

(2001) 10 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 22505 of 1998

Syndicate Bank

APPELLANT

Vs

Chamundi Industries and Others

RESPONDENT

Date of Decision : 06-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17

Citation : (2002) 1 KCCR 652

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Tukaram S. Pai, for the Appellant; Annapurna Bevinje, for Respondent 2 and VKK Nair, for Respondent 3, for the Respondent

Judgement

Chandrashekaraiah, J.—This writ petition is by the Bank challenging the order passed by the Debts Recovery Tribunal, Bangalore, dismissing the application for recovery of money from Defendants-1 to 3 filed by the Bank holding that it is not maintainable on the ground that the application is hit by Rule 10 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as "the Rules").

2. The Petitioner-Bank filed an application u/s 17 of the Recoveries of Dues due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act") for recovery of a sum of Rs. 12,90,934/- with cost, current and future interest. The Respondents who are Defendants before the Debts Recovery Tribunal (hereinafter referred to as "the Tribunal") have not disputed or denied the transaction entered into between the Bank and Respondents-1 to 3. Respondent-3 in the statement of objections filed before the Tribunal has stated that the Bank has unjustly combined the two distinct causes of action on two distinct loans in an effort to bring their total to an amount exceeding Rs. 10,00,000/- with a view to avoid recourse to the normal Courts of law and to unjustly avail the summary procedure prescribed under the Act and therefore the

application filed by the Petitioner is liable to be rejected for want of jurisdiction of the Tribunal.

3. Respondent-2 in his statement of objections has not raised the abovesaid contentions.

4. Respondent-1 though served remained absent.

5. On the basis of the pleadings the Tribunal has raised four points for consideration. Point No. 2, which is relevant for the purpose of deciding the controversy in this petition reads as follows:

Whether the Defendants prove that the two transactions are entirely different transactions and the application is hit by Rule 10 of the Debts Recovery Tribunal (Procedure) Rules?

6. The abovesaid point has been answered by the Tribunal in the affirmative and consequently dismissed the application filed by the Bank holding that the application is hit by Rule 10 of the Rules. Therefore, the Bank is before this Court. In view of the finding recorded by the Tribunal on point No. 2. the Tribunal found it unnecessary to consider the other points.

7. The Tribunal ought to have recorded the finding on other issues also when the trial was complete as it would have been convenient for the Petitioner to challenge or for this Court to consider the findings on other points also in the event the finding recorded on point No. 2 was to be reversed.

8. The case of the Bank is that the 1st Respondent is a partnership firm and Respondents 2 and 3 are its partners. The Bank sanctioned a loan of Rs. 2,45,000/- on 12.7.1982 and overdraft facility upto limit of Rs. 1,00,000/- on 25.2.1995. In respect of these transactions, the Respondents have executed the required documents as stated in the application. As the Respondents were irregular in making payments and they have not discharged their liability even though certain concession was given at the request of the Respondent in the rate of interest, the Bank has filed the application for recovery certificate to recover an amount of Rs. 12,90,934/- with cost and interest. Respondent 3 no doubt in the statement of objections has stated that the Bank has unjustly combined two distinct causes of action alleged on two distinct loans in order to bring their total to an amount exceeding Rs. 10,00,000/- with a view to avoid recourse to the normal Courts of law and therefore the application is liable to be rejected for want of jurisdiction by the Tribunal. So far as the transactions are concerned, both Respondents-2 and 3 have admitted in their statement of objections. The tribunal is of the view that one transaction relates to a loan and another relates to overdraft facility, which are covered by independent documents unconnected with each other and therefore the application filed by the Bank for recovery of amount due under the abovesaid transactions based on more than single cause of action in single application is not maintainable as it is hit by Rule 10 of the Rules.

9. In order to consider whether the finding recorded by the Tribunal on maintainability of the application is correct or not, it is useful to refer to certain provisions of the Act and the Rules.

Section 1(4) of the Act, reads as follows:

1. (4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify".

The word "debt" is defined u/s 2(g) of the Act, which reads 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;

10. Section 17 of the Act, confers power on the Tribunal to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such banks and financial institutions. u/s 18 no Court or the other authority shall have any jurisdiction, power or authority in relation to the matters specified in Section 17.

11. Section 19, of the Act, prescribes procedure for the Tribunals to decide the application before it. Section 19 (1) to (9) reads as follows:

19. Application to the Tribunal.-(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,-

a) the Defendant, or each of the Defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

b) any of the Defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or

c) the cause of action, wholly or in part, arises.

2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under Sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is

passed, by making an application to that Tribunal.

3) Every application under Sub-section (1) or Sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this Sub-section relating to fee shall apply to cases transferred to the Tribunal under Sub-section (1) of Section 31.

(4) On receipt of the application under Sub-section (1) or Sub-section (2), the Tribunal shall issue summons requiring the Defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The Defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the Defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the Defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a claim in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A Defendant in an application, may in addition to his right of pleading a set-off under Sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the Defendant against the applicant either before or after the filing of the application but before the Defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under Sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both to the original claim and on the counter-claim.

12. u/s 36 of the Act, the Central Government may, by notification, make rules to carry out the provisions of this Act. Sub-Section 2(c) of Section 36 reads as follows:

36. (2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(c) the form in which an application may be made u/s 19, the documents and other evidence by which such application shall be accompanied and the fees

payable in respect of the filing of such application:

13. In exercise of the power conferred on the Central Government, to make Rules u/s 36, the Central Government has framed the Rules. Rule 4 of Rules reads as follows:

4. Procedure for filing application.-(1) An application shall be presented in Form annexed to these rules by the applicant in person or by his agent or by a duly authorised legal practitioner to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

Pursuant to this, the application form to be filed u/s 19 of the Act, has been prescribed.

Clause (iv) of the form, in relation to limitation reads as follows:

4. Limitation: The application further declares that the application is within the limitation prescribed in Section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

14. Rule 10, of the Rules which is relevant to be considered reads as follows:

10. Plural Remedies.-An application shall not seek relief or reliefs based on more than a single cause of action in one single application unless the reliefs prayed for are consequential to one another.

15. The expression "cause of action" has different meaning in different context in different circumstances. The expression "cause of action" may be in relation to pecuniary jurisdiction u/s 1(4) of the Act, or it may be in relation to territorial jurisdiction provided u/s 19 of the Act or it may be in relation to the limitation prescribed for filing the applications. The expression "cause of action" has not been defined either under the Act or under the Rules. Even in the CPC the word "cause of action" is not defined. But the expression "cause of action" understood to mean the bundle of facts which are required to be proved by the Plaintiff if traversed in order to support his right to the judgment and it has nothing to do with the defence that may be raised by the Defendant irrespective of the character of the relief prayed for by the Plaintiff.

16. Section 19 of the Act, which prescribes procedure for the Tribunals for adjudication on the application filed by the Bank for recovery of money does not prohibit filing an application on causes of action which arises wholly or in part within its local limits. Under Sub-section (6) of Section 19, the Defendant may in his pleading claim set off against the claim of the applicant. Under Sub-section (8) of Section 19 of the Act, the Defendant in an application, may in addition to his right of pleading a set off under Sub-section (6), set up, by way of counter claim against the claim of the applicant. Under Sub-sections (7) and (9) of Section 19, the Tribunal is conferred with the power to consider the set off and the counter claim and pass final order on the application filed by the Bank. From

this it is seen, the Tribunal is conferred with the power to decide the case of the original application and also the set off and the counter claim. The set off and the counter claim necessarily are based on different causes of action from that of the cause of action pleaded by the applicant.

17. The consequences of filing an application seeking for relief or reliefs based on more than single cause of action is not provided under the Rules. Whereas Order VII, Rule 10 of CPC provides for return of the plaint if the Court has no jurisdiction to entertain the suit, Order VII, Rule 11 of CPC provides for rejection of the plaint in certain cases. But under the Rules, where an application is filed seeking relief based on more than single cause of action no consequences are provided. Therefore, in the absence of providing consequences in case where application is filed on more than a single cause of action, the Rule is to be held directory and not mandatory. Further, Section 19 of the Act, does not prohibit filing an application by the Bank seeking for relief or reliefs based on causes of action. Whereas Rule 10, of the Rules prohibits seeking relief or reliefs based on more than single cause of action. Therefore, limiting the claim based on only one cause of action under the Rule is inconsistent with the Act. Under the Rules of interpretation, if the Rule is inconsistent with the provisions of the Act, provisions of the Act prevails over the Rule. Therefore, to the extent of inconsistency referred to above. Section 19 of the Act, prevails over the Rules.

18. As stated earlier, u/s 19 of the Act, the Tribunal has the power to adjudicate the application filed by the Bank and also the set off and counter claim pleaded by the Defendant which are based on the causes of action different from that of the cause of action pleaded by the Bank. From this it is seen that the Tribunal has the power to adjudicate on the causes of action pleaded by the Bank and the Defendant/Defendants on one application filed by the Bank. Therefore, it cannot be understood to mean any application filed, seeking relief based on more than single cause of action, cannot be decided or adjudicated by the Tribunal as the Tribunal is, conferred with the power to decide the claim based on different causes of action as provided u/s 19 of the Act.

19. Order 2, Rule 3 Code of Civil Procedure, provides that the Plaintiff may unite in the same suit several causes of action against the same Defendant, or the same Defendants jointly; and any Plaintiffs having causes of action in which they are jointly interested against the same Defendant or the same Defendants jointly may unite such causes of action in the same suit. Section 67 of the Transfer of Property Act, compels the mortgages to sue on all the mortgages in respect of which the mortgage money has become due by bringing a single action. If the Defendant owes certain monies under different transactions to the Plaintiff and if he commits the breach in not discharging his obligation or liability the cause of action for the Plaintiff in such cases is the breach of obligation or liability and therefore even assuming that the transactions are different the cause of action is only one, that is, breach of obligation in discharging his liability. Therefore, the Tribunal is not right in holding that the application filed by the Plaintiff is hit by

Rule 10 of the Rules.

19. Section 19 of the Act, provides for making an application by Bank or financial institution to recover any debt from any person. Section 1(4) of the Act, which provides for pecuniary jurisdiction, says the provisions of the Act shall not apply where the amount of debt due to any Bank or financial institution is less than Rs. 10,00,000/-. So in order to understand the meaning of the word "debt" appearing under Sub-Section 1(4) and Section 19 of the Act, we have to read the definition of the word "debt" as defined u/s 2(g) of the Act. The expression "debt" has to be given the widest amplitude to mean any liability which is claimed as due from any person by a Bank during the course of any business activity undertaken by the Bank either in cash or otherwise. In the instant case though the amount due is under two transactions it is the liability due from the Defendants and is debt as defined under the Act. If that is so, it is open for the Bank to make an application in respect of all liability due by the Defendant/ Defendants to the Bank. Therefore, it cannot be said a single application for recovery of debt due under two transactions cannot be held to be not maintainable.

20. The learned Counsel for the Respondents relying upon the decision in the case of Smt. Gerty Suvarna and Another Vs. Union of India and Others, , submit that the application by the Bank based on two causes of action is not maintainable in law. This decision is subsequently considered and explained in the case of M/s. Jay Jee Service Station, Bangalore and Another Vs. M/s. Syndicate Bank, Shoolay Branch and Another, . The facts are:

The Bank had filed an application for recovery of Rs. 13,38,263.45 ps based on two facilities granted to the borrower one by way of loan and another by way of overdraft facility. The contention of the Defendant in the said case was that the two facilities were independent to each other and constituted two distinct cause of action which taken independently would not have been within the jurisdiction of the Tribunal. Considering the said contention, it is held that the two facilities were granted to the same set of individuals against the same securities and on the same day and therefore both the loan transactions arise out of one security and having been given to the Defendants on the same date, are not independent of each other and they constitute one cause of action. In the instant case also the Respondents-1 to 3 borrowed loan of Rs. 2,45,000/- for the purpose of purchasing machinery and working capital and also availed the overdraft facility in a sum of Rs. 1,00,000/- for the business of the first Respondent-firm. Respondents-2 and 3 have executed personal guarantees in respect of both the transactions. If that is so, the relief claimed in the application are consequential to one another. It is submitted that the decision in Smt. Gerty Swarna (supra) has been set aside by the Division Bench in Writ Appeal No. 5684 of 1997 disposed of on 4.9.2001. Further, when that case was decided the learned Judge had no benefit of the amendment introduced to Section 19 providing for considering the set off and the counter claim. Hence, I am of the considered view the Tribunal is

not right in dismissing the application holding that the application is hit by Rule 10 of the Rules.

21. The learned Counsel for the contesting Respondent submits that this Court shall not entertain the writ petition under Article 226 of the Constitution as against the impugned order since there is an alternative remedy of appeal provided under the Act. No doubt, an appeal is provided as against the impugned order. But since the above writ petition is of the year 1998 and Rule has been issued and it is pending till now it is not appropriate for this Court to dismiss the writ petition on the ground of alternative remedy at this distance of time. Further, providing for an alternative remedy of appeal alone does not in any way come in the way of this Court exercising the discretionary power conferred on it under Articles 226 and 227 of the Constitution of India, when it is satisfied that the Tribunal has committed the grave error in dismissing the application on technical ground. Therefore, the contention raised by the learned Counsel for the Petitioner regarding maintainability on the ground of alternative remedy is stated to be rejected and accordingly, it is rejected.

22. Since the Tribunal in the impugned order has dismissed the application on the finding recorded on point No. 2, without considering the other points raised by the Tribunal and since, I have held that the application filed by the Bank is maintainable, the matter requires to be sent back for consideration on other points.

Hence, I pass the following order:

Writ Petition is allowed:

The impugned order is quashed and the matter is remitted to the Tribunal to consider the application filed by the Bank on the points other than point No. 2 after due notice to both the parties.