
(2018) 01 BOM CK 0029
In the Bombay High Court
Case No : 217 of 2005

TJSB Sahakari Bank Ltd.

APPELLANT

Vs

Global Trust Bank Limited

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
<Banking Regulation Act, 1949 — Section 5
Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 3(1),
Section 31, Section 18, Section 17, Section 19(1A), Section 19(1B)

Citation : (2018) 01 BOM CK 0029

Hon'ble Judges : S.C.Gupte

Bench : Single Bench

Advocate : Fredun De Vitre, Yashesh V. Pajwani, ??Bhupesh V. Samant, G.N. Salunkhe, Ajit M. Rajgole, B.M. Gupta & Associates

Judgement

1. Heard learned Counsel for the parties. The present order disposes of the notice of motion taken out in the Summary Suit.

2. The subject matter of the suit is a liability which is claimed as due from the Defendant, who is also a bank, in respect of certain bills of exchange issued under letters of credit and negotiated with the Plaintiffbank. The summons for judgment is opposed by the Defendantbank. The Defendantbank has taken out the present notice of motion praying for transfer of the proceedings of the suit to the Debts Recovery Tribunal

("DRT").

3. This application is on the ground that after coming into force of the Enforcement of Security Interest And Recovery of Debts Laws (Amendment) Act, 2012 ("Amending Act") on 15 January 2013, this suit, which is a suit for recovery of a debt of the Plaintiffbank, which is a multiState cooperative bank covered under the definition of "banks" under the Recovery of Debts due to Banks and Financial Institution Act, 1993 ("Recovery of Debts Act"), cannot be entertained

by this Court. It is submitted that under Section 18 of the Recovery of Debts Act, this Court has no jurisdiction to entertain or decide any application from a bank for recovery of debts due to such bank. It is submitted that under Section 31 of that Act, every suit or other proceeding pending before the court immediately before coming into force of the Amending Act must be transferred to DRT. It is submitted that the date of coming into force of the Amending Act ought to be reckoned as the date of establishment of the Tribunal under the Recovery of Debts Act insofar as debts to be recovered by multiState cooperative banks are concerned. It is submitted that on or from that date, DRT alone can entertain or proceed with any application for recovery of debts by such banks, under Sections 17 and 18 of the Recovery of Debts Act.

4. Mr. De Vitre, learned Senior Counsel appearing for the Plaintiff, opposes the application. Learned Counsel submits that the suit is not covered under the transfer provisions of Section 31 of the Recovery of Debts Act. Learned Counsel submits that the present suit cannot be said to be pending "immediately before the date of establishment of the Tribunal" under the Recovery of Debts Act. Learned Counsel submits that such pendency is a prerequisite for application of Section 31 for transfer of the suit. Learned Counsel submits that apart from Section 31, there is no inherent power in the court to order transfer of suits for recovery of debts. Learned Counsel refers in this behalf to a judgement of the Supreme Court in case of Raghunath Rai Bareja Vs. Punjab National Bank, (2007) 2 Supreme Court Cases 230. In further support of his submission, learned Counsel also relies on the prvisios, respectively appearing under Sections 18 and 31 of the Recovery of Debts Act. Relying on the objects and reasons of the Amending Act, which brings multiState cooperative banks under the definition of "banks" under the Recovery of Debts Act, learned Counsel submits that the express object of the Amending Act was to enable multiState cooperative banks, such as the Plaintiffbank, to continue at their option proceedings availed of by them on the date of coming into force of the Amending Act.

5. Under the provisions of the Recovery of Debts Act, the Central Government is required to establish one or more tribunals to be recognized as Debt Recovery Tribunal ("DRT") to exercise the jurisdiction, powers and authority conferred on such tribunal by or under that Act. Under Section 17 of that Act, a tribunal is required to exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. The expressions "appointed day", "banks" and "debt" are defined under Recovery of Debts and Bankruptcy Act, 1993 as follows :

2. Definitions. In this Act, unless the context otherwise requires,

(a) "....."

(b) "....."

(c) "appointed day", in relation to a Tribunal or an Appellate Tribunal, means the date on which such Tribunal is established under subsection (1) of Section 3 or, as the case may be, subsection (1) of section 8;

(d) "banks" means

(i) a banking company;

(ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank" or

(v) a Regional Rural Bank;

(vi) a multiState cooperative bank:

(e) ".....

(ea) ".....

(f) ".....

(g) "debt" means any liability (including 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, an legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or];

The relevant provisions of the Act proving for jurisdiction of DRT, bar of jurisdiction of civil courts and transfer of pending suits are as follows :

"Sec.17. Jurisdiction, powers and authority of Tribunals (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institution for recovery of debts due to sch banks and financial institutions. [(1A) Without prejudice to subsection (1),

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016;

(b) the Tribunal shall have circuit sittings in all district headquarters.]

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

[(2A) Without prejudice to subsection (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the Jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.]"

"Sec. 18. Bar of jurisdiction. On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in section 17:

[Provided that any proceedings in relation to the recovery of debts due to any multiState cooperative bank pending before the date of the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the MultiState Cooperative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.]"

"Sec. 31. 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 cause of action wherein 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 of such Tribunal:

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before any Court:

[Provided further that any recovery proceedings in relation to the recovery of debts to any multiState cooperative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the MultiState Cooperative Societies Act, 2002 (39 of 2002), shall be continued and nothing contained in this section shall apply to such proceedings.]

(2) Where any suit or other proceeding stands transferred from any Court to a Tribunal under subsection (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, proceeding to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such

transfer or from any earlier stage as the Tribunal may deem fit."

6. It is clear from the forgoing provisions that on and from the date a tribunal is established under Subsection (1) of Section 3 of the Recovery of Debts Act, all applications for recovery of any liability (inclusive of interest), which is claimed as due from any person by a bank during the course of any business activity undertaken by it, is to be entertained and decided by DRT alone. Under Section 31 of that Act, every suit or other proceeding pending before any court immediately before the date of establishment of DRT, relating to recovery of such liability, is required to be transferred to DRT. The Recovery of Debts Act was amended by the Amending Act, whereupon a multiState cooperative bank was added in the definition of "banks" under clause (d) of Section 2 of the Recovery of Debts Act. Simultaneously, the amending Act added two provisos under Sections 18 and 31 of the Recovery of Debts Act. The effect of these provisos was to continue any proceeding in relation to recovery of debts due to any multiState cooperative bank, filed under the MultiState Cooperative Societies Act and pending before the amending Act, before any forum under that Act notwithstanding the main provisions of Section 18 and 31. In keeping with these provisos and their object, a few other provisions were also added to Section 19 of the Recovery of Debts Act, namely, SubSections (1A) and (1B), which had the effect of permitting multiState cooperative banks to initiate proceedings under the MultiState Cooperative Societies Act, 2002 to recover debts, whether due before or after the amending Act, notwithstanding the Amending Act making the provisions of Sections 18 and 31 applicable to such multiState cooperative banks. The net effect of all these provisions introduced by the amending Act was to put multiState cooperative banks on par with other banking companies as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949. As much as these banks, multiState cooperative Banks, seeking to recover liabilities due from any person to them and arising in the course of their business activities, could have recourse to the Recovery of Debts Act and apply to DRT for such recovery. They, however, had an option to instead choose the remedy provided for recovery of such liability under the MultiState Cooperative Societies Act. Under the MultiState Cooperative Societies Act, disputes involving a multiState cooperative society and its members and touching the constitution, management or business of such society could be referred to any arbitrator to be appointed by the Central Government and the provisions of Arbitration and Conciliation Act, 1996 were made applicable to such arbitration. Thus, at its option, a multiState cooperative bank could now initiate proceedings either under Recovery of Debts Act to recover its debts, whether due before or after the date of commencement of the Amending Act, before the DRT or invoke the machinery of the MultiState Cooperative Societies Act and go before the arbitrator. (It also had the option to withdraw any application earlier filed under the provisions of the Recovery of Debts Act for the purpose of initiating proceedings under the MultiState Cooperative Societies Act. Such application, however, had to be made with the permission of DRT.) So also, any recovery proceeding already initiated by such

multiState cooperative bank under the MultiState Cooperative Societies Act before the Amending Act would continue notwithstanding the provisions of subsection (1) of Section 31 of the Recovery of Debts Act.

7. The present suit being a suit which is pending before the Court on the date of coming into force of the Amending Act and the suit being a suit covered under Section 17 of the Recovery of Debts Act, is required to be transferred to DRT on and from that date. Mr. De Vitre makes two principal submissions to oppose such transfer. The first submission is that pendency of the suit must be reckoned as of the date of original establishment of the tribunal under the Recovery of Debts Act and not the date of coming into force of the Amending Act, which included multiState cooperative bank in the definition of "banks" under the Recovery of Debts Act. Secondly, he submits that, in any event, the suit being a recovery proceeding filed by a multiState cooperative bank, in keeping with the object of the Amending Act, must be continued before this Court notwithstanding anything contained in subsection (1) of Section 31 of the Recovery of Debts Act.

8. As far as the first submission of Mr. De Vitre is concerned, it is clear that for the purpose of both Sections 18 of Recovery of Debts Act, which provides for bar of jurisdiction of all other courts and authorities with respect to the matter specified under Sections 17, and Section 31 of that Act, which provides for transfer of pending suits or proceedings, the relevant date for operation is the date of establishment of tribunal under the Recovery of Debts Act. Whereas Section 31 refers to such date in terms, i.e. "the date of establishment of tribunal", Section 18 uses the expression "on or from appointed date", the "appointed date" being defined as the date on which the tribunal is established under subsection (1) of Section 3 of the Act. Insofar as multiState cooperative banks are concerned, it is quite obvious that in relation to proceedings for recovery of debts due to them, the tribunal is established under the Recovery of Debts Act on the date when the Amending Act comes into force, with effect from which date such multiState cooperative banks are included in the definition of "banks" under that Act. If Mr. De Vitre is right in his submission that the expression "pending immediately before the establishment of the tribunal", must relate to the establishment of the tribunal originally under the Recovery of Debts Act, then neither Section 18 nor Section 31 would make any sense insofar as multiState cooperative banks are concerned. Since both Sections, Sections 18 and 31, effectively use the expression "date of establishment of the tribunal" so as to have them triggered, the implication of Mr. De Vitre's argument is that despite inclusion of multiState cooperative banks in the definition of "banks" under the Recovery of Debts Act, Section 18 of that Act, which provides for bar of jurisdiction of other courts or authorities in relation to matters specified under Section 17, will not apply for any filing between the date of the original establishment of DRT and the date of the Amending Act and even future filings thereafter. That would make scarce sense and defeat the purpose of the Amending Act. For the purposes of Section 18 of the Recovery of Debts Act, thus, the "date of establishment of the tribunal" must be reckoned as the date of

coming into force of the Amending Act, when the tribunal can be said to be established for entertaining applications for recovery of debts of multiState cooperative banks. The expression "date of establishment of tribunal" cannot have different meanings for the purposes of Sections 18 and 31. If it means for the purposes of Section 18 the date of coming into force of the Amending Act, it must mean so even for Section 31. Correctly construed, the amendment implies that on and from the appointed date, i.e. date of establishment of tribunal under the Recovery of Debts Act insofar as applications for recovery of debts due to multiState cooperative banks are concerned, that is to say, the date of coming into force of the Amending Act, no court or other authority, shall have jurisdiction, power or authority (except Supreme Court and High Courts, exercising jurisdiction under Article 226 and 227 of the Constitution of India) in relation to applications from multiState cooperative banks for recovery of debts due to them. This of course is subject to the proviso that if any proceedings in relation to recovery of debts due to such multiState cooperative banks are pending under the MultiState Cooperative Societies Act before the date of commencement of the Amending Act, they shall be continued and the provisions of Section 18 shall have no application to such proceedings. So also, any suit or other proceedings pending on that date shall stand transferred as of date to the tribunal established under Recovery of Debts and Bankruptcy Act, 1993, also subject to the proviso that any recovery proceedings in relation to debt due to multiState cooperative bank which are pending before the date of such commencement, under MultiState Cooperative Societies Act, 2002, shall be continued and nothing contained under Section 31 shall apply to such proceedings.

9. That leaves the second argument of Mr. De Vitre that the scheme of the Recovery of Debts Act, as amended by the Amending Act, is to allow the continuation of recovery proceedings initiated by multiState cooperative Banks, which were pending as of the date of the Amending Act. Learned Counsel submits that such recovery proceedings need not be under the MultiState Cooperative Societies Act; even proceedings such as the present suit, which is filed before this Court as a civil Court, are covered under such recovery proceedings. In the first place, this argument is plainly contrary to the expression used in the proviso of Section 31. The proviso requires continuation of recovery proceedings "under the MultiState Cooperative Societies Act, 2002". The argument of Mr. De Vitre principally rests on the objects and reasons of the Amending Act as mentioned in the Statement of Objects and Reasons of the Bill. Learned Counsel submits that such objects and reasons provide that the amendment was proposed for providing continuation of any recovery proceedings pending before the commencement of the Amending Act before any forum in relation to recovery of any debt due to any multiState cooperative Bank in the same manner as if the Amending Act never came into force. In the first place, if the object as suggested by Mr. De Vitre was not only to provide for continuation of proceedings under the MultiState Cooperative Societies Act, but any recovery

proceedings before any forum, such object is not reflected in the Amending Act, considering particularly the provision introduced in Sections 18 and 31 of the Recovery of Debts Act by the amendment. The Amending Act and the provisions introduced by it are very clear in that they provide merely for continuation of recovery proceedings under the MultiState Cooperative Societies Act notwithstanding the main provisions of these Sections. Secondly, there is absolutely no ambiguity in the provisions of Section 31 as it stands after the Amending Act and accordingly, there is no warrant for referring to the objects and reasons of the Bill as an external aid for interpretation. Even otherwise, that is to say, even if one were to refer to the Statement of Objects and Reasons, it is clear that the object was to permit multistate cooperative banks to opt to either initiate proceedings under the MultiState Cooperative Societies Act, 2002 or under the Recovery of Debts and Bankruptcy Act, 1993 and if the proceedings are already initiated by such multiState cooperative bank under the Multi State Cooperative Societies Act, such proceedings are required to be continued notwithstanding the transfer provisions of Section 31 of the Recovery of Debts Act introduced by the Amending Act. The four clauses which provide for matters for which the Amending Act provided, are as follows : (a) to include the multiState cooperative banks in the definition of "bank" under clause (d) of section 2 of the Act;

(b) to permit the multiState cooperative banks, with respect to debts due before or after the commencement of the proposed legislation, to opt either to initiate proceedings under the MultiState Cooperative Societies Act, 2002 or to initiate the proceedings before the Debts Recovery Tribunal;

(c) to enable the banks and financial institution to enter into settlement or compromise with the borrower and also to empower the Debts Recovery Tribunal to pass an order acknowledging such settlement or compromise;

(d) to provide that the recovery proceedings pending before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2011 in relation to recovery of debts due to any multiState cooperative bank shall be continued in the same manner as the proposed amendments had not come into force. Particularly reading clauses (b) and (d) together, as a composite scheme, they support the object as stated above and not as suggested by Mr. De Vitre.

10. Mr. De Vitre's reliance on the judgment of the Supreme Court in the case of Raghunath Rai Bareja (supra) does not take his case any further. In Raghunath Rai Bareja's case, what the Supreme Court decided was that the only power of transfer of a pending proceeding concerning recovery of debt owed to a bank was under Section 31 of the Recovery of Debts Act and the High Court had no jurisdiction under its inherent powers to transfer any such proceeding. There is no quarrel with this proposition. The question is whether this proposition can sustain Mr. De Vitre's objection to transfer in the present case. In the present case, the transfer is sought not de hors the provisions of Section 31, but under

the very provisions thereof and, as I have noted above, Section 31 clearly applies to the facts of the present case.

11. The judgments of United Bank of India Vs. Abhijit Tea Co. Pvt. Ltd, (2000) 7 Supreme Court Cases 357 and Judith Fernandes (Mrs) Vs. Conceicao Antonio Fernandes, (1996) 10 Supreme Court Cases 401, cited by Mr. De Vitre infact support the Defendant's case here. The law in the present case having made a specific provision for pending proceedings, civil courts cannot exercise jurisdiction in proceedings pending before them and under the specific transfer provision, such proceedings must be transferred to DRT.

12. The Notice of Motion is, accordingly, made absolute in terms of prayer clause (a). The proceedings of the suit shall be transfered to DRTII having regard to the place of business of the parties. Considering the fact that this suit has been pending in this Court since the year 2004, DRTII is requested to dispose of the suit as expeditiously as possible and in any event, within a period of one year from today.

13. No order as to costs.