

(2000) 09 CAL CK 0059

In the Calcutta High Court

Case No : A.P.O.T. No. 49 of 2000 with G.A. No. 235 of 2000

The Vysya Bank Ltd.

APPELLANT

Vs

Shankar Export Pvt. Ltd.

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Companies Act, 1956 — Section 442, 529

Constitution of India, 1950 — Article 226, 227, 228

Debts Recovery Tribunal and Financial Institutions Act, 1993 — Section 17, 18, 19(22), 25

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 16

Citation : AIR 2001 Cal 47 : (2001) 1 CALLT 194 : (2000) 2 CHN 679

Hon'ble Judges : Tarun Chatterjee, J; Amitava Lala, J

Bench : Division Bench

Advocate : Shri Rajshekhar Rao, for the Appellant; Shri Shibdas Banerjee and Shri Soumitra Ghosh Chowdhury, for the Respondent

Judgement

T. Chatterjee, J.—By consent of parties, the appeal is treated as on day's list and is disposed of along with the application for grant of interim relief being G.A. No. 235 of 2000.

2. This appeal is preferred against an interim order passed by a learned Judge of this Court in ALP No. 216 of 1999.

3. The order under appeal runs as under :--

"There will be an interim order to the effect that there will be a stay of hearing of the pending proceedings before the learned Tribunals. The interim order, if any, passed by the Tribunal shall continue without prejudice to the rights and contentions that this application is not maintainable.

Directions for filing affidavits given :--

A/O. is to be filed after the one week after the vacation, reply one week

thereafter, liberty to mention. This matter is adjourned sine die after the Supreme Court Judgment."

4. Mr. Shib Das Banerjee appearing on behalf of the respondent has submitted before us that no appeal lies against the aforesaid order passed under Clause 13 of the Letters Patent. He further urged that even assuming that an appeal lies against an order passed under Clause 13, then also the appeal cannot be filed against the interim order staying the proceeding pouncing before the Debt Recovery Tribunal constituted under Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "Debt Recovery Act") till the decision is arrived at on the application under Clause 13 of the Letters Patent as the same cannot be construed to be a "judgment" within the meaning of clause 15 of the Letters Patent in view of the fact that no rights have been decided by the Trial Court. In support of these contentions, strong reliance was placed to a decision of the Supreme Court in the case of *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, . In order to decide the questions raised by Mr. Banerjee on the entertainability of this appeal by us in the exercise of the power under clause 15 of the Letters Patent, we will deal with some facts which would be required for decision on this question. In or about November, 1998 the respondents instituted a suit in this Court for declaration and injunction and also for a money decree against the Vysya Bank Ltd. (hereinafter referred to as the Bank/appellant). After filing the suit, an application under Order 39 Rules 1 and 2 of the CPC was filed by the respondents praying for an order of injunction, restraining the Banks from dealing with the securities of the respondents held by the Bank/appellant till the disposal of the suit. Upon the application for injunction a learned Judge of this Court had passed an ad interim order of status quo with regard to the securities of the respondents till the disposal of the application for injunction. On the returnable date, the interim order was modified in part. Against the said order, an appeal was taken to the Division Bench of this Court which was disposed of by an order dated 31st March, 1999. In the month of September, 1999 the respondents moved an application under clause 13 of the Letter Patent being ALP No.216 of 1999. In the said application the respondents, inter alia, prayed, that the proceedings filed by the Bank/appellant before the Debts Recovery Tribunal being C.A. No. 155 of 1999 (*Vysya Bank v. Shankarlal & Company & Ors.*) be transferred to this Court and pending disposal of clause 13 petition, all further proceedings before the Debt Recovery Tribunal be stayed. By the impugned order, as noted herein earlier, the proceedings before the Debt Recovery Tribunal was stayed till the disposal of the clause 13 petition. As noted herein earlier, it has been contended by Mr. Banerjee that no appeal lies against the order passed under clause 13 of the Letters Patent. We are unable to accept this contention of Mr. Banerjee. To decide this question, the Court needs to consider whether the impugned order decides any right or controversy or by the order the concerned party faces serious injustice and thereby comes under clause 15 and whether this Court has any jurisdiction to entertain a petition filed under the Debt Recovery Act. Let us first consider whether in view of the decision

of the Supreme Court in the case of Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, , all orders passed under Clause 13 of the Letters Patent are not appealable under clause 15 of the Letters Patent. From a plain reading of this judgment of the Supreme Court, it can be said that orders passed under clause 13 of the Letters Patent are not appealable. But after careful examination of the entire judgment it can also be concluded that it may not be safe to hold that the Supreme Court in its decision has held that under no circumstances an appeal can be filed under clause 15 of the Letters Patent against an order under clause 13 of the Letters Patent. In the said decision, the Supreme Court in paragraph 12, however, observed as follows :--

"As stated already, it is not our purpose in the present case to frame an exhaustive definition of the word "judgment" as used in clause 15 of the Letters Patent.

5. From the aforesaid observation of the Supreme Court, it, therefore, appears to us that no exhaustive definition of the expression "judgment" in clause 15 of the Letters Patent can be given and, therefore, it cannot be straightway said that all orders passed under clause 13 of the Letters Patent are not appealable. In our opinion, there may be instances where an appeal shall lie against a particular order under clause 13 of the Letters Patent as the nature of the order under clause 13 indicates that the same must be construed to be a "judgment" under clause 15 of the Letters Patent. At this stage, we may now consider whether this Court, after transferring the petition filed by the Bank for recovery of debts due to them before the Debt Recovery Tribunal can decide the petition of the Bank-appellant or can it be said that this Court has any jurisdiction to decide the petition filed before the Debt Recovery Tribunal if the petition pending before the Tribunal is transferred to this Court for decision in the exercise of its power under clause 13 of the Letters Patent. When asked whether this Court can have any jurisdiction to decide the petition filed under the Debt Recovery Act, the answer of Mr. Banerjee was in the negative. In any view of the matter, let us now consider whether it confers exclusive jurisdiction on the Debt Recovery Tribunal to decide the disputes relating to Bank dues. The Debt Recovery Act which was brought into force in the year 1993 is undoubtedly a special statute intended for expeditious adjudication and recovery of debts due to Banks and Financial Institutions. Chapter III of the Debt Recovery Act deals with jurisdiction, powers and authority of Tribunals. Section 17 clearly says that a Tribunal shall exercise the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for recovery of debts to such Banks and institutions. Debt Recovery Act has been enacted to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions. Section 18 bars the jurisdiction of all Courts and other authorities (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 in relation to matters covered by section 17. Section 17 covers the entire procedure for the filing of an application u/s 19 to the stage of "adjudication" and "recovery".

6. In our opinion, from a plain reading of the preamble to the Debt Recovery Act and also from the different provisions under the said Act, it would be evident that the Debt Recovery Act has been enacted to subserve the purpose for realising thousands of crores of Bank dues at an early date that is to say by the introduction of the Debt Recovery Act, in our view, the legislature intended to avoid the long drawn proceedings in Civil Courts which would be clear from section 19(19) as are re-enacted by Ordinance (1) of 2000 that permits even the working out of the priorities by the Tribunal. Sections 17 and 18 of the Debt Recovery Act clearly excluded jurisdiction of any civil Court to entertain applications filed by the Banks to recover their dues which has been conferred exclusively on the Bank Recovery Tribunals under the Debt Recovery Act We need not discuss on this aspect any further in view of a recent decision of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, . Paragraphs 21 and 22 of the said decision make the position abundantly clear. Therefore, we feel it necessary to reproduce the said Paragraphs which are as under :

Para 21 : In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunals alone to decide applications for recovery of debts due to Banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate u/s 19(22) (formerly u/s 19(7) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate u/s 19(22). u/s 18. the jurisdiction of any other Court or authority which would otherwise have had jurisdiction but for the provisions of the Act is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not, however, apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 and 227 of the Constitution.). This is the effect of sections 17 and 18 of the Act."

Para 22 : "We hold that the provisions of sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned,"

7. From the aforesaid principles as laid down by the Supreme Court, there cannot be any doubt in our mind that the provisions of sections 17 and 18 of the Debt Recovery Act are exclusive so far as the question of adjudication of the liability of the loanee to the bank is concerned. Paragraph 25 of the same judgment of the Supreme Court also observed as follows :

Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the company Court can go into the said questions relating to the liability and the recovery except as provided (in the Act.)"

8. Again the Supreme Court regarding the exclusive jurisdiction of the Debt Recovery Tribunal concluded at paragraph 50 in the following manner : --

"For the aforesaid reasons, we hold that at the stage of adjudication u/s 17 and execution of the certificate u/s 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by the company Court u/s 442, read with section 537 or u/s 446 read with section 537 or u/s 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the quest km of priorities among the Bank financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with section 19(19) read with section 529A of the Companies Act and in no other manner."

9. Applying the principles laid down by the Supreme Court in the aforesaid decision, we are, therefore, of the view that the petition filed by the Bank before the Debt Recovery Tribunal u/s 17 of the Debt Recovery Act "can only be adjudicated by the Debt Recovery Tribunal constituted under the Special Act, namely the Debt Recovery Act. Therefore, by the introduction of the Debt Recovery Act, there cannot be any dispute that the High Court or any Civil Court cannot adjudicate the claim of the Bank to recover debts due u/s 17 of the Debt Recovery Act and it is the Debt Recovery Tribunal which alone has the exclusive jurisdiction to try such claims. Accordingly, we are of the view that this Court cannot have any jurisdiction to try and adjudicate the application filed by the Bank to recover its dues from the company even if the said application can be transferred to this Court because the application filed by the Bank/ appellant before the Debt Recovery Tribunal can only be decided by the Debt Recovery Tribunal under the Debt Recovery Act. Therefore, the question of trying the same by this Court after transfer cannot arise at all. If such a suit is tried after transfer, there cannot be any doubt that the judgment and decree that would be passed by this Court would be a nullity and without jurisdiction. Therefore, in our view, the question of jurisdiction readily comes into play, that is to say, this Court has no jurisdiction or cannot have any jurisdiction to try the pending application filed by the Bank/appellant before the Debt Recovery Tribunal under the Debt Recovery Act and such being the position in law, we are of the view that the question of entertaining a petition under Clause 13 of the Letters Patent to transfer the application filed u/s 17 by the Bank/appellant against the company from the Tribunal to this Court cannot arise at all. Accordingly, we are of the firm opinion that the Trial Court ought not to have entertained the application under clause 13 of the Letters Patent at all as this Court cannot have any jurisdiction to try such claim of the Bank-appellant and it is the Debt Recovery Tribunal which can only decide such claims under the Debt Recovery Act.

10. Before we come back to the question as to whether order under appeal is appealable as "judgment" within the meaning of clause 15 of the Letters Patent, we must state at this stage that Mr. Banerjee appearing on behalf of the

respondent also raised a submission that since the appeal has been filed against the interlocutory order granting stay of the proceeding pending before the Debt Recovery Tribunal till the final disposal of the application under clause 13 of the Letters Patent, no appeal lies against such an order as the said order cannot be a "judgment" within the meaning of clause 15 of the Letters Patent, in view of the fact that no rights have been decided by the trial Court. It is true by the impugned order an interim order was passed granting stay of the proceedings pending before the Debt Recovery Tribunal. But in our view, by such order, the right of the Bank-appellant to proceed with the proceeding under the Debt Recovery Act was practically stalled. The Bank-appellant would not be in a position to proceed with the said proceeding and by this way the recovery of debts from the respondent, if any, would be delayed. It is now well-known that the Debt Recovery Act has been introduced by the Parliament for speedy disposal of disputes and adjudications by a Tribunal. That being the position, we are of the view that even though an interlocutory order was passed which is now under challenge in this appeal, then also the right of the Bank-appellant to recover dues from the respondent was stalled by the impugned order and, therefore, it will come within the meaning of "judgment" under clause 15 of the Letters Patent. It is well settled law by series of decisions of the Supreme Court as well as other High Courts of India that an interlocutory order which affects the rights and also causes injustice between the parties can be appealed against. Reference in this connection may be made to a decision of the Supreme Court in the case of *Sonta Bhatta v. State of U.P.* AIR 1981 SC 1278. That apart, in our view, when an order is passed without jurisdiction, the aggrieved party can file an appeal against such an order which was passed without jurisdiction. In any view of the matter when an order is passed without jurisdiction, it can be set aside either by filing an appeal against such an order or by other steps that are provided for the purpose of setting aside an order passed without jurisdiction. In the case of *Hriday Nath Roy v. R.C. Varna Sarma*. AIR 1921 Cal 34, a Full Bench of this Court held that an order can be said to have been passed without jurisdiction, if the Court finds that it has no power to hear and decide the question at issue, the authority to hear and decide a particular controversy that has arisen between the parties. This decision of this Court was noted with approval by the Supreme Court in the case of *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, . The Supreme Court in that decision after approving the decision of the Full Bench of this Court observed at para 15 as follows:--

"From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide particular controversy that has arisen between the parties. Therefore, the fact that Ramfry, J. had jurisdiction to pass certain orders either under the Indian Trusts Act, 1882 or under the Official

Trustees Act, 1913 or under the Trustees and Mortgages Powers Act, conclusive of the matter. What is relevant is whether he had the power to grant the relief asked for in the application made by the settlor. That we think is the essence of the matter."

11. In Paragraphs 27 and 28 of the aforesaid decision of the Supreme Court, it was further observed as follows :--

"From whatever angle we may examine the validity of the order made by Ramfry, J. it appears clear to us, that the said order was outside the jurisdiction of the learned Judge. It was not merely a wrong order, or an illegal order, it was an order which he had no competence to make. It is merely an order that he should not have passed but it is an order that he could not have passed and, therefore, a void order."

12. Therefore, an order which was passed without jurisdiction can always be challenged in appeal and, as such the impugned order must be construed to be a "judgment" within the meaning of clause 15 of the Letters Patent.

13. In view of our discussions made herein earlier, it is clear to us that this Court cannot have any jurisdiction to adjudicate the claim of the Bank as such claim of the Bank can only be adjudicated by the Debt Recovery Tribunal constituted under the Debt Recovery Act which has the exclusive jurisdiction to try such claims of the Bank. Such being the position in law, we have no hesitation in our mind that any question regarding jurisdiction to entertain the application under clause 13 of the Letters Patent by which the respondent sought to transfer the pending proceeding under the Debt Recovery Act can only be decided by Debt Recovery Tribunal and not by this Court or any Civil Court. Therefore, the learned trial Judge not having conferred with jurisdiction to by the claim of the Bank if the pending application before the Debt Recovery Tribunal is transferred to this Court under clause 13 of the Letters Patent, the question of entertaining the application under clause 13 of the Letters Patent by the learned trial Judge could not arise at all and, therefore, the order even if it was interim order was totally without jurisdiction. In the case of Rawatmal Bhairudan Vs. The Rajputana Trading Co. (Pvt.) Ltd., , a Division Bench of this Court, while dealing with appeal ability of an order passed u/s 17(2) of the Act within the meaning of "judgment" under clause 15 of the Letters Patent observed at para 30 page 252 of the said decision which are as follows :--

"We do not express any opinion as to whether all the orders passed u/s 17(2) are appealable as judgment within the meaning of clause 15 of the Letters Patent.

In the instant case, the order or in any event, clearly a part of the order as made was beyond the jurisdiction of the learned Judge. The learned Judge did not exercise his jurisdiction u/s 17(2) that order under appeal involves a jurisdictional question and thus is appealable within the meaning of Clause 15."

14. From the above observations, the Division Bench of this Court to which we

are in full agreement, we are, therefore, of the opinion that when a jurisdictional question is raised, the order deciding such jurisdiction or entertaining an application without jurisdiction, certainly would be appealable within the meaning of clause 15 of the Letters Patent. From the aforesaid observation of the Division Bench of this Court it is also clear that the impugned order was beyond the jurisdiction of the learned judge as he had no jurisdiction to exercise his power under clause 13 of the Letters Patent in view of the fact this Court is not conferred with jurisdiction to adjudicate the claim of the Bank/appellant as it is only the Debt Recovery Tribunal to adjudicate such claim. There is another aspect of the matter. From the impugned order, we find that the right of the Bank to proceed with the petition u/s 17 of the Debt Recovery Act has been, by the order passed by the trial Court which is under challenge in this appeal practically stalled. In the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , it was held by the Supreme Court that whenever a trial Judge decides a controversy which affects valuable right between the parties it must be treated to a "Judgment" within the meaning of clause 15 of the Letters Patent. In the said decision, it was further laid down by the Supreme Court at every interlocutory order cannot be regarded as judgment but only those orders would be the judgment which decide matters of moment or affect the vital and valuable right of the parties and which would cause serious injustice to the parties. Therefore, it is also clear to us that an order can be construed to be a "judgment" if the same works serious injustice to the party concerned. In this case by exercising the power under clause 13 of the Letters Patent, the learned trial Judge sought to transfer the pending applications u/s 17 of the Act before the Debt Recovery Tribunal to this Court which has no jurisdiction to adjudicate the claims of the Bank-appellant in view of the law pronounced by the Hon'ble Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, and in view of the discussions made hereinabove.

15. For the reasons aforesaid, we are, therefore, of the view that since the question of jurisdiction of this Court to adjudicate the pending petition filed under the Debt Recovery Act had arisen in this case and as by the order under challenge in this appeal a proceeding before the Debt Recovery Tribunal which is exclusively conferred with the power to proceed under the Debt Recovery Act and as such power is not conferred with the High Court or any other Civil Court, such an order can be construed to be a "judgment" within the meaning of clause 15 of the Letters Patent Accordingly, the preliminary objections, raised by Mr. Banerjee cannot be sustained in law.

16. As noted herein earlier, the order under challenge in this appeal is an order by which the right of the Bank appellant to proceed to recover debts due to it from the respondents has been stayed till the disposal of the pending application under clause 13 of the Letters Patent and in view of our discussions made herein earlier that since an order was passed totally without jurisdiction in view of the recent decision of the Supreme Court reported in (2000)2 SCC 406, Allahabad Bank v. Canara Bank the order under appeal cannot be sustained in law.

17. In a single Bench decision of this Court, P.B. Mukherjee (as His Lordship then was) in the case of P.K. Ghosh v. Mrs. K. Dutta, held that section 16 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 had destroyed the jurisdiction of the High Court under clause 13 of the Letters Patent to entertain or try in the nature and descriptions made in that section of the Act. Paragraph 8 would be necessary for our purpose which are as follows :--

"The argument was advanced on behalf of the counsel that the High Court under clause 13 of the Letters Patent tries suits which has ordinarily no jurisdiction to try that this section 16 of the Rent Control Act 1950, only refers to and should be understood only in relation to the original civil jurisdiction of the High Court and, therefore, it is contended that section 16 of the Act does not affect the extraordinary original civil jurisdiction given under clause 13 of the Letters Patent. The section itself does not say whether it is the original jurisdiction or the extraordinary original jurisdiction which intended to be affected. The section is unqualified on this point. When, therefore, the section is silent on the point, it can only be read in its amplitude and the proper conclusion to arrive at will be that of jurisdiction of this Court in entertaining or trying a suit which affect only application of a suit by a landlord against a tenant in which recovery of possession of any premises to which this Act applies "is claimed" except suits involving a substantial question of law as to the interpretation of the Constitution of India, when under Article 228 of the Constitution this High Court has the jurisdiction to transfer such suits from a subordinate Court."

18. For the reasons aforesaid, we are of the view that since the learned trial Judge had no jurisdiction to entertain a petition under clause 13 of the Letters Patent to transfer the petition filed under the Debt Recovery Act, the question of granting stay of the said proceeding pending before the Debt Recovery Tribunal could not arise at all. Therefore, we set aside the impugned judgment.

19. There will be no order as to costs.

The appeal is, therefore, allowed. However, in view of the order passed in this appeal, nothing remains to be decided on the application under clause 13 of the Letters Patent and accordingly, it also stands rejected. Since the appeal itself is disposed of, the application for grant of interim relief becomes infructuous and is accordingly disposed of.

A. Lala, J.--I agree.

Appeal allowed