

SUPREME COURT OF INDIA

Bank of Rajasthan Ltd.

Vs.

VCK Shares & Stock Broking Services Ltd.

C.A.Nos.8973-8973 of 2014

(Ranjan Gogoi and S.A. Bobde JJ.)

17.09.2014

JUDGMENT

S. A. BOBDE, J.

1. Leave granted.
2. In these appeals, the question before us is whether having regard to the Recovery of Debts due to Banks and Financial Institutions Act, 1993 [hereinafter referred to as ~RDB Act™], a suit containing a counter-claim or claiming a set-off filed by a debtor can be heard and tried before the Debt Recovery Tribunal (hereinafter referred to as ~DRT™) under the RDB Act or must be tried by a Civil Court alone.
3. The appellant “ Bank filed an application for recovery under Section 19 of the RDB Act before the DRT for a recovery certificate against the respondent for Rs. 8,62,41,973.36/-. Though the respondent entered appearance before the DRT, it filed Civil Suit No. 77 of 1998 before the Calcutta High Court against the appellant claiming a decree for sale of pledged shares and payment of sale proceeds to the respondent. After the appellant sold pledged shares for a total sum of Rs. 5,77,68,000/-, the respondent filed Civil Suit No. 129 of 1999 praying inter alia for following reliefs:
4. A declaration that sale of shares of BFL Software Ltd. was void;

5. A decree for return of pledged shares in respect of overdraft facility account and in default to pay Rs. 48.95 crores; and A declaration that no sum was payable by the respondent to the appellant in respect of Term Loan dated 27.07.1994 and overdraft Account dated 19.09.1995 and that the appellant is not entitled to a decree for a sum of Rs. 8,62,41,973.36 from the respondent.

6. The appellant filed an application in C.S. No. 129 of 1999 for rejecting the suit on the ground that the High Court did not have jurisdiction since the subject matter was within the exclusive jurisdiction of the DRT. The Single Judge allowed that application and directed that the suits be taken off from the file of the High Court. The Division Bench stayed operation of the Order of the Single Judge.

7. Since the DRT held that the appellantTMs claim for Rs. 6,04,17,777.36 was satisfied, it directed inter alia to return the title deeds of the pledged shares. On the counter claim, the DRT held that the respondent was entitled to recover Rs. 6,88,187.49 from the appellant within 4 weeks.

8. The appellantTMs petition under Article 227 of the Constitution before the High Court of Calcutta challenging the DRT order dismissing the appellantTMs appeal against the DRT order was dismissed in default. The Division Bench allowed the appeal filed by the respondent against the order of the Single Judge taking off the suits from the file of the High Court. This Judgment of the High Court is questioned in these appeals. In *United Bank of India, Calcutta vs. Abhijit Tea Co. Pvt. Ltd. and Others*[1], a two-Judge Bench of this Court took the view that as per the legislative scheme of the RDB Act, jurisdiction was indeed conferred upon the Tribunal to try counter-claim and set-off by Section 19 of the RDB Act and that all such counter-claims and set-offs, including a cross suit filed independently should be tried by a Debt Recovery Tribunal. The Court was considering a case where the borrower-company had filed an application that suit filed by the Bank should remain on the Original Side of the Calcutta High Court. That application was allowed by the Single Judge. Against this order the Bank had preferred the Special Leave Petition. Though the RDB Act had not come into force when the suit was filed by the Bank, the debtor-company had filed the application and resisted the transfer of the suit. This Court took the view that the above pleas raised by the respondent-company are all inextricably connected with the amount claimed by the Bank and therefore directed transfer of the

suit. In a later decision in *Indian Bank vs. ABS Marine Products (P) Ltd.*[2], a Bench of two Judges of this Court took the view that the jurisdiction of the Civil Courts is not barred in regard to any suit filed by a borrower against a bank for any relief. That jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debt. The Bench also held that though a ~counter-claim™ and ~set off™ may be made under sub-sections (6) and (11) of Section 19 of the DRB Act, no jurisdiction is conferred on the Tribunal to try independent suits or proceedings initiated by borrowers.

9. It held that what is provided and permitted is a cross-action by the respondent in a pending application filed by a bank. It was held that the borrower had the option to file a separate suit before the Civil Court and the counter-claim before the Tribunal was not the only remedy. Referring to the earlier Judgment in *Abhijit™s*[3] case (supra), the Bench observed that an independent suit can be deemed to be a counter-claim and can be transferred to the Tribunal only if the following conditions are satisfied: The subject-matter of the bank™s suit, and the suit of the defendant against the bank, is inextricably connected in the sense that the decision in one would affect the decision in the other.

10. Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counter-claim in the bank™s application before the Tribunal, so that both can be heard and disposed of by the Tribunal.

11. In *State Bank of India vs. Ranjan Chemicals Ltd. and Another*[4], a two- Judge Bench considered the matter from the perspective of whether it was just and proper to order a joint trial of two cases i.e. one before the DRT and another before the Civil Court. The two-Judge Bench referred to *Abhijit™s*[5] case (supra) and observed that though a borrower-company always had an option to sue the bank in a civil court, it does not in any manner affect the power of the Court to order a joint trial of the applications. There was no warrant of curtailing the power of the Court to order a joint trial by introducing a restriction that it can be done only if there was consent by both sides, though a claim in an independent suit could be considered as a claim for set-off and a counter-claim within the meaning of Section 19 of the RDB Act. In such an eventuality the only question was whether in the interest of justice, convenience of parties and avoidance of multiplicity, the suit should be transferred to the DRT to be

tried as a cross-suit. Thus the Bench leaving Ranjan Chemicals Case held in effect that the consent of the parties for transfer of the suit to the DRT was not necessary, as held in the Indian Bank Case (supra). In a subsequent decision of this Court by another two-Judge Bench in Nahar Industrial Enterprises Limited vs. Hong Kong and Shanghai Banking Corporation[6], the issue cropped up again. The Court considered the three authorities referred to above i.e. United Bank of India, Calcutta vs. Abhijit Tea Co. Pvt. Ltd. and Others[7]; Indian Bank vs. ABS Marine Products (P) Ltd.[8] and State Bank of India vs. Ranjan Chemicals Ltd. and Another[9]. The two-Judge Bench in this case i.e. NaharTMs case (supra) observed that in the Indian BankTMs case, the Court had come to the conclusion that the respective claims of the parties were not inextricably connected and therefore the transfer of a suit to the Tribunal can only be on the basis of the consent of the parties. The Bench in Indian Bank case had held that the claims can be transferred only if the following two conditions exist:

12. Inextricable connection of the subject matter of the two proceedings; and The agreement of both parties that the suit should be transferred to the Tribunal.

13. It further directed that the Bench in Ranjan Chemicals[10] case was bound by the decision in the Indian Bank Case[11] being a co-ordinate Bench, and therefore, could not have taken a contrary view by holding that the Court can consider a suit to be a claim of ~set-offTM and transferred to the Tribunal for being tried jointly with the application filed by the bank as a cross-suit and that too without the consent of parties. The Bench, vide para 60, held as under:

14. We are in agreement with all the above observations of this Court. Ranjan Chemicals[12] was bound by the decision rendered in Indian Bank[13] being a coordinate Bench. It could not have taken a contrary view. Though having so observed, the Bench apparently did not consider it appropriate to have the matter decided by a larger Bench. It was held that if all suits whether inextricably connected with the application filed before the DRT by the Bank are transferred, the same would amount to ousting the jurisdiction of the civil court indirectly and consent of the plaintiff is necessary for transferring the suits. This finding is in consonance with the observation of the Court in the Indian BankTMs Case[14] but is at variance with the Judgment in Ranjan Chemicals[15] case. According to the last judgment i.e. NaharTMs case[16], the Bench deciding Ranjan Chemicals case could not have taken a contrary view but was bound by the decision rendered in the Indian Bank case. Many other

aspects of variance and consonance have been pointed out to us but we have not dealt with them in view of the one aspect alone, which has been highlighted. Mr. Shyam Divan, learned senior counsel appearing for the appellant relied upon the decision of this Court in *Jit Ram v. State of Haryana*[17] and *Union of India v. Godfrey Philips India Ltd.*[18], where in paragraph 12, this Court observed as follows:

..We find it difficult to understand how a Bench of two Judges in *Jit Ram* case could possibly overturn or disagree with what was said by another Bench of two Judges in *Motilal Sugar Mills* case[19]. If the Bench of two Judges in *Jit Ram* case found themselves unable to agree with the law laid down in *Motilal Sugar Mills* case, they could have referred *Jit Ram* case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same Court in *Motilal Sugar Mills*. We have carefully considered both the decisions in *Motilal Sugar Mills* case and *Jit Ram* case and we are clearly of the view that what has been laid down in *Motilal Sugar Mills* case represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in *Jit Ram* case to the extent that they conflict with the statement of the law in *Motilal Sugar Mills* case and introduce reservations cutting down the full width and amplitude of the propositions of law laid down in that case. Shri Divan submitted that the Bench deciding *Ranjan Chemicals Case*[20] had decided at variance with the Judgment in *Indian Bank* case[21]. They were Benches of coordinate strength and the latter ought to have referred the matter to a larger Bench instead of taking a contrary view. The learned senior counsel also pointed out that this, in fact is the exact observation of the Bench in *Nahar Chemicals Case*[22] which did not also consider it appropriate to refer the issues to a larger Bench.

15. Mr. Jaideep Gupta, learned senior counsel appearing for the respondent submitted that the matter does not call for a reference as there is complete consistency in the views of the Court in *Indian Bank* case (supra) and *Nahar* case (supra) since both the judgments have taken the view that the jurisdiction of the civil courts has not been ousted and a suit filed before the civil court can be transferred to the DRT only with the consent of both parties. According to the learned counsel, *Nahar Chemicals Case* (supra) is the last word on the point and it must be taken to lay down the correct law, and in any case the law which is binding.

16. It is not possible to accede to the submissions made on behalf of the respondent as pointed out above. There is a difference of opinion between several Benches of this Court on the issue. This is likely to create a doubt as to the true position in law, hence we consider it appropriate to refer the following questions of law to a larger Bench: Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the DRB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT? If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff? Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to proceedings for recovery of debt by a Bank or Financial Institution?

17. At this stage, Shri Diwan, learned senior counsel for the appellant prayed for stay of further proceedings in the two suits being Civil Suit No. 77 of 1998 and Civil Suit No. 129 of 1999, both titled VCK Shares & Stock Broking Services Ltd. Vs. Bank of Rajasthan pending before the High Court of Calcutta. The suits are apparently pending since the years 1998 & 1999 and due to various proceedings, which have been taken out by the parties, have virtually remained stationary. We are informed that the suits are at the stage of amendment of the pleadings, which have not been carried out. Suffice it to say that there is virtually no progress in the suits and much progress is not likely to take place for a long time. Moreover, the respondent “ plaintiff has made a monetary claim, the satisfaction of which can be appropriately ensured by any order which may be passed in the proceedings. We thus see no reason to direct stay of the suits. The interim relief prayed for the same is rejected. In view of above, the Registry is directed to place the papers before the Hon'ble Chief Justice of India for taking appropriate action in accordance with law.

[1] [2] (2000) 7 SCC 357 [3] [4] (2006) 5 SCC 72 [5] [6] (2000) 7 SCC 357 [7] [8] (2007) 1 SCC 97 [9] [10] (2000) 7 SCC 357 [11] [12] (2009) 8 SCC 646 [13] [14] (2000) 7 SCC 357 [15] [16] (2006) 5 SCC 72 [17] [18] (2007) 1 SCC 97 [19] [20] (2007) 1 SCC 97 [21] [22] (2006) 5 SCC 72 [23] [24] (2007) 1 SCC 97 [25] [26] (2006) 5 SCC 72 [27] [28] (2006) 5 SCC 72 [29] [30] (2007) 1 SCC 97 [31] [32] (2009) 8 SCC 646 [33] [34] (1981) 1 SCC 11 [35] [36] (1985) 4 SCC 369 [37] [38] (1979) 2 SCC 409 [39] [40] (2007) 1 SCC 97 [41] [42] (2006) 5 SCC 72 [43] [44]

(2009) 8 SCC 646