the year, 1982 and it continued till January, 1993. Mr. Mazumdar, counsel for respondent no. 3 submits that according to his instruction the arguments in the suit were heard in the month of January, 1993, but he has no authentic record to support this fact. We will assume that arguments in the suit were heard and concluded in January, 1993 and all that remained to be done was to deliver the judgment. The judgment was delivered on 18.3.1997.

3. The facts not in dispute are that by notification dated 13.12.1996, (Annexure 2 to the writ petition), Shri Ram Prit Pathak, Dist. and Sessions Judge, Giridih was appointed as the Presiding Officer of the tribunal under the Act by the Central Government. By notification dated 24.1.1997 the Central Government established the Debt Recovery Tribunal at Patna having jurisdiction over the State of Bihar and Orissa, in exercise of powers conferred by Section 3 of the Act. It would, thus, appear that before the judgment was delivered on 18.3.1997 the said tribunal had been duly established, and the Presiding Officer also appointed by the Central Government. Thus the tribunal had come into existence before the judgment in the suit was delivered. The letter written by the Registrar of this court to all the Dist. & Sessions Judges of Bihar, directing them to transfer the relevant case records to the tribunal is not of much significance, though even the said letter was issued on 10.3.1997, a little before the judgment was delivered in the suit on 18.3.1997.

4. Section 17 of the Act provides that the tribunal constituted under the Act 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. Section 18 of the Act bars the jurisdiction of civil courts by providing that on and from the appointed day, no court or 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.

5. Section 31 of the Act is relevant which provides as follows:

31. Transfer of pending cases.?(1) Every suit or other proceeding pending before a court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon 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 :

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (1) :?

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

6. It would thus appear that on and from the appointed day i.e. from the date of establishment of the tribunal, the jurisdiction to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions vested solely in the Tribunal. Therefore, once the Tribunal was established no civil court could entertain and decide such claims, nor could it proceed with the matter already pending before it. Section 31 in express terms provides that such suit or other proceeding pending before any court immediately before the date of establishment of a tribunal under the Act shall stand transferred on that date to such Tribunal. It is not in dispute that the Tribunal established by notification dated 24.1.1997 had jurisdiction to try the suit in question Once the Tribunal was established, the law operated to transfer to the tribunal such suits or proceedings pending before any court. The transfer of such suits or proceedings was effected by the operation of law and nothing more was required to be done. We must, therefore hold that on 24.1.1997 when the Tribunal was duly established by the Central Government, the instant suit also stood transferred to the said Tribunal, and the Subordinate Judge II, Kishanganj had no jurisdiction left in the matter. Even if he had only to pronounce the judgment, he was denuded of that jurisdiction as the suit stood transferred to the Tribunal.

7. The learned Judge has dismissed the writ petition holding that even if the judgment and decree passed by the Subordinate Judge II was without jurisdiction, the bank must seek its remedy by way of appeal. We do not agree. Since the transfer of the suit took effect by operation of law, on the date the judgment was passed i.e. 18.3.1997, the Subordinate Judge had no jurisdiction whatsoever in the matter. This is not a case where the jurisdiction was in doubt, but a case where the Subordinate Judge had no jurisdiction whatsoever to decide the claim in suit and, therefore, a case of complete lack of jurisdiction. In such a case the judgment and decree may even be ignored as a nullity. In the circumstances we allow this appeal and declare the judgment and decree passed by Subordinate Judge II, Kishanganj in Title Mortgage Case No. 43 of 1982 dated 18.3.1997 a nullity. The suit stands transferred to the Tribunal under the Act and the record of the suit, therefore, should be immediately sent down to the Tribunal which shall dispose it of in accordance with law. This letters patent appeal is accordingly allowed.

