
(1996) 03 DEL CK 0027

In the Delhi High Court

Case No : Suits No's. 2806-2811 of 1993 and 493 and 150 of 1994

State Bank of India

APPELLANT

Vs

Vijay Kumar Tayal and others

RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Citation : (1997) 89 CompCas 424

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Ishwar Sahai, Sanjeev Kakra, Atul Kumar and H.C. Dhall, for the Appellant;

Judgement

Manmohan Sarin J.

1. By this common order, I would be deciding the question of transfer of suits instituted by banks and financial institutions to the Debt Recovery Tribunal, constituted under "the Recovery of Debts Due to Banks and Financial Institutions Act, 1993" (hereinafter referred to as "the Act").

2. By virtue of section 17 of the Act, the Debt Recovery Tribunal has been conferred the jurisdiction to try and entertain an application for the recovery of debts due to banks and financial institutions. An Appellate Tribunal has also been constituted to entertain appeals from orders of the Debt Recovery Tribunal. The jurisdiction of the civil courts has been excluded in relation to matters falling within the jurisdiction of the Tribunal except under articles 226 and 227 of the Constitution of India. Reference may usefully be made to section 31, which deals with transfer of pending cases. Section 31 of the Act is as under :

"Transfer of pending cases. - (1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the causes 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 proceedings 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 or other proceedings, so far 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."

3. Suits instituted by banks and financial institutions of value exceeding the sum of Rs. 10 lakhs are liable to be transferred to the Debt Recovery Tribunal from the appointed day. This has given rise to several questions regarding transfer of suits, wherein cross suits have been instituted or counter-claims are filed. Additionally, there are cases where set-off or adjustment is claimed. These situations may broadly be classified as under :

(i) Suits for recovery filed by the banks and institutions wherein the defendant raises a plea of a adjustment or set-off to wipe out or reduce the plaintiff's claim.

(ii) Suits for recovery instituted by the banks or financial institutions wherein the defendant raises a counter-claim, the extent of which is either lower than the amount claimed in the suit, equivalent thereto or higher than the amount in the suit.

(iii) Suits instituted by the banks and financial institutions for recovery, wherein the defendants have filed separate cross suits for seeking declaration, damages for failure to honour its commitments and such suits have either been consolidated with the suits filed by the bank or financial institutions for purposes of trial and recording of evidence.

(iv) Suits instituted by the banks against the employees for amounts embezzled or misappropriated.

4. At the very outset, it may be noted that the Debt Recovery Tribunal would not have any jurisdiction to entertain claims or suits instituted against a bank or financial institutions. The questions, Therefore, that arise for consideration relate to suits where pleas of adjustment or set-off are raised in the written statement. Further directions would be required for the trial of cases, which are liable to be transferred to the Debt Recovery Tribunal and which involve a counter-claim, cross-suit or separate suit for damages filed by the defendant and the two have been consolidated for the purposes of trial and recording of evidence.

5. Let us examine the first category of cases wherein adjustment is claimed or

set-off is claimed. The net effect would be to either wipe off or to reduce the plaintiff's claim. The plea being pure and simple in defense, subject to the conditions for invoking the claim for adjustment and set-off, namely, the amount being an ascertained amount, being legally recoverable and the parties filling in the same character in the claim for set-off as that in the plaintiff's suit being satisfied, are liable to be considered in the suit itself. In these cases, no relief independently of the claim in the suit is being claimed. The defendant's claim in suit is by way of set-off or adjustment and is confined either to wiping out or reducing the plaintiff's claim in suit. The above class of suits wherein claims for adjustment and set-off are made, would be liable to be transferred to the Debt Recovery Tribunal for trial.

6. The second and third classes of suits are where either a counterclaim is filed on which court-fee is paid or a cross-suit is instituted claiming damages for alleged breach. The counter-claim or cross-suits may be in respect of the same or a different cause of action accruing to the defendant against the banks or financial institutions either before or after the filing of the suit by the banks or financial institutions. The counter-claim is registered as a separate suit. In my view, the Debt Recovery Tribunal which has the jurisdiction to entertain only claims from banks and financial institutions will not have the jurisdiction to entertain a cross-suit or counter-claim that may be founded either on the same or a separate cause of action and/or the amount of which may even be in excess of the claim in suit. This is because the Debt Recovery Tribunal has no jurisdiction to pass by decree or order for recovery against the bank or financial institutions. My attention has been drawn to an order dated July 19, 1995, passed by N.G. Nandi J. in Suit No. 3195 of 1992 - Canara Bank v. Coffee Export Pvt. Ltd. While considering the transfer of a suit for recovery of Rs. 25,21,586 instituted by the bank, the learned judge also transferred the counter-claim holding that in the counter-claim, the defendant seeks only the relief of getting the claim reduced to the extent stated there under and no relief as such independent of the claim in the suit had been prayed. With utmost respect, in case the above is taken to be an authority for the transfer of all counter-claims to the Debt Recovery Tribunal, I am unable to subscribe to the said view. The learned judge did not have the occasion to consider cases of counter-claims, where the counter-claim is founded on a separate cause of action or may even be in excess of the amount claimed in suit. In such cases the Debt Recovery Tribunal would not have the jurisdiction to either entertain or pass an order or a decree against the bank if the counter-claim is found to be correct. I am, Therefore, of the view that in cases wherein a counter-claim has been filed along with the suit, directions should be issued for separately registering the counter-claim as a suit if not already done. The counter-claim should be delinked from the suit file even though trial with the suit could be expedient and convenient. The suit instituted by the bank is to be transferred to the Debt Recovery Tribunal without the counter-claim.

7. Regarding the third category, i.e., cases where the defendants have filed cross-

suits or separate suits for claiming damages and seeking declaration and injunction against the banks. The injunction could well be against sale of hypothecated assets or property and the declaration may be sought challenging the notice for recall of loan or seeking damages for the alleged failure of the bank or financial institution to perform their obligations. The above suits could have been consolidated with the suit instituted by the bank or financial institutions for recovery, for an expeditious trial. The suit instituted by the banks and financial institutions are liable to be transferred to the Debt Recovery Tribunal, while the suits instituted by the defendants either for declaration, injunction or damages are liable to be delinked and tried by civil courts. The registry in all these cases, where the suits were consolidated shall place on the record of the other suit, copies of the orders passed and evidence recorded, pleadings and documents wherever necessary.

8. Arguments were addressed by the parties against transfer of the suits instituted by the bank or financial institutions to the Debt Recovery Tribunal wherein the said suits had been consolidated with the suit filed for damages, declaration and injunction by the parties. These have been considered and separately dealt with.

9. As regards suits instituted by the banks and financial institutions against employees for amounts misappropriated or embezzled, reference may be invited to OA No. 7 of 1995, in Suit No. 550 of 1994 - Oriental Bank of Commerce v. Sh. Mohan Gupta. I have held that a suit for recovery of misappropriated or embezzled amounts by the banks or financial institutions against the employee, would not be one which would come within the definition of a "debt arising during the course of business" as contemplated under the Act. Hence, the said suits would not be liable to be transferred to the Debt Recovery Tribunal.

10. Having considered the broad categories and situations in which the question of transfer of pending cases has arisen, let me now deal with specific cases, wherein questions of transfer arise.

11. The State Bank of India has filed the undermentioned suits against the Tayal group and their associate concerns, partners and family members. These are :

(i) Suit No. 2806 of 1993 - State Bank of India v. Mr. Vijay Kumar Tayal for recovery of Rs. 2,44,17,286.34. It includes a claim for the sale of mortgage property.

(ii) Suit No. 2807 of 1993 - State Bank of India v. Sandeep Plywood Put. Ltd. for recovery of Rs. 2,13,25,596. It includes a claim for the sale of mortgage property.

(iii) Suit No. 2808 of 1993 - State Bank of India v. Geeta Ram Gupta for recovery of Rs. 1,05,38,614. It includes a claim for the sale of mortgage property.

(iv) Suit No. 2809 of 1993 - State Bank of India v. Kusum Gupta for recovery of Rs. 95,06,800.92. It includes a claim for the sale of mortgage property.

(v) Suit No. 2810 of 1993 - State Bank of India v. Tayal Sales Corporation Pvt. Ltd. for recovery of Rs. 2,58,69,053. It includes a claim for the sale of mortgage property.

(vi) Suit No. 2811 of 1993 - State Bank of India v. Tayal Plywood Industries Pvt. Ltd. for recovery of Rs. 3,84,89,41. It includes a claim for the sale of mortgage property.

12. Apart from the foregoing suits filed by the State Bank of India, Mr. H.C. Dhall urged that the following suits have been filed by the Tayal group and their associate companies and its partners/family members :

(i) Suit No. 150 of 1994 - Tayal Sales Corporation Pvt. Ltd. v. State Bank of India, Delhi. The suit is for recovery of Rs. 10 lakhs, for declaration with consequential relief and for injunction. The plaintiff in this suit is seeking adjustment of the claim in Suit No. 2812 of 1993, said to have been instituted by the State Bank of India against the plaintiff for Rs. 1,48,38,922.75 and has sought in addition a decree in the sum of Rs. 10 lakhs as damages apart from the relief and declaration.

(ii) Suit No. 493 of 1994 - Sh. Geeta Ram Gupta v. State Bank of India. This is a suit for recovery of Rs. 4 lakhs, for declaration with consequential relief and for injunction. The plaintiff in this suit is seeking a sum of Rs. 4 lakhs after adjustment of the defendants/bank alleged claim in Suit No. 2808 of 1993.

(iii) Suit No. 711 of 1994 - M.T. Plywood Traders Pvt Ltd. v. State Bank of India.

(iv) Suit No. 837 of 1994 - Sandeep Plywood Pvt. Ltd. v. State Bank of India.

(v) Suit No. 2085 of 1994 - Tayal Plywood Industries Pvt. Ltd. v. State Bank of India.

13. Suit at Sl. Nos. (i) and (ii) above were on my board. Suit at Sl. Nos. (iii) to (v) are said to be pending before other Benches.

14. H.C. Dhall, appearing for the defendants, in the suit instituted by the State Bank of India and for the plaintiff in the suits listed above and instituted against the State Bank of India, has argued against the transfer of the suits filed by the bank to the Debt Recovery Tribunal. Mr. Dhall submitted that the bank has instituted seven suits against the Tayal group of companies and concerns, while five suits have been instituted by the Tayal group and their associate concerns and family members against the State Bank of India for recovery of damages, declaration and consequential relief of injunction, etc., has been sought. It is submitted by Mr. Dhall that in all the cases filed against the bank, a prayer has been made that the amounts claimed by the bank in the suit instituted by the bank has been adjusted against the losses suffered by the Tayal group and even thereafter the bank is liable to pay the amount claimed in the suit instituted by the Tayal group and its associate concerns. The claims in the suit instituted by the Tayal group arise out of alleged acts of commission and omission committed

by the bank and its officers which caused the losses to the group and its concerns. The submission of Mr. Dhall is that if the suits instituted by the State Bank of India are transferred to the Debt Recovery Tribunal and decided expeditiously, the bank would resort to coercive process and make recoveries from the Tayal group and its concerns while the suit instituted by the Tayal group would still be pending in this court. It is argued that if this court ultimately holds in favor of the Tayal group and decrees the suits against the bank, it would result in contradictory judgments being given one by the Debt Recovery Tribunal and another by this court. Further, it would result in unjust enrichment for the bank. To further buttress the arguments, Mr. Dhall submitted that the former senior officer of the State Bank of India and the director of the Tayal group of companies are facing charges u/s 120 of the Indian Penal Code, and section 120 of the Indian Penal Code, read with section 13(2) and 13(1d) of the Prevention of Corruption Act in respect of the subject-matter of the claims in suits. Mr. Dhall contended that because of the allegations of fraud and criminal offences the amounts claimed by the bank in the suits would be excluded from the definition of "debt". Mr. Dhall submitted that since either criminal cases pending investigation or prosecutions have been launched the suit of the bank was liable to be stayed. In this respect, it was submitted that application of stay of the suits filed by the bank had been moved by the defendants which was pending adjudication. In these circumstances, Mr. Dhall contended that the suit instituted by the bank as well as the suit instituted by the Tayal group are liable to be tried together and thus the suit instituted by the bank should not be transferred to the Tribunal and be tried by this court.

15. Mr. Ishwar Sahai, senior advocate, appearing with Mr. Sanjeev Kakra and Atul Kumar for the State Bank of India has refuted these arguments. Mr. Sahai argued that perusal of the plaint in the suit instituted by the Tayal group would show they virtually admit their liability in respect of the amount claimed by the State Bank of India in the suit filed by it. It would be worthwhile to reproduce the prayer clause in Suit No. 493 of 1994, filed by Sh. Geeta Ram Gupta against the State Bank of India.

(i) a judgment and decree of declaration be passed in favor of the plaintiff and against the defendant-bank, declaring :

(a) that the defendant-bank is not entitled to interest on any debits up to Rs. 61.47 lakhs from March 1, 1990;

(b) that the defendant-bank has no interest left in the stock-in-trade of the plaintiff that was stated to have been hypothecated to the defendant-bank and further the defendant-bank has no interest left in the collateral security of the plaintiff alleged to have been mortgaged with the defendant-bank.

(ii) that a judgment and decree for a sum of Rs. 4 lakhs in respect of its claim, after due adjustment of the sums claimed by the defendant-bank, be passed in favor of the plaintiff and against the defendant-bank;

(iii) that a judgment and decree of permanent injunction be granted, restraining the defendant-bank from approaching other banks of the plaintiff or making any complaints against the plaintiff, and/or

(iv) such other orders be passed or reliefs be granted as this court deems fit and proper under the circumstances of the case.

16. Mr. Sahai urged that it was not permissible for the Tayal group to claim adjustment in a separate suit along with damages. The claim for adjustment, if any, had to be made in the written statement to be filed in the suit instituted by the bank. As regards investigation and criminal proceedings having been instituted, it was pointed out by Mr. Sahai that the suits instituted by the bank are not based on any allegation of fraud. The first information report that has been filed is by a third person and is concerned with the enhanced financial limits granted to the various Tayal group of concerns and not with the transaction in the suit.

17. I have considered the rival contentions. I find that the submission made by Mr. Dhalla are devoid of merit. These are cases in which the bank has instituted suits for recovery which include claims for the sale of mortgage property. Following the judgment of R.C. Lahoti J. in *State Bank of India Vs. Samneel Engineering Company and Others*, it is now well-settled that suits for recovery of mortgage debts would fall within the competence and jurisdiction of the Tribunal. The plea of mortgage suits not being liable to be transferred is no longer open. In these suits, the defendants have not yet filed the written statement or raised any defense by way of adjustment or set-off. On the other hand, separate suits wherein adjustment of the amount claimed in the present suit in addition to damages is sought. Mr. Sahai rightly pointed out that it is not permissible as adjustment cannot unilaterally be sought in a separate suit.

18. The mere fact that the Debt Recovery Tribunal may allow the claim of the bank prior to disposal of the suit filed by the Tayal group and pending in this court is not a ground for declining transfer of the suit instituted by the bank to the Tribunal. It does without saying that this court has no jurisdiction to continue with the trial of the suit instituted by the bank, which are required to be transferred forthwith. Further, it would be open for the defendant to claim and take up all pleas of adjustment in the suit filed by the State Bank of India. As regards the stay of the suits on the ground that criminal investigation and proceedings are pending, the defendant-Tayal group have filed separate applications in the suits and the same would be dealt with by the Tribunal in accordance with law. Assuming for the sake of arguments that the suits instituted by the bank are decreed by the Debt Recovery Tribunal and subsequently the Tayal group/defendant gets a decree for damages in the suit instituted by it against the bank, it would be entitled to have the same executed or adjusted against the claim allowed in favor of the bank. I further find no merit in the contention that the claim of the bank ceases to be a "debt" because either prosecution or investigation is pending against the officials of the bank for

cheating or criminal conspiracy.

19. In these circumstances, I allow and direct the transfer of the suits instituted by the State Bank of India, i.e., Suit Nos. 2806 of 1993, 2807 of 1993, 2808 of 1993, 2810 of 1993 and 2811 of 1993, to the Debt Recovery Tribunal. The suits instituted by the Tayal group, namely, Suit No. 150 of 1994 - Tayal Sales Corporation Pvt. Ltd. v. State Bank of India and Suit No. 493 of 1994 - Geeta Ram Gupta v. State Bank of India would continue to be tried by this court.