

(1997) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 536 of 1996

State Bank of Indore

APPELLANT

Vs

Mehta Industries and Others

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1, 18, 3, 31

Citation : (2001) 103 CompCas 524

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : Puntambekar, for the Appellant; B.G. Neema, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Shri Puntambekar and Shri Neema made a strenuous search for the purpose of finding out the notification issued by the Government of India in view of the provisions of Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act" for convenience). Both of them categorically stated that no Tribunal has been established in view of the provisions of Section 3 of the Act. They further stated that no notification has been issued by the Central Government in view of the provisions of Section 3 of the Act.

2. The appellant is hereby assailing the correctness, propriety and legality of the order which has been passed by the Fourth Additional District Judge, Dewas, in the matter of 13-B/95 by which the learned judge returned the plaint to the appellant for presenting it before the Tribunal which has been contemplated by the provisions of Section 3 of the Act. The learned trial judge pointed out the provisions of Section 1(c), sections 18 and 31 of the Act for justifying his decision of returning the plaint to the appellant.

3. The appellant had filed a suit for recovery of a sum of more than Rs.

7,40,631.65 along with interest and incidental cost from the respondents.

4. The respondents were absent since some dates though they were served. None appeared for them even today when this appeal is listed for final hearing.

5. Section 2(1)(c) of the Act points out the definition of "the appointed day" in relation to a Tribunal by indicating that appointed day means, the date on which the Tribunal has been established under Sub-section (1) of Section 3 or, as the case may be, Sub-section (1) of section 8. In view of the provisions of Section 3(1) of the Act, the Central Government has by notification, to establish one or more Tribunals, to be known as the Debt Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act. By the persons of Sub-section (2) of Section 3 of the Act, the Central Government has also to specify, in the notification referred to in Sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.

6. By the provisions of section 8, Sub-section (1) of the Act, the Central Government has by notification, to establish one or more Appellate Tribunals, to be known as the Debt Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act. In view of Sub-section (2) of section 8 of the Act, such Tribunal would be exercising the appellate jurisdiction. In view of the provisions of Section 31 of the Act, 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 cause of action whereon 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. Sub-section (2) of Section 32, provides that where any suit or other proceeding stands transferred from any court to a Tribunal under Sub-section (1) :

"(i) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal."

7. There is no doubt that the provisions of the Act are applicable to the State Bank of Indore, because as Shri Puntambekar, submitted and pointed out from the record it happens to be a "subsidiary bank" of State Bank of India. Both such type of banks, have been contemplated in view of the provisions of Section 2 of the Act. Though by virtue of the provisions of sections 1 and 3, the Act would be deemed to have come into force on June 15, 1993, the Central Government has to, by notification, establish one or more Tribunals to function in view of the Act. No such notification seems to have been issued by the Central Government and, therefore, there will not be any question of transferring the pending suits to the Tribunal as contemplated by the provisions of Sections 3 and 31 of the Act. In view of that the provisions of Section 18 of the Act would not come into play.

8. The learned trial judge has committed an error of returning" the plaint to the appellant. If at all, the learned judge was under the impression that he was to

implement the provisions of Section 31 of the Act, what the learned judge should have done, was to transfer the record and proceeding of this present civil suit to the Tribunal. It was not proper for the learned trial judge to return the plaint to the appellant (original plaintiff). It was necessary for the learned judge to find out whether such notification has been issued by the Central Government in view of the provisions of Section 3 of the Act. Thus, in any case, the order which is being assailed by this appeal is not proper, correct and in accordance with the provisions of law. It deserves to be set aside.

9. The appellant is to recover a huge sum from the respondents. The money involved is public money. The suit pertains to the year 1995. The interest on the principal sum would increase and if it is not decided within proper time, it would not be possible for the appellant to recover that even from the assets which the respondents are possessing on this date. Such suits need to be tried as early as possible for the purpose of seeing that public money is not put to stake on account of delay.

10. Thus, the appeal stands allowed. No order as to costs so far as the present appeal is concerned, because that could be decided by the trial court at the time of deciding the suit. The trial court is hereby directed to decide the suit in accordance with the provisions of law prevalent at present. The parties to appear before the court on January 16, 1998.

11. The record be sent to the trial court as soon as possible.