(2000) 07 CAL CK 0050

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction A.P.O.T. No. 768 of 1999 G.A. No. 3592 of 2000 C.O.S. No. 572 of 1991

Vijaya Bank — APPELLANT

Vs

Smt. Sulochana Devi Jalan — RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 105, 151, 19
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19(22), 2, 31

Citation : (2001) 1 CALLT 466 : (2001) 1 CHN 93

Hon'ble Judges : Tarun Chatterjee, J;Subhro Kamal Mookherjee, J

Bench : Division Bench

Judgement

S.K. Mookherjee, J.—The main question that was raised by the learned counsel for the parties in this appeal was whether an application pending before the Debt Recovery Tribunal under the Recovery of Debts due to Banks and Financial Institutions Acf, 1993 (hereinafter referred to as "the Act") would be directed to be stayed either under the provisions of section 10 of the CPC or under the inherent power of the Court u/s 151 of the Code of Civil Procedure, In view of a suit pending in this Court which was filed prior to the Institution of the Application under the Act.

2. To decide this question we like to state the facts which would be required. The opposite party/respondent herein Smt. Sulochana Devl Jalan In the year 1991 Instituted a suit in the Original Side of this Court against the Vijaya Bank (hereinafter referred to as "the appellant"), inter alia, for a decree for a sum of Rs. 80,85,000/- and for other incidental reliefs. In the aforesaid suit, it has been alleged In the plaint that the appellant arbitrarily and capriciously and In breach of its duty reduced overdraft facilities and Imposed conditions as to the working capital of the respondent thereby wrongfully preventing the respondent from carrying on her business and in consequence thereof the respondent was

compelled to suspend her business and suffer loss and damages. In the aforesaid suit, the appellant has already entered appearance and filed Its written statement denying the material allegations made in the plaint. When this suit was pending the appellant instituted a suit for a decree for a sum of Rs. 57,18,64.84 against the respondent jointly and severely and for other reliefs. During the pendency of the aforesaid suit being Title Suit No. 116 of 1993 the said Act was enacted and pursuant to the provisions of the section 31 of the said Act, the said suit was transferred to the Debt Recovery Tribunal, Calcutta and the same has been registered as T.A. No. 47 of 1994 by the said Tribunal. An attempt was made by the plaintiff/respondent to transfer the aforesaid application being registered as T.A. No. 47 of 1994 now pending before the Debt Recovery Tribunal, Calcutta from It to this Court by making an application under clause 13 of the Letters Patent. A learned Judge of this Court, however, rejected the said application filed under clause 13 of the Letters Patent. An appeal was carried to a Division Bench of this Court against the aforesaid order of the learned trial Judge. The appeal is now pending decision, but the prayer for interim relief was refused. The plaintiff/respondent thereafter made an application in this Court praying that the proceedings being T.A. No. 47 of 1994 now pending before Debt Recovery Tribunal shall remain stayed till the disposal of the suit filed by the plaintiff being suit No. 572 of 1991 on the ground that as the suit filed by the plaintiff/respondent was prior to the filing of the proceeding before the Debt Recovery Tribunal being T.A. No. 47 of 1994 and the issues involved in the aforesaid two proceedings were same, and, therefore, the Court shall pass an order of stay of the pending proceedings before the Debt Recovery Tribunal till the suit being Suit No. 572 of 1991 pending In this Court is decided and disposed of. By the impugned order, the learned Trial Judge has allowed the said prayer of the plaintiff/respondent and directed that the proceedings in T.A. No. 47 of 1994 pending before the Debt Recovery Tribunal shall remain stayed till the disposal of the pending suit In this Court. From a perusal of the order of the learned trial Judge, it appears to us that the learned trial Judge was of the view that Issues involved In both the proceedings, as mentioned above, were the same and in view of the fact that the suit filed by the plaintiff/respondent in this Court was filed. prior to the filing of the proceedings under the Act, the proceedings pending before the Debt Recovery Tribunal shall remain stayed till the disposal of the suit. In our view, in view of the recent decision of the Supreme Court, the order of the learned trial Judge cannot be sustained in law. We need not dwelke in this matter in detail in view of the aforesaid recent decision of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, . In that decision, the Supreme Court has clearly held that the jurisdiction to entertain any dispute regarding recovery of debts by the Bank is exclusively conferred on the Debt Recovery Tribunal and no Court shall entertain such claim of the Bank. That is to say the Jurisdiction of civil Courts have been taken away by the introduction of the said Act. we are, also, not unmindful of the fact that the Act was enacted for expeditious adjudication of recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto. In the statement of object and reasons for the Introduction of the Act it has also been stated, Inter alia, that Banks and Financial Institutions at present experienced considerable difficulties in recovering loans and enforcement of securities charged with them and the existing procedure for recovery of debts due to Banks and Financial Institutions has blocked a significant portion of their funds in unproductive assets the value of which deteriorates with the passage of time. The locking of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country. By the Act. the Tribunals and appellate Tribunals were sought to be established for expeditious adjudication and recovery of the debts due to Banks and Financial Institutions. As noted herein earlier, the Supreme Court, after considering the objects and reasons for which the Act was enacted, in the aforesaid decision observed, inter alia, as under :--

"It is clear from section 17 of the Act that the Tribunal is to decide the applications of the banks and financial prostitutions for recovery of debts due to them. We have already referred to the definition of "debt" in section 2(g) as amended by Ordinance 1 of 2000. It includes "claims" by banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise. In this context section 31 of the Act is also relevant. That section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the words "proceedings" in section 31 Includes "execution proceedings" pending before a civil court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of ''in the same manner'' as applications u/s 19.

''21. In our opinion, the Jurisdiction of the Tribunal In regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks and 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 or 227 of the Constitution). This is the effect of sections 17 and 18 of the Act.

"22. We held that the provisions of sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the pliability of the defendant to the appellant Bank Is concerned."

3. From the aforesaid principles as laid down by the Supreme Court in the aforesaid decision, we are, therefore, of the view that this Court has no

jurisdiction to stay the proceedings pending before the Tribunal till a decision is made in the aforesaid pending suit by this Court. Since the Tribunal has only the jurisdiction to decide the aforesaid proceeding under the Act, we are of the view that this Court has no jurisdiction to direct stay of such proceedings pending before the Tribunal till the suit is disposed of which is now pending in this Court. Even assuming that this Court has the jurisdiction to stay the proceedings pending before the Tribunal, we are of the view that the learned trial Judge was not Justified in holding that the issues of the two proceedings were the same. For this purpose we have carefully perused the pleadings and the defence put forward by the parties and on a bare perusal of such pleadings, we are unable to agree with the learned trial Judge that the issues involved in the aforesaid two proceedings were identical. That being the position, we are of the view that the order under challenge cannot be sustained in law. Before we and with this judgment, we may also refer that Mr. Abhrajit Mitra, the learned advocate appearing for the respondent, cited certain decisions to impress upon this Court that this Court has the inherent power to stay even where the provisions of section 10 of the CPC do not apply. There is no doubt about the proposition that the Court has the Jurisdiction to stay proceedings under its inherent power when the provisions of section 10 of the CPC cannot be applied to the facts and circumstances of a particular case. So far as this case is concerned, the question of jurisdiction is involved that is to say whether the High Court has any Jurisdiction to touch the proceedings pending under the said Act. In view of the aforesaid decision of the Supreme Court, It is clear that the jurisdiction of the Tribunal is exclusive to deal with the disputes raised by the Bank before the Debt Recovery Tribunal. In that view of the matter question of granting stay of the proceedings pending before the Debt Recovery Tribunal cannot arise at all. Accordingly, the impugned order to the extent that the proceedings pending before the Tribunal shall remain stayed till the disposal of the suit cannot be sustained in law.

4. With regard to the cross objection, we are also of the view that it has no merit. From the record, we find that a report of a receiver was filed which indicated that there was an offer from M/s. Gopal Engineerings Works for sale of machines at Rs. 86,500/-.

5. That being the position, the learned Judge was fully Justified is not confirming the sale of the drop hammer for Rs. 12,500/- only In favour of M/s, Manoj Engineering Works. In any view of the matter, It appears to us that the respondent was not acting bona fide and the learned Judge has rightly refused to grant any relief in her favour in connection with her application being G.A. 8318 of 1989. We however, make it clear that this will not prevent the respondent from moving the Tribunal for appropriate Interim order or orders.

Accordingly, the appeal is allowed to the extent indicated above and the cross objection is dismissed.

There will be no order as to costs.

T. Chatterjee, J.--I agree.

6. Appeal allowed