SUPREME COURT OF INDIA

State Bank of India

Vs

Messrs Ranjan Chemicals Limited and Another

Civil Appeal No. 4443 of 2006

(H. K. Sema and P. K. Balasubramanyan, JJ)

11.10.2006

JUDGMENT

P. K. BALASUBRAMANYAN, J.

Leave granted.

2. This appeal is filed by the State Bank of India (hereinafter referred to as the 'bank') challenging the order of the High Court of Patna affirming an order of Subordinate Judge-I, Patna in Suit No. 168 of 2001 refusing to transfer the suit for being tried jointly with O.A.No. 18 of 2002 filed by the bank before the Debt Recovery Tribunal, Patna. The bank sought the transfer on the basis that the suit was in the nature of a counter claim to its claim and arose out of the same cause of action as the one put in suit by the bank before the Tribunal. The bank originally granted a term loan to M/s. Ranjan Chemicals Ltd. (hereinafter referred to as the 'company') of Rs. 30 lakhs. The bank further extended a cash credit facility to the company. The company failed to meet its obligations under the account. Thereupon the bank issued a notice calling upon the company to repay the amounts due under the loan transactions and to close its accounts. On receipt of that notice, the company filed a suit before the Court of Subordinate Judge-I, of Patna as Suit No. 168 of 2001 claiming that the bank had failed to fulfil its obligations while making available the cash credit facility and has not honoured its commitments in time to release the working capital which was agreed to as part of a rehabilitation process of the company and because of the delay on the part of the bank in fulfilling its obligations, the company had suffered losses leading to the Board of Industrial and Financial

Reconstruction, recommending its winding up and in view of the fact that the losses were incurred because of the failure of the bank to fulfil its obligations, the company was entitled to recover a sum of Rs. 1739.15 lacs as damages with interest thereon. The bank in its turn approached the Debt Recovery Tribunal constituted under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by way of O.A.No. 18 of 2002 filed under Section 19(1) of that Act.

3. In the suit, the bank moved an application praying that the said suit be transferred to the Debt Recovery Tribunal for being tried jointly with O.A.No. 18 of 2002 pending before the Tribunal, since both proceedings arose out of the same cause of action, namely, the grant of a loan and the providing of a cash credit facility by the bank to the company and that the suit by the company was really in the nature of a counter claim or set off, as against the claim of the bank for recovery of a sum of Rs. 833.06 lakhs on the loan account. The prayer of the bank was resisted by the company contending that the cause of action for its suit was different from the cause of action put in action by the bank in the Recovery Tribunal, that the suit for damages was not in the nature of a counter claim or set off, but that it was an independent action that the Civil Court alone had jurisdiction to try and that the transfer prayed for was not liable to be granted. The Trial Court took the view that the suit filed by the company did not come within the purview of Section 19(9) of the Recovery of Debts Act and it could not be treated as a counter claim in O. A.No. 18 of 2002 and hence the prayer was liable to be rejected. On a challenge by the bank of the above said order before the High Court of Patna, that Court held that there was no bar created by the Recovery of Debts Act or any other law. which could prevent a person from filing a suit in the civil Court or making any claim, much less, one for damages which was even otherwise, completely alien to the claim based on the loan made by the bank before the Tribunal. Since the suit was not hit by Section 18 of the Recovery of Debts Act, the jurisdiction of the civil Court was not affected and the Court had full authority to proceed with the suit for damages which was filed earlier and which was unconnected with the loan transaction. The Revision was thus dismissed. This order is challenged in this appeal.

4. It appears to us that the High Court and the Trial Court asked themselves the wrong question. The question was not whether the civil Court had jurisdiction to entertain the suit or to continue with the suit. The question was whether in the nature of the respective claims arising out of the loan transaction, it was just and proper to order a joint trial of the two causes and whether there was anything in the Recovery of Debts Act which prevented the Debt Recovery Tribunal from entertaining the claim made by the plaintiff in the suit. A question of joint trial arises when the rival parties file independent actions but based on the same cause of action; for enforcement of rights or obligations springing out of that cause of action. Here, the bank had approached the Recovery Tribunal for recovery of amounts paid on the basis of the loan transaction and the cash credit facility extended to the company. The company had gone to the Civil Court claiming that it had suffered damages because the bank had failed to fulfil its obligations based on the cash credit facilities and the rehabilitation package extended to it. The question, therefore, was whether it could be said that both claims arose out of the same cause of action giving rise to different rights of action. The elements of a cause of action are: first, the breach of duty owing by one person to another and; second, the damage resulting to the other from the breach, or the fact of combination of facts which gives rise to a right to sue. Viewed thus, it cannot but be said that both claims have arisen out of the same transaction or out of the same relationship that came into existence between the bank and the company and the alleged breach of obligations by one or the other. We have, therefore, no hesitation in holding that the two actions have sprung out of the same cause of action.

5. Then the question is whether the cause of action put in suit by the company could be considered to be one in the nature of a set off or a counter claim within the meaning of Section 19 of the Recovery of Debts Act. It is clear from sub-sections (6) to (11) of Section 19 of the Act that the Recovery Tribunal has the jurisdiction to entertain a claim of set off or a counter claim arising out of the same cause of action and has also the power to treat the counter claim as a cross suit. Therefore, if the claim of the company in the suit partakes the character of a cross action founded on the same cause of action, the same could be tried by the Debt Recovery Tribunal. In United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and others .], this Court interpreted the expression counter claim in sub-sees. (8) to (11) of Section 19 as including even a claim made in an independent suit and a claim for damages based on the same transaction as being broadly a plea of set off falling under subsections (6) and (7) of Section 19 of the Act. With respect, we see no reason to differ from the reasoning and conclusion therein in that regard. It is therefore clear that the claim made by the company in the suit filed by it could be considered as a claim for set off and/or as a counter claim within the meaning of Section 19 of the Act.

6. Even otherwise, after the amendment of Order VIII Rule 6A of the Code of Civil Procedure by Act 104 of 1976, for maintaining a counter-claim, the cross action need not even arise out of the same cause of action or be intrinsically connected with the cause of action sued upon. Any right or claim in respect of a cause of action accruing to the defendant against the plaintiff can be made the subject matter of a counter-claim. Section 19(8) of the Act is also on the same lines. Therefore, there can be no objection to treating a claim in favour of the Company arising out of the Loan transaction and/or rehabilitation package as a counter-claim in the application filed by the Bank before the Debt Recovery Tribunal.

7. Learned Senior Counsel for the company, relied on the decision in Indian Bank v. ABS Marine Products (P) Ltd.[= in support of the preposition that the Civil Court continued to have jurisdiction to try the suit filed by the company and it could not be said that the subject matter of the bank's claim before the Recovery Tribunal and the suit filed by the company against the bank are inextricably connected, in that the decision in one, would affect the decision in the other. He also urged that unless both the parties agreed for the independent suit being considered as a counter claim in the bank's application before the Tribunal, the suit could not be transferred to the Tribunal. Counsel particularly relied upon the discussion in paragraph 9 of the judgment suggesting that when the claim of the bank was for an ascertained sum due from the borrower and the claim of the borrower was for damages, it could not be said that there was any connection between the subject matter of the two actions and that a decision in one would depend on the other. Nor could there be any apprehension of different and inconsistent results if the application and the suit are tried and decided separately by different fora.

8. Their Lordships have held that the subject matter of the suit and the proceeding before the Tribunal were in no way connected, but it appears to us that the two litigations arise out of the same transaction or series of transactions between the Bank and the Company. Even if, as observed by their Lordships, a counter claim in the application by the Bank before the Tribunal was not the only remedy available to the Company but an option was available to the Company to sue, and the Company has exercised that option by filing a suit, it does not in any manner affect the power of the Court to order a joint trial of the application and the suit in the Debt Recovery Tribunal provided the

Debt Recovery Tribunal has jurisdiction to entertain the action of the Company. What is relevant to note is that the claim of the Company in the suit could have been maintained as a counter-claim in the application of the bank, even if it did not arise out of the same cause of action. There is no warrant for curtailing the power of the Court to order joint trial by introducing a restriction to the effect that a joint trial can be ordered only if there was consent by both sides. The power inherent in the Court on well accepted principles to order a joint trial, does not depend upon the volition of the parties but it depends upon the convenience of trial, saving of time and expenses and the avoidance of duplicating at least a part of the evidence leading to saving of time and money.

9. On going through the application filed by the bank and the plaint filed by the company in the present case, we find that both causes of action arise out of a cash credit facility extended by the bank to the company and while the claim by the bank is for recovery of amounts due under that account, the suit of the company is for recovery of compensation based on the alleged failure of the bank to fulfil its obligations under the cash credit facility in time and in a meaningful manner. Obviously, if the company is able to establish its claim, the amount that may be awarded to it by way of damages has necessarily to be set off against any amount that may be found due to the bank on the basis of the loan transaction including the cash credit facility extended by it to the company. The decree to the one or the other would depend upon an ascertainment of the rights and obligations arising out of the loan transaction and the state of the loan account. We are therefore of the view that the two claims are inextricably inter linked. The consequences arising out of the respective claims are referable to the cause of action arising out of the very transactions-between the bank and the company. We have already indicated that the claim of the company is in essence a claim for set off and/or a counter claim, which could be tried by the Debt Recovery Tribunal in view of the amended Section 19 of the Act.

10. A joint trial can be ordered by the court if it appears to it that some common question of law or fact arises in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. Where the plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counter claim in the consolidated action, a joint trial can be ordered. An order for joint trial is considered to be useful in that, it will save he expenses of two attendances by counsel and witnesses and the trial Judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. If therefore the claim made by the Company can be tried as a counter claim by the Debt Recovery Tribunal, the Court can order joint trial on the basis of the above considerations. It does not appear to be necessary that all the questions or issues that arise should be common to both actions before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions.

11. A joint trial is ordered when a Court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the Court as an inherent power. It is not possible to accept the argument that every time the Court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A Court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim

of the company in the suit could be considered to be a claim for set off and a counter claim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the bank as a cross suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil Court since that is a proceeding before a Tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified.

12.It is clear that in both proceedings what are involved are, the nature of the loan transaction and the cash credit facility extended, the relationship that has spring out of the transactions, the right and obligations arising out of them, their breach if any, who is responsible for the breach and its extent. The same basic evidence will have to be scrutinized not only to ascertain the sum, if any, due to the bank but also to ascertain as to when and in what manner the cash credit facility was permitted to be availed of by the company. Of course, evidence will have to be taken on whether there was any violence of conditions or latches on the part of the bank in fulfilling its obligations causing damage to the company. At least a part of the evidence will be common. Duplication of evidence could be avoided if the two actions are tried together. If a decree is granted to the bank on the basis of its accounts, and the damages, if any, is decreed in favour of the company, a set off could be directed and an ultimate order or decree passed in favour of the bank or the company. In such a situation, we are of the view that this is a fit case where the two actions should be ordered to be tried together.

13.In this view, we are satisfied that the trial court and the High Court have failed to exercise the jurisdiction vested in them by law in refusing to transfer the suit to the Debt Recovery Tribunal, Patna. They have not considered the question whether it will be fit and proper to order a joint trial of the two actions. We find that it is not only fit and proper but also just and necessary to have the two causes tried together. Hence, we allow this appeal and setting aside the order of the High Court and that of the trial Court, Transfer Money Suit No. 168 of 2001 from the file of Subordinate Judge-I, Patna to the Debt Recovery Tribunal, Patna for being treated as a counter-claim by way of a cross suit and for being jointly tried and disposed of with O.A.No. 18 of 2002 pending on its file

14.In the circumstances we direct the parties to suffer their respective costs.