
(2004) 02 MAD CK 0097

In the Madras High Court

Case No : Civil Revision Petition (P.D.) No. 2214 of 2002 and C.M.P. No. 18568 of 2002 and V.C.M.P. No. 19621 of 2003

Theatre Mathi and Others

APPELLANT

Vs

Indian Bank and Suguna

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18(2), Order 34 Rule 5
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 136, 5
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31A(1)

Citation : (2004) 3 BC 406 : (2004) 120 CompCas 272 : (2004) 1 LW 767 :
(2004) 52 SCL 362

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; P. Renganatha Reddy, for King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—By consent of both parties, Civil Revision Petition itself has been taken up.

2. This Civil Revision Petition is filed to strike out O.A. No. 236 of 2002 on the file of the Debt Recovery Tribunal, Coimbatore.

3. The first respondent Indian Bank filed the suit O.S. No. 123 of 1990 in the Second Additional Sub Court, Madurai to recover Rs.

59,41,091.26 with subsequent interest at 19.5% per annum against the revision petitioners 1 and 2 and the second respondent and also others

since deceased. In that suit a preliminary decree for sale was passed on 10.7.1996 for Rs. 63,45,653.05 together with future interest at 6% per

annum on the principal amount of Rs. 26,89,001/- from the date of decree. The

first respondent filed appeal in A.S. No. 404 of 1998 in respect of the interest, which was disallowed, and the appeal is pending in this Court. The first respondent bank filed the application in O.A. No. 236 of 2002 in the Debt Recovery Tribunal at Coimbatore for grant of a certificate u/s 31A(1) of the Recovery of Debts due to Banks & Financial Institutions Act, 1993 (hereinafter referred to as "the Act") and it is pending.

4. According to the revision petitioners, the Debt Recovery Tribunal has no jurisdiction to entertain the application and to issue certificate as claimed. Therefore, this Civil Revision Petition is filed to strike out the O.A. No. 236 of 2002 on the file of the Debt Recovery Tribunal, Coimbatore.

5. The point for consideration is as to whether the O.A. No. 236 of 2002 on the file of the Debt Recovery Tribunal, Coimbatore is to be struck off?

6. The learned counsel for the revision petitioners contended that though the application in O.A. No. 236 of 2002 is filed u/s 31A(1) of the Act, the said application is not exempted from the purview of the Limitation Act, whether in the form of a certificate or the final decree. In this regard, the learned counsel for the revision petitioners pointed out that since the preliminary decree was passed on 10.7.1996 granting time till 30.6.1997 for payment of the amount decreed and as such within three years from that date, viz., on or before 30.6.2000, the first respondent bank ought to have filed the said application before 30.6.2000 for grant of certificate and in view of the fact that the said application was filed only on 28.1.2002, the said application as filed is barred by time. As regards the pendency of the appeal in A.S. No. 404 of 1998 in this Court filed by the first respondent bank in respect of the interest disallowed by the Sub Court, the learned counsel for the revision petitioners contended that the period of limitation not extended to the final decree or certificate proceedings under the Act. According to the learned counsel for the revision petitioners, the said Debt Recovery Tribunal has no jurisdiction to take the application in O.A. No. 236 of 2002 on its file and to issue certificate u/s 31A(1) of the Act, as claimed. The learned counsel for the revision petitioners also referred to Order 34 Rule 5(3) and Section 2(2) of CPC and also Section 2(g) of the Act, as per which "decree" and "debt" respectively are defined.

The learned counsel for the revision petitioners also referred to the procedure and powers of the Debt Recovery Tribunal and the Appellate Tribunal within the meaning of Section 22 of the Act, and Section 24 of the Act, which deals with Limitation in respect of the application made to the Debt Recovery Tribunal.

7. The learned counsel for the revision petitioners has relied on the following decisions:-

(1) 19911 L W 502 (S. Veluchamy Nadar - vs. - Diravia Nadar and others), in which at page 504 this Court has held:-

The language of Section 5 of the Limitation Act is wide enough to include application under Order 34, Rule 5 of the Code of Civil Procedure.

When the language of Section 5, by its own force would apply to all applications excepting those under Order 21 C.P.C., there is no justification

for holding that applications under Order 34, Rule 5 C.P.C. are not covered by the Section. The Court below is in error in holding that Section 5

of the Limitation Act does not apply to applications under Order 34, Rule 5 C.P.C.

(2) Atava Akkulamma (died) Vs. Gajjela Papi Reddy, , in which it has been held:-

Preliminary decree is a decree within the meaning of Section 2(2) of C.P.C. but it is not capable of execution normally till a final decree is passed.

In that sense, the Court dealing with a preliminary decree before passing a final decree may not be designated in law as an executing Court within

the meaning of Section 37 of C.P.C. The questions to be determined by a Court dealing with a preliminary decree before passing a final decree

may not be the one u/s 47 but still, the transfer of decree by assignment in writing is covered by Order 21, Rule 16 of C.P.C. for the purpose of

execution. Therefore, the Court when confronted with the transfer of the decree is debarred from going behind the decree as an executing court

has no merit.

(3) (1995) 3 Supreme Court Cases 413 (Shankar Balwant Lokhande(dead) by L.Rs. - vs. - Chandrakant Shankar Lokhande and another), in

which the Supreme Court at page 415 has ruled:-

The executing court cannot receive the preliminary decree unless final decree is passed as envisaged under Order 20, Rule 18(2) C.P.C.

(4) Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, , in which the Apex Court at page 582 has ruled:-

The language used by the legislature in Article 136 of the Limitation Act, if read in its proper perspective, to wit: "when the decree or order becomes enforceable" must have been to clear up any confusion that might have arisen by reason of the use of the expression "the date of the decree or order" which was used in the earlier Act. The intention of the legislature stands clearly exposed by the language used therein viz., to permit a twelve-year period certain from the date of the decree or order.

8. The learned counsel for the first respondent argued that the preliminary decree was passed in the suit O.S. No. 123 of 1990 filed by the first respondent bank on 10.7.1996 granting time till 30.6.1997. In view of the fact that as per the Act, which came into force on 24.6.1993, the Civil

Court has no jurisdiction and so the first respondent bank filed O.A. No. 236 of 2002 before the Debt Recovery Tribunal, Coimbatore for grant

of certificate u/s 31A(1) of the Act, inasmuch as the Limitation Act is not applicable. The learned counsel for the first respondent also referring

Section 17 of the Act, relating to jurisdiction, powers and authority of Debt Recovery Tribunals; Section 18 of the Act, with regard to Bar of

jurisdiction; Section 22 of the Act, which deals with procedure and powers of the Debt Recovery Tribunal and the Appellate Tribunal; Section 31

of the Act, which deals with the transfer of pending cases and Section 31A(1) of the Act, in respect of power of the Debt Recovery Tribunals to

issue certificate of recovery in case of decree or order; vehemently contended that the CPC is not applicable and inasmuch as the appeal in A.S.

No. 404 of 1998 filed by the first respondent bank in respect of the claim towards interest disallowed by the trial court, is pending and as such,

there is no limitation for filing the application u/s 31A(1) of the Act. In this regard, the learned counsel for the first respondent relied on the decision

reported in the case of Punjab National Bank, Dasuya - vs. - Chajju Ram and others, (2000)6 Supreme Court Cases 655, in which the Apex

Court at page 658 has ruled:-

The Section 31-A of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 is clearly applicable in the present case. The decree

was passed by the Court before the commencement of the Amendment Act and the same has not yet been executed. At least after the

amendment, it is only the Tribunal which would have the jurisdiction of

entertaining the application for execution of the decree inasmuch as the amount due for which the decree was sought to be executed is over Rs. 10/- lakhs. We are also unable to agree with the High Court that because the original decree which was passed was for principal sum of Rs. 6,19,250/- the Tribunal would get no jurisdiction. As and when the amount due to the Bank under the decree became more than Rs. 10/- lakhs and an application for execution was filed, it could only be entertained by the Tribunal and not by the civil court. It is clear that in view of the provisions of Section 34 of the Act, the provisions of Order 21 Rule 10 C.P.C. would have no application.

9. Section 2(2) of CPC defines:-

decree"" means the formal expression of adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

Section 2(g) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 defines:-

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. It is not in dispute that the first respondent obtained a preliminary decree on 10.7.1996 in O.S. No. 123 of 1990 in the Second Additional Sub

Court, Madurai for Rs. 63,45,653.05 with future interest at 6% per annum on the principal amount of Rs. 26,89,001/- from the date of decree

and it is also not in dispute that the first respondent bank has filed appeal in A.S. No. 404 of 1998 in this Court in respect of the interest claimed

which was disallowed and the said appeal is pending. Therefore, it is clear that the money due to the first respondent bank has been determined in

the preliminary decree of that suit. Since, time was granted till 30.6.1997 for payment, the application for passing of final decree is to be filed on or

before 30.6.2000 in the Court which passed the preliminary decree. But, however, since the Act came into force on 24.6.1993 and during the

pendency of the suit in O.S. No. 123 of 1990 in the Second Additional Sub Court, Madurai, after passing of preliminary decree, the first

respondent bank has filed O.A. No. 236 of 2002 u/s 31A(1) of the said Act for grant of certificate for recovery of the amount which is more or

less like application for passing of final decree in the Civil Court.

11. After passing of the preliminary decree for sale, recovery of mortgage debt lies only within the jurisdiction of the said Tribunal and as such the

jurisdiction of the Civil Court is excluded. After passing of the preliminary decree for partition, as per which specific shares have been allotted to

the respective parties and an application is to be filed for passing of final decree at which stage, specific portions have to be allotted to the

respective parties considering the report of the advocate-commissioner and if not divisible in accordance with the Partition Act. After passing of

preliminary mortgage decree, as per which the amount due is determined granting time for payment and after such time, an application is to be filed

for passing of final decree so that the correct amount payable is to be determined, in that if any amount is paid after passing of preliminary

mortgage decree that amount is to be deducted.

12. Therefore, the application in O.A. No. 236 of 2002 filed u/s 31A(1) of the Act is only in the nature of an application for passing of final decree

and as per that Section, the Debt Recovery Tribunal is to issue certificate for recovery of the amount due and payable by the judgment-debtor to

the Recovery Officer as determined in the preliminary decree for sale made on

10.7.1996 in O.S. No. 123 of 1990 and as such, it is a debt within the meaning of Section 2(g) of the Act, since, after passing of the Act which came into force on 24.6.1993, all proceedings for recovery of the amount due including execution proceedings u/s 31A(1) of the Act have to be initiated only in the Tribunal constituted under the said Act.

Therefore, the first respondent bank rightly moved the Tribunal u/s 31A(1) of the Act to recover the amount due which is in the nature of final decree application, in which case the first respondent bank also should have filed an application to condone the delay in filing such application, since final decree application is to be made within three years from the date granted for paying the amount due on the preliminary decree, viz., on or before 30.6.2000. However, the Debt Recovery Tribunal, while entertaining the said application has not considered these aspects and has taken the application in O.A. No. 236 of 2002 on its file without returning the same that application to condone the delay u/s 5 of the Limitation Act is to be filed, in that as per Section 24 of Recovery of Debts due to Banks & Financial Institutions Act, 1993, the Limitation Act, 1963 shall apply to an application made to the Tribunal. Therefore, it would be just and proper, if an opportunity is given to the first respondent bank to file such an application before the said Tribunal and on considering such application and if it is allowed, then it would be open to the Tribunal to issue necessary certificate as contemplated u/s 31A(1) of the Act.

13. Therefore, the first respondent bank is permitted to move necessary application to condone the delay in filing the application u/s 31A(1) of the Act for issuance of necessary certificate to recover the amount due and considering such application and if it is allowed, then it would be open to the Tribunal to issue necessary certificate as contemplated u/s 31A(1) of the Act. Accordingly, this Civil Revision Petition is disposed of. No costs.

Consequently, the connected petitions in C.M.P. No. 18568 of 2002 and V.C.M.P. No. 19621 of 2003 are closed.