

Punjab National Bank, Dasuya

Vs

Chajju Ram and others

Civil Appeal No. 4365 of 2000

(Mr. B.N. Kirpal, Mr. A.P. Misra and Mrs. Ruma Pal, JJ.)

01.08.2000

JUDGMENT

B.N. Kirpal, J.:— Special leave granted.

The appellant on 26th August, 1988 filed a suit for recovery of Rs. 6, 19,250/- in the Civil Court. By judgment dated 16th February, 1994, the trial court decreed the suit for the aforesaid amount with interest at the rate of 16-1/2 per cent per annum from the date of filing of the suit till the recovery of money. On 21st December, 1994, an execution application was filed by the appellant before the Court of Civil Judge, Dasuya. According to the appellant, an amount of rs. 12,91,398/- being the principal amount of Rs. 6,19,250/- plus interest thereon as per the decree, had become due & payable and it was in respect of this amount that execution was sought.

In the meanwhile on 25th June, 1993, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act") had come into force. On 30th August, 1994, a Tribunal was set up in Jaipur and it was given jurisdiction to decide claims even with regard to those arising in the State of Punjab. On 18th February, 1997, the appellant moved an application before the Civil Court Dasuya for transfer of the execution proceedings to the Debts Recovery Tribunal, Jaipur. This application was allowed and the trial court ordered the transfer of the execution proceedings to the Debts Recovery Tribunal, Jaipur.

The respondents thereupon filed a revision petition in the High Court. By judgment dated 1st April, 1999, the High Court came to the conclusion, while reversing the decision of the trial court, that the execution proceedings could not be transferred and it is only the Civil Court, which had passed the decree, which could execute the same. Hence, this appeal by special leave.

The point in issue is no longer res integra. After analysing the provisions of the Act, this Court in Allahabad Bank vs. Canara Bank & Another, JT 2000 (4) SC 411 held that the word 'proceeding' in Section 31 of the Act would include an execution proceedings pending before a Civil Court before the commencement of the Act. It was further held that the suits and proceedings so pending would stand transferred to the Tribunal. This conclusion emanated from the fact that the definition of the word 'debt' contained in Section 2(g) of the Act, inter alia, meant any liability which was due to a bank and was payable under a decree or order of a Civil Court. The decretal amount being a debt as envisaged by Section 2(g) would clearly attract the provisions of Sections 17 and 18 of the Act which give exclusive jurisdiction to the Tribunals constituted thereunder to decide the questions regarding recovery of debts due to the banks and financial institutions. Section 31 which deals with transfer of cases reads as under:

"31. Transfer of pending cases. — (1) Every suit for 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 whereon 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 to such Tribunal.

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (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 proceed 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 or de novo as the Tribunal may deem fit."

A bare reading of the aforesaid Section shows that execution application being a proceeding pending in a Civil Court when the Act came into force was liable to be transferred to the Tribunal because the amount for which the execution application had been filed as per the decree which had been passed, was over Rs. 10 lakhs.

Learned counsel for the respondents submitted that the use of the words 'cause of action' in Section 31 indicated that it is only pending suits which could be transferred. We are unable to agree with this submission. The words 'cause of action' are preceded by the words 'being a suit or proceeding'. Section 31 contemplates not only the transfer of a suit but also transfer of a proceeding which may be other than a suit, like an execution application. Understood in this context, the words 'being a suit or proceeding the cause of action whereon it is based....' would mean that in the case of an execution application if the decree is for more than Rs. 10 lakhs, then that is the cause of action or the reason for an application for execution being filed before the Tribunal.

To put matters beyond doubt, the Act has been amended by the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and Section 31A has been inserted which reads as follows:

"31A. Power of Tribunal to issue certificate of recovery in case of decree or order. (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act."

The aforesaid Section 31A is clearly applicable in the present case. The decree was passed by court

before the commencement of the Amendment Act and the same has not yet been executed. Atleast 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. It is to be seen that decree was for a sum of Rs. 6,19,250/- plus interest at the rate of 16-1/2 per cent per annum from the date of filing of the suit till the recovery of money. 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 Tribuanl 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.

For the aforesaid reasons, the appeal is allowed and the judgment of the High Court is set aside, with costs throughout.