
(2000) 04 MAD CK 0054

In the Madras High Court

Case No : Application No. 790 of 2000 in C.S.No. 369 of 1997

Vee Cee Yes Granites Chennai

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2(2)(A), Order 2 Rule 2(3), 10, 4, 9
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 3(1)

Citation : (2001) 104 CompCas 37 : (2000) 2 CTC 664 : (2000) 2 MLJ 392

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. Vedantham Srinivasan for Mr. S. Subbiah, for the Appellant; Mr. S. Kothandaraman, for the Respondent

Judgement

1. Vee Cee Yes Granites, Chennai, the plaintiff/applicant has filed this petition u/s 10 of the CPC seeking to stay the proceedings before the Debts

Recovery Tribunal at Chennai.

2. The prayer is as follows:-

I pray that this Hon"ble Court may be pleased to order the stay of all proceedings in O.A.No.401 of 1998 before the Debts Recovery Tribunal

for Tamil Nadu and Pondicherry at Chennai pending disposal of the suit in C.S.No.369 of 1997"".

3. The brief facts leading to the filing of this application are as follows:-

The plaintiff filed the suit before this Court on 23.4.1997 in C.S.No.369 of 1997 against the defendants I to 6 for recovery of a sum of

Rs.15,03,340 due to the plaintiff under the export bill as well as for the loss suffered by it on account of the non-payment. The third defendant-

Central Bank of India, Chennai, the respondent herein, filed written statement on 5.3.1998 stating that they are not vicariously liable and as such,

they are not liable to pay any amount. In April 1998, the Central Bank filed the application in O.A.No.401 of 1998 before the Debts Recovery

Tribunal, Chennai, against the plaintiff/applicant and guarantors and mortgagors for recovery of a sum of Rs.21,13,647 and for sale of the

immovable properties which were mortgaged to the Bank. The plaintiff/applicant and others filed a counter-statement before the Tribunal in

August, 1999. Thereafter, the plaintiff/applicant has filed this application u/s 10 of C.P.C. on 16.11.1999 seeking for the stay of the proceedings

before the Debts Recovery Tribunal pending disposal of the suit filed by the plaintiff/applicant

4. The case of the plaintiff in the suit is as follows:-

The plaintiff carries on the business of export of granites. On the orders being placed by the defendants 1 and 2, the parties in London, the plaintiff

exported the polished granite monuments and shipped the Order No.383 on 28.2.1994 on the assurance given by the second defendant that the

bill would be honoured within 60 days from the date of receipt of the bill and shipment. On 28.2.1994, the plaintiff entrusted the export documents

to the Central Bank, the third defendant with instructions that they be negotiated and the proceeds be credited to the account of the plaintiff

maintained with the third defendant. However, on 30.3.1994, the plaintiff received message from the second defendant that if he fails to resolve the

second defendant's outstanding problems by 31.3.1994, the second defendant would definitely advise the fourth defendant, Barclays Bank, U.K.

to withhold the payment of the bill sent for collection. Subsequently, the fourth defendant, the Bank at London, the plaintiff's sub-agent parted with

the documents of title to the subject goods without ensuring payment from the first defendant and the first defendant took delivery of the subject

goods on 8.4.1994. Thus, the fourth defendant parted with the documents of title and the goods without realising the sale consideration. Several

reminders had been sent to the first and second defendants. There was no response. On 24.6.1994 the Central Bank, the third defendant informed

the plaintiff that the fourth defendant informed the third defendant that the bill sent for collection was unpaid, as the goods were reported to be

unacceptable quality. Then, the plaintiff addressed a letter to the third defendant calling upon to return the relevant document. There was no response. The notices were sent to the first and second defendants on 23.10.1995 demanding payment. In the reply dated 13.12.1995 sent by the first and second defendants, it is stated that the goods supplied were sub-standard and the client of the first defendant refused to pay the first defendant incurred losses exceeding 10,000 sterling pounds. Under those circumstances, the plaintiff filed the suit against the first four defendants for recovery of the amount of Rs.4,77,9211 towards the value of the bill, Rs.5,16,869 towards interest and Rs.5,08,560 towards consequential loss suffered on account of the failure of the first and second defendants failing to pay the plaintiff in time on account of the acts of negligence of the third and fourth defendants.

5. The case of the respondent/third defendant-Central Bank of India is as follows:-

In 1993, the plaintiff/applicant and the partners approached the Bank along with the mortgagors for financial assistance in the nature of packing credit during 1992 for their granite export business. During 1992 and April, 1993, the plaintiff/applicant was sanctioned an adhoc packing credit limit of Rs.5,00,000 which was regularised on 31.1.1994. The Company represented by other partners executed an agreement of hypothecation and also an agreement of guarantee. The other guarantors declared the continuance of the mortgage, which was created by them in favour of the Bank for the plaintiff/applicant's dues, shall be continued to be held by the Bank as security for the dues of the plaintiff/applicant also. The plaintiff/applicant exported granite for which they availed packing credit. The plaintiff/applicant was not in a position to realise the proceeds of the four Export Bills made in 1994. Consequently, the packing credit account as also the Bills account remained unadjusted. Therefore, the plaintiff/applicant and others were called upon to pay the dues to the Bank. They failed to do so. The Bank sent a lawyer's notice dated 15.9.1995. By reply, the plaintiff/applicant and others acknowledged their liability and replied stating that they have some problems with the realisation of export proceeds and wanted four months' time to pay the dues. Instead of making payment of dues within four months as promised,

they filed a suit against the foreign purchaser impleading the Bank also claiming the export value, for certain alleged acts of commission and

omission of the fourth defendant Bank at England in C.S.No.369 of 1997 before this Court. Since the dues of the plaintiff/applicant were not paid

in time and they were guaranteed by other persons, the Bank filed an application in O.A.No.401 of 1998 before the Debts Recovery Tribunal

seeking to recover a sum of Rs.21,13,647 against the plaintiff and other guarantors.

6. Mr.Vedantham Srinivasan, the learned counsel representing Mr.Subbiah, appearing for the plaintiff/applicant would vehemently contend seeking

for stay of the DRT proceedings that the matter in issue between the applicant firm and the respondent Bank in O.A.No.401 of 1998 before the

Debts Recovery Tribunal is also directly and substantially in issue between the same parties in CS.No.369 of 1997 on the file of this Court and

therefore, the proceedings in O.A.No.401 of 1998 have to be stayed pending disposal of the suit filed by the plaintiff/applicant in C.S.No.369 of

1997.

7. Arguing contra, Mr.Kothandaraman, the counsel appearing for the respondent-Bank with equal vehemence would contend that provisions of

Section 10, C.P.C. will not be applicable to the applicant in the present case, since the matter in issue in this suit between the applicant and the

Bank is not directly or substantially in issue between the same parties in their claim application before the Tribunal, which is not a Civil Court, that

too when parties are different, the issues are different, the subject-matter is different and the reliefs claimed are also different and that therefore, this

application has to be dismissed with costs.

8. Let us at the outset quote Section 10 of C.P.C.:

Stay of suit--No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously

instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is

pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established

or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

9. The reading of the above provision would make it clear that a Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances.

10. Mainly, for staying a subsequently filed suit, matters in issue in both the suits should be identical.

11. The words ""directly and substantially in issue"" would mean that Section 10 would apply only if there is identity of the matter in issue in both the suits meaning thereby that the whole of the subject-matter in issue in both the proceedings is identical and not merely one of the main issues which arise for determination in the two suits.

12. Where the subject-matter of two suits are not the same, Section 10 will have no application. In other words, where the determination of the issues involved in the earlier suit would not put an end to the controversy between the parties with regard to the other issues that may be left in the subsequent suit, stay of the subsequent suit is not possible.

13. What the section requires is that the matter in issue in the two suits should be directly and substantially the same, and proper effect must be given to the language used in the section that the identity required is a substantial identity of the subject-matter, the field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated need not be identical and the same in every particular but the identity and the field of controversy must be substantially the same.

14. On a closer perusal of Section 10, C.P.C., it is clear that the section provides the following:

Where a suit is instituted in a Court to which the Code applies, the Court shall not proceed with the trial of the suit, if--

firstly, the matter in issue in the suit is also directly and substantially in issue in a previously instituted suit between the same parties;

secondly, the previously instituted suit is pending--

(a) in the same Court in which the subsequent suit is brought, or

(b) in any other Court in India (whether superior, inferior or coordinate), or

(c) in any Court beyond the limits of India established or continued by the Central Government or

(d) before the Supreme Court and

thirdly, where the previously instituted suit is pending in any of the Courts mentioned in cl. (b) or cl. (c), such Court is a Court of jurisdiction

competent to grant the relief claimed in the subsequent suit. The object of the section is to prevent Court of concurrent jurisdiction from

simultaneously trying two parallel suits in respect of the same matter in issue.

15. It is important to note that the Court in which the first suit is pending must be competent to grant the relief claimed in that suit, and also the

relief claimed in the subsequent suit.

16. It is also to be noted that where it is clear from the pleadings of the previously instituted suit by the plaintiff before the Civil Court that the

subject matter of controversy in issue is directly or substantially in issue in subsequently instituted suit, the subsequently instituted suit is required to

be stayed.

17. The object underlying Section 10 is to avoid two parallel trials on the same issues by two Courts and to avoid recording of conflicting findings

on issue which are directly and substantially in issue in previously instituted suit.

18. The above principles have been laid down by this Court as well as the other High Courts in various decisions, such as J.C. Roy Chowdhury

Vs. Krishna Paper Board Mills and Another, , Mehta Gandhi and Associates Vs. Shree Pipes Ltd, R.Srinivasan v. Southern Petrochemical

Industries Corporation Ltd. and Bijendra Kumar and others Vs. Basant Kumar, .

19. In the light of the above principles, let us now deal with the prayer sought for in this petition.

20. As indicated above, the present suit has been filed by the plaintiff/applicant in April, 1997 against several defendants including the respondent

herein as third defendant. The third defendant Bank filed the application in O.A.No.401 of 1998 before the Debts Recovery Tribunal in April

1998 against the plaintiff, the applicant herein and its guarantors.

21. Now, the prayer before this Court is for staying the application subsequently instituted by the Bank before the Tribunal for recovery of the

dues from the plaintiff/applicant pending disposal of the suit filed by the plaintiff/applicant for recovery of money against the defendants before this

Court.

22. This issue can be dealt with from three angles.

23. Firstly, Section 10 of C.P.C. would provide that Civil Court shall not proceed with the trial of the suit subsequently instituted when the matter

in issue is the same in previously instituted suit. Therefore, unless the Tribunal in which the subsequently instituted application is pending is

considered to be the Civil Court or - the application is considered as a suit, Section 10, C.P.C. would not apply.

24. It is the specific contention of the learned counsel appearing for the Bank, the respondent herein, that the application in O.A.No.401 of 1998

filed by the Bank is not the suit and the Tribunal constituted under the Special Act in which the matter is pending is not the Civil Court as

contemplated u/s 10 of C.P.C.

25. According to him, subsequent to the introduction of the Special Act, namely, Recovery of Debts Due to Banks and Financial Institutions Act,

1993, the banks and financial institutions cannot approach Civil Court for recovery of the debts, but they shall only file application for recovery of

the debts due to such banks against the parties concerned before the Tribunal constituted u/s 3(1) of the Act. When the bank approaches the

Tribunal in accordance with the provisions of the Special Act, Section 10, C.P.C. would cease to apply.

26. The reading of the history leading to the introduction of this Special Act would show that the banks and financial institutions had considerable

difficulties in recovering loans and advances through the Civil Courts and the existing procedure was not conducive as the ordinary system was

burdened with public litigation which had led to locking up of their funds in unproductive assets and that therefore, periodical Committees were

constituted and on their recommendation the Bill was introduced in the Parliament and the same came to be published on 27.8.1993. By virtue of

the powers conferred u/s 3(1) of the Act, the Tribunal has been constituted.

27. For the purpose of the present case, Sections 17 and 18 of the Act are quite relevant. Section 17 of the Act is as follows:-

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 institutions for recovery of debts due to such banks and financial

institutions.

(2)

Under this section, it is clear that the banks shall approach the Tribunal for recovery of debts due to such banks.

28. Section 18 of the Act reads thus:-

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 a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the

matters specified in Section 17.

As per this section, from the date of introduction of the Act, that is, from 27.8.1993, no other court shall have any jurisdiction in relation to the

claim for recovery of the debts of the banks as specified in Section 17 of the Act.

29. Thus, the "jurisdiction" is stated without any ambiguity. The caption contained in Section 18, viz., "Bar of jurisdiction" would itself indicate that

it expressly excludes the jurisdiction of "Civil Court" in relation to the matters specified under the Act.

30. Admittedly, the respondent/third defendant filed an application for recovery of the dues due to it from the applicant/plaintiff only after

constitution of the Tribunal as per the Special Act which was introduced in the year 1993. In other words, since there was bar of jurisdiction on

Civil Courts, the bank had to necessarily approach the Tribunal by filing an application for recovery of dues.

31. As a matter of fact. Section 9, C.P.C. provides that the Civil Courts have jurisdiction to try only suits of civil nature excepting suits of which

their cognizance is either expressly or impliedly barred.

32. Similarly, as noted above, Section 18 of the Act also would put a bar of jurisdiction on other courts except the tribunals in regard to the

recovery of the claims by the banks as specified in Section 17 of the Act.

33. It is also noticed that Section 4, C.P.C. would provide that in the absence of any specific provision to the contrary, the CPC shall not be

deemed to limit or affect any special law made, any special jurisdiction conferred or any special form of procedure by any other law.

34. Under these circumstances, it can be safely stated that the respondent/third

defendant is debarred from claiming its dues by filing a suit or from making a counter-claim or set off in the suit filed by the applicant/plaintiff in the Civil Court.

35. In this context, the observation made by the High Court of Gujarat in *Gujarat State Road Transport Corporation Vs. Vimlaben L. Shah*, is relevant, which is as follows:

Language of Section 10 itself suggests that it is referable to a suit instituted in Civil Court and it cannot apply to proceedings of other nature instituted under the statute, more particularly, when by, ouster clause enacted in special statute, the jurisdiction of the Civil Court is specifically ousted. Section 10 of C.P.C. can never have any application so as to stay the proceedings under the special statute before the special forum on the ground that one of the parties has already approached the Civil Court despite ouster clause ousting the jurisdiction of the civil Court. To accept the contention of the respondent-plaintiff in substance would amount to conferring jurisdiction upon the Civil Court despite its specific ouster by the special statute and it could also render meaningless and nugatory the ouster clause contained in the special statute, the object of which was to specifically oust the jurisdiction of the Civil Court and to confer the same on the competent authority.

36. Thus, the combined reading of Sections 4, 9 and 10 of C.P.C. and Sections 3(1), 17 and 18 of the Act would clearly indicate that the jurisdiction upon the Civil Court has been specifically ousted by the special statute and therefore, Section 10 of C.P.C. would not apply to the proceedings of other nature instituted in the Tribunal under the special statute, especially when by ouster section, viz., 18 enacted in the special statute, the jurisdiction of the Civil Court is specifically ousted and therefore, Section 10 of C.P.C. can never have any application so as to stay the proceedings under the special Act before the Special Tribunal merely on the ground that one of the parties before the Tribunal has already approached this Court, namely, Civil Court.

37. In other words, the word "Court" and the word "suit" contained in Section 10, C.P.C. cannot be construed to mean the Tribunal" and "application" respectively, as Sections 17 and 18 of the Act would exclude the Civil Court jurisdiction.

38. This can be looked at from another angle also. Even assuming that the Tribunal is a Court and the application is a suit, the next important

requisite would be that the matter in issue between the same parties must be, directly and substantially the same.

39. As per the pleading in the plaint, the main relief sought for by the plaintiff is as against defendants 1 and 2, the parties at London, towards the

non-payment of the dues on export bill despite receipt of the goods. It is also mentioned in the plaint that the fourth defendant, the Bank at England

should not have delivered the export bill and the goods to the first and second defendants without receipt of payment and therefore, the fourth

defendant is liable to make good the loss suffered by the plaintiff on account of the failure to collect the bill and remit the proceeds.

40. It is also referred to in the plaint that the third defendant failed to intimate the same to the plaintiff in time and therefore, he was also vicariously

liable for all losses accruing to the plaintiff on account of all acts of commission and omission by the fourth defendant.

41. In the plaint there are six defendants. The first two defendants are the importers at London, the third defendant is "Bank", the present

respondent who sent the bill, the fourth defendant is the Bank at London who handed over the bill to the importers and the fifth and sixth

defendants were the approved inspection agents of the first defendant. So, the main relief sought for in the suit is as against first and second

defendants.

42. In O.A.No.401 of 1998, the applicant is the Central Bank, the third defendant herein, the first respondent is the borrower, the plaintiff herein,

the respondents 2 to 4 are the partners of the borrower Company, the respondents 5 and 6 are the guarantors and the seventh respondent is the

mortgagor which is a partnership firm with the respondents 5 and 6 as partners.

43. The claim made before the Tribunal by the Bank, the third defendant herein, in the above application is for recovery of the dues from the

respondents therein and for sale of the immovable properties which were mortgaged to the Bank for the loan dues of both the plaintiff herein and

seventh respondent therein. The third defendant herein in the suit is the applicant in the application before the Tribunal. The plaintiff herein in the suit

is the first respondent in the application therein. Except these persons, the

respondents 2 to 7 in the application are not the parties in the present suit. Similarly, the defendants 1, 2, 4 and 6 are not the parties in the application. These things would show that the parties in these proceedings are different. The main relief sought for in these proceedings are not identical and issue also is not the same.

44. Mere averment that the cause of action would arise out of the same transaction would not suffice to hold that the matter in issue in both the proceedings is directly and substantially the same. On the other hand, factually, the parties are different, the issues are different and consequently, it cannot be said that the matter in issue is directly and substantially the same.

45. Furthermore, as indicated above, one of the main conditions for invoking Section 10, C.P.C. would be that both the forums must be competent to grant the relief claimed in both the suits. But, the relief sought for by the Bank before the Tribunal cannot be granted by the Civil Court in which the suit is pending, as it is barred, as discussed in the earlier paragraphs.

46. To put it differently, a reading of the relevant provisions of the CPC and the Act would make it manifestly clear that the Civil Court and the Tribunal are not having concurrent jurisdiction in which event, it shall not be permissible for this Court to invoke Section 10, C.P.C. Consequently, the reference about Order 2, Rule 2 and Order 8, Rule 6A will have no relevance, especially with regard to the matters referred to in Section 17 of the Act which could be dealt with only by the Tribunal as contemplated u/s 18 of the Act.

47. Therefore, the decisions in Messrs. Maheswari Metals and Metal Refinery, Bangalore v. Tamil Nadu Small Industries Corporation Ltd. 1981

(94) L.W. 633 and Maheswari Metals & Metal Refinery v. M.S.S.I. Corporation, 1973 (86) L.W. 785 cited by the learned counsel for the plaintiff/applicant regarding the applicability of Order 2 Rule 2 (3) and Order 8 Rule 6 (2) (A) C.P.C. would be of no use.

48. The learned counsel for the plaintiff/applicant would also cite some of the authorities referring about the powers of this Court under Articles 226 and 227 which conferred on High Courts to examine the decision of the Tribunals to see whether they have acted illegally or not. Those decisions are Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and

L. Chandra Kumar Vs. Union of India and others, .

49. In the present case, we are not on the question whether we have got powers to go into the decision taken by the Tribunal. No doubt, it is true

that the Constitution Bench in L. Chandra Kumar Vs. Union of India and others, would hold that the power vested in the High Courts to exercise

judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the

Constitution.

50. These decisions are rendered over the question whether the High Court under Article 226 could go into the validity of the orders passed by the

Tribunal. That is not the question raised here. This Court is called upon through this application as to whether this Court could stay the proceedings

pending before the Tribunal by invoking Section 10, C.P.C.

51. As discussed above, as the basic requirements to invoke Section 10, C.P.C. have not been satisfied, this Court would not be competent

enough under the powers conferred u/s 10, C.P.C. to stay the proceedings pending before the Tribunal, which in my opinion may affect the very

purpose of the introduction of the special Act.

52. This can be viewed from yet another angle as well. If we carefully read Section 10, C.P.C. again, in my view, it indicates the power granting

stay under the above section is one imposed by the Court upon itself and it is not imposed by any outside authority.

53. In the light of the above position, if we look at the prayer made in this application, it is seen that the plaintiff/applicant has not sought for stay of

the trial of this suit, but is seeking for the stay of the proceedings pending before the outside authority.

54. If the plaintiff/applicant who is the respondent before the Tribunal filed an application u/s 10, C.P.C. before the said Tribunal assuming it to be

Civil Court, then there is some meaning in that, inasmuch as the power to stay u/s 10, C.P.C. is the one imposed by the said forum upon itself. But,

in the present case, the plaintiff/applicant has approached this Court in which the suit has already been filed and requested this Court to stay the

proceedings before some other forum, which, in my considered opinion, would not be in consonance with the purport of Section 10, C.P.C.

55. For my above view, I find support from the decision of the Full Bench of the

Calcutta High Court in Narsing Das Tansukdas Vs. Chogemull

and Another, . The Full Bench, While comparing Section 34 of the Bengal Agricultural Debtors Act and Section 10, C.P.C., clearly held that u/s

10, C.P.C., the Court in which the suit is pending can itself stay the same, but u/s 34 of the Act, the stay can be imposed from an outside authority.

The relevant portion is this:-

There is moreover no analogy between S. 10, Civil P.C., and S. 34 of the Act, for in the former case the Court in which the suit is pending itself

stays it. Its jurisdiction is not curtailed or affected, but the stay under the terms of S. 34 of the Act is one imposed from an outside authority.

Therefore, on this ground also, the contention on the strength of Section 10, C.P.C. urged by the counsel for the plaintiff/applicant would fail.

56. In view of the discussion made in the foregoing paragraphs, I am of the definite opinion that there is no merit in any of the contentions urged by

the counsel for the plaintiff/applicant and therefore, the application is liable to be dismissed. Accordingly, the application is dismissed. No costs.

57. Before parting with this case, I place on record the appreciation for the effective assistance rendered by Mr. Vedantham Srinivasan through his

elaborate vivid submissions and Mr.Kothandaraman, learned counsel appearing for the respondents for his polite and persuasive submissions.