

(2001) 07 KAR CK 0026

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 871 and 874 of 1995

Walter Rosario and Others

APPELLANT

Vs

Corporation Bank and Another

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18

Citation : (2001) 4 KCCR 2502

Hon'ble Judges : D.V. Shylendra Kumar, J;A.M. Farooq, J

Bench : Division Bench

Advocate : K. Ram Bhat and A. Keshava Bhat, for the Appellant; A. Mahabaleshwar Bhat, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The only common question that arises for consideration in these two appeals is as to whether the provisions of Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 constitutes a bar on the jurisdiction of a Civil Court for making an Award of an Arbitrator a rule of the Court or a decree of the Court in terms of the provisions of Section 14 of the Arbitration Act, 1940, subsequent to 30.11.1994, from which date onwards the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has come into effect.

2. The brief facts giving rise to the above two appeals are:

The appellants here in Miscellaneous First Appeal No. 871 of 1995 and 874 of 1995 were borrowers of certain amounts from the first Respondent-bank. The lending of the money by the bank in favour of the appellants was covered by an agreement between the parties, which inter-alia provided for reference to an Arbitrator, if dispute arise between the parties in the matter of repayment of the borrowed amounts.

3. Dispute having ultimately arisen between the parties in the matter of repayment, an Arbitrator was appointed in terms of the agreement between the parties and one Sri P. Narayana Bhat appointed as a sole Arbitrator in respect of the disputes.

4. The Arbitrator has entered upon the reference and having allowed the parties to file the claim petition, objections etc., and parties having also led evidence before the Arbitrator and ultimately proceedings culminated in the passing of two Awards dated 20.10.1992, which is the subject matter in Miscellaneous First Appeal No. 871 of 1995 and another Award dated 23.10.1992, which is a subject matter of Miscellaneous First Appeal No. 874 of 1995. Under these two Awards it was held by the Arbitrator that the appellants were liable in a sum of Rs. 18,15,515.14 in the earlier Award and Rs. 39,13,032/- respectively with interest.

5. The learned Arbitrator filed the Awards before the Court and the interested party wanted to make the Award a Rule of the Court. Notices were issued after filing of the Awards before the Court in Arbitration Case Nos. 8 of 1992 and 7 of 1992 respectively, and it appears that no objections as such were filed under the provisions of Section 33 within the time permitted under the Act, by filing an application by the Respondents therein. However at the time of arguments the learned Counsel for the Respondents in the Arbitration cases before the trial Court sought to contend that the Awards were not tenable due to certain technical lacuna and illegalities. However what is pertinent to note for the purpose of present appeal is that lack of jurisdiction on the part of the Court to make the Awards a rule of Court in view of the bar u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was not a ground raised before the trial Court.

6. The trial Court finding no substance in the objections raised on behalf of the appellants and also that the objections sought to be raised were not tenable and could not be looked into by the Court as they were raised beyond the time provided under the Act itself rejected the same and made the Awards a Rule of the Court.

7. It is aggrieved by these two Awards in the two Arbitration cases, the appellants have come before this Court in these two appeals. Sri K. Ram Bhat learned Counsel appearing for the appellants has contended that the Court below could not have passed a decree or made the Award a rule of the Court, in view of the specific bar u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the decree of the Court making the Award a rule of the Court is therefore without jurisdiction and not sustainable and liable to be set aside. The submission of the learned Counsel is that in view of the provisions of Section 18 read with Section 17 of the 1993 Act, the Debt Recovery Tribunal alone could have entertained even an application for making an Award a rule of the Court and in this regard the learned Counsel submits that even an application for making an Award of Arbitrator the rule or decree of the Court is also an application, which is in the nature of an application filed by the bank seeking for

recovery of debts due to the bank.

8. However the learned Counsel is not in a position to substantiate this submission with the support of any precedent.

9. We have considered the submissions and have examined the provisions of Sections 17 and 18 of the 1993 Act and also the provisions of Arbitration Act, 1940. The Arbitration Act, 1940 is a Special Enactment, which provides for informal resolution of dispute by parties, who have agreed for referring the matter to an Arbitrator. The dispute is resolved by the Arbitrator in the form of an Award. It is only for the enforcement of the Award, the Arbitration Act provides for making the Award a rule of the Court as per Section 14 of the Act. Under this Act the only ground on which such an Award can be avoided is by making an application by the aggrieved party against whom an Award has been, made under the provisions of Section 33 of the Act, within the time provided on grounds for attacking Award as provided u/s 30 of the Arbitration Act. In no other manner an Award can be avoided or sought to be set aside. The appellants did make an effort in this regard, but failed. The Award was made a rule of the Court. The proceedings before the lower Court was not a proceeding, whereby the bank was seeking to enforce a debt due to it, which was being contested or disputed by the borrower. That stage is already over when the Arbitrator made his Award. The dispute between the parties for recovery of the amount had already been resolved by the Arbitrator in the form of the Award. The proceedings before the Court below was one for making the Award a rule of the Court. We are of the clear view, this is not a proceeding or situation which is contemplated under the provisions of Section 17 of the 1993 Act, (hereinafter referred to as the Act). The Award was come into existence under the provisions of a Special Enactment. The aspect of making such an Award a rule of the Court or a decree of the Court is also governed only by the Arbitration Act, 1940. The provisions of Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is not a substitute for the provisions under the Arbitration Act. Accordingly we are of the opinion that the Court below was not denuded of its jurisdiction by the operation of Section 17 of the 1993 Act. In this view of the matter, we are unable to accept the submission on behalf of the appellants, we are of the view that the Court below had the jurisdiction to make the Award the rule of the Court.

10. Accordingly these appeals are dismissed without any order as to costs.