

RAJASTHAN HIGH COURT

Bank of Rajasthan Ltd.

Vs.

Rajasthan Breweries Ltd.

C.W.P. No. 4835 of 2000

(Dr. A.R. Lakshmanan, C.J. and A.K. Parihar, J.)

21.12.2000

JUDGMENT

Dr. A.R. Lakshmanan, J.

1. The Bank of Rajasthan Ltd. is the petitioner in this writ petition. The writ petition was filed with the following prayers:

(i) to quash the order dated 13.10.2000 passed by the learned Debts Recovery Appellate Tribunal, New Delhi whereby the appeal has been entertained by the learned Debts Recovery Appellate Tribunal, Delhi and notices have been issued for summoning the parties;

(ii) to declare that the learned Debts Recovery Appellate Tribunal, New Delhi has no jurisdiction to entertain the appeal against the orders dated 5.7.2000 and 6.9.2000 passed by the learned Debts Recovery Tribunal, Jaipur;

(iii) to quash the entire proceedings of appeal Nos. 191/2000 and 192/2000 by holding that no appeal was maintainable against the orders dated 5.7.2000 and 6.9.2000 passed by the learned Debts Recovery Tribunal, Jaipur and restrain the Debts Recovery Appellate Tribunal, New Delhi from proceeding further in the matter of hearing of the appeal;

(iv) and may pass any other appropriate order or direction which this Hon'ble Court considers just and proper in the facts and circumstances of the case in favor of the petitioner.

2. The short facts of the case which are relevant for the disposal of this writ petition are as under:

The petitioner Bank sanctions certain credit facilities to first respondent here in pursuance to the application of the respondent No. 1. According to the Bank, the loan application was considered in the meeting of the Board of Directors of the Bank held on 6.1.95 within the territorial limits of jurisdiction of the Debts Recovery Tribunal, (for short DRT), Jaipur. The Bank sanctioned the credit facilities as per the terms and conditions mentioned in the sanction letter dated, 20th January, 1995. In consideration of the Bank's granting credit facilities, the respondent No. 1 executed various documents. As the respondent No. 1 failed to make the payment and committed breach of the agreement, the Bank was constrained to institute proceedings before DRT, Jaipur for recovery of a sum of Rs. 11,34,83,080/- and claimed various reliefs; such as :

- (a) a decree for the amount claimed against respondent Nos. 1 to 7 jointly or severally;
- (b) auction the movable goods, plant and machinery, etc.
- (c) and other incidental and ancillary prayers concluding the appointment of receiver to take actual physical possession of all the movable and immovable properties of the respondents;
- (d) a further prayer restraining the respondents from transferring, alienating or otherwise disposing of or parting with possession of any of its movable and immovable properties till the realization of all outstanding dues were also made.

3. The above application was filed under Section 19 of the Act of 1993 before the DRT, Jaipur. The respondents, pursuant to the receipt of the summons appeared before the DRT on 5.7.2000 and moved an application seeking seven days' time to file objections with regard to the jurisdiction of the DRT, Jaipur. On the said date, the DRT, Jaipur passed a detailed order wherein it had observed that regarding the territorial jurisdiction, it can only be decided after hearing both the parties on the pleas taken by them and, therefore, directed the respondent Nos. 1 to 8 to file their reply to the Original Application as well as to the miscellaneous applications. A copy of the order has been marked as Annexure-3.

4. The respondent Nos. 1 to 7 filed an application for vacation of the interim order dated 26.6.2000 on 21.7.2000. On the same day, they also filed an application for extension of time for filing the reply. According to the petitioner Bank, on 25.7.2000, detailed arguments were heard by the DRT, Jaipur on the application of the defendants for vacation/modification of the order dated 26.6.2000 and the DRT Jaipur passed an

order on 26.7.2000 (Annex. 6).

5. Respondent Nos. 1 and 2 also filed an application under Section 19(25) of the Act of 1993 raising the ground that the DRT, Jaipur has no jurisdiction to entertain and decide the application filed by the applicant Bank. The said objection has been raised on the basis of agreement dated, 26.1.1995 wherein it has been stated that all disputes shall be subject to the jurisdiction of the Delhi Court. The DRT, Jaipur, passed an order on 6.9.2000 whereby the question of interim injunction passed by the DRT was decided. As regards the jurisdiction of the Tribunal, the DRT, Jaipur, specially mentioned in the order dated, 6.9.2000 that such jurisdiction question will be determined after framing the issues on these points. The DRT, as already noticed, passed orders on various dates and listed the case on various dates. During the course of the proceedings before DRT, the defendant by giving application on 17.10.2000 sought an adjournment on the ground that against the order dated 5.7.2000 and 6.9.2000 passed by the DRT, Jaipur, the respondent Nos. 1 to 7 filed two appeals before the Debt Recovery Appellate Tribunal, New Delhi, which have been registered as Misc. Appeal Nos. 191/2000 and 192/2000 respectively. It was also contended on behalf of the respondents that since the Appellate Tribunal is now seized with the matter specially where the question of jurisdiction has been challenged and notices have been issued with regard to the jurisdiction for 25.10.2000, the DRT, Jaipur should adjourn the proceedings pending before it. Being aggrieved by the proceedings pending before the Appellate Tribunal, New Delhi, the Bank has filed this writ petition under Articles 226 and 227 of the Constitution of India before this Court by contending that :

(a) No appeal lies against the order passed on miscellaneous application when such an application was neither entertain able by the Tribunal nor it was covered under Section 19(25). The respondents had also challenged the jurisdiction of the Tribunal, which objection could have been taken only in their reply and further an appeal is provided under Section 20 of the Act against the final order passed by the Tribunal under Section 19 of the Act. The present appeals filed before the Appellate Tribunal, New Delhi, are not competent.

(b) The Tribunal, Jaipur, has not committed any error by holding that the objection can be raised by the respondents herein the written statement and the question of jurisdiction will be determined after framing a point of issue on this point. Since the recovery Tribunal has exercised its jurisdiction vested in it by law, there is no material illegality in the exercise of jurisdiction.

(c) Though, Section 20 of the Act of 1993 provides that any person aggrieved by an order made or deemed to have been made by a Tribunal may prefer an appeal to the Appellate Tribunal, that does not mean that every order whether it is executive or administrative order or judicial or non-judicial order that is appealable before the Tribunal. According to Mr. Kuhad, learned Counsel for the petitioner Bank, the order herein means the final order passed by the Tribunal on the original application and a reading of the provisions of Section 17 read with Sections 19 and 20 and Act would clearly demonstrate that orders which are passed on the application under Section 19 are then only appealable orders. In this view, Mr. Kuhad submitted that the orders passed by the DRT, Jaipur, dated 5.7.2000 and 6.9.2000 are not covered under any order passed under Section 19 of the Act.

(d) It is also submitted by Mr. Kuhad that if there is no provision in the Act for filing an appeal, no appeal shall lie and appeal in essence enables the review of the decision of the lower Court by high forum and it means for an appeal there should be decision of the lower Court. Certain other grounds have also been raised in regard to the maintainability of the appeal, with which we are not presently inclined to consider the merits of the submissions.

6. A reply on behalf of respondent Nos. 1 and 2 to the stay application was also filed. In addition to the reply an application for adjournment was also filed by respondents/defendants before the Tribunal. In the application also for adjournment, it has been specifically raised that the question of jurisdiction does not lie with the DRT, Jaipur, as the parties themselves have entered into agreement whereby they have conferred jurisdiction to Delhi Courts only. According to the respondents, the question of the jurisdiction has to be decided first and specially when there is a specific agreement to this effect and, therefore, no evidence is required. Therefore, the direction issued by the DRT with regard to the jurisdiction that the question of jurisdiction would be decided after obtaining pleadings of both the parties is not legal and correct. Since the Appellate Tribunal is now seized with the matter and specially when the question of jurisdiction has been challenged and a notice had been issued with regard to the jurisdiction, it is submitted by Mr. R.K. Anand, Sr. Advocate that it would be appropriate if the Tribunal is directed to adjourn the matter and take up the same after the Appellate Tribunal would hear and decide the matter.

7. In the reply it is also submitted by Mr. R.K. Anand that since the agreements were

executed at New Delhi and Banking facilities were extended to the respondents from the South Extension, New Delhi Branch, the Tribunal at Jaipur has no jurisdiction to entertain and decide the case.

8. We have given our anxious consideration to the questions at issue, the arguments advanced by Mr. Paras Kuhad, reply by Mr. R.K. Anand and other learned Counsel appearing for the other parties.

9. While issuing a show cause notice on 24.10.2000 as to why the Write Petition should not be admitted and disposed of at the stage, a Division Bench of this Court stayed the proceedings before the Debt Recovery Appellate Tribunal, New Delhi, in Appeal No. 191/2000 till the disposal of the stay application and also permitted the Debt Recovery Tribunal, Jaipur to proceed with the case. Since the appeals filed by the respondents herein are stayed by this Court and are pending final adjudication, it is not proper for us to express any opinion on the question raised by the Bank of Rajasthan in regard to the maintainability of the appeal pending before the Appellate Tribunal at New Delhi. We, therefore, are not inclined to express any opinion on the contentions raised at this stage, which would ultimately depend upon the orders that may be passed by the Debt Recovery Tribunal, Jaipur, in regard to its jurisdiction to decide the original application filed by the Bank of Rajasthan before it for recovery of loan amount and other consequential reliefs.

10. Pending writ petition an application under Article 226(3) of the Constitution of India was also filed on behalf of respondent Nos. 1 and 2. The said application was filed to vacate the *ex parte* stay order dated, 24.10.2000 whereby the proceedings before the DRAT, New, Delhi, in Appeal No. 197/2000 stayed. A was reply to the said application was also filed by the Bank of Rajasthan.

11. As already noticed, the original application filed by the Bank of Rajasthan is pending before the DRT, Jaipur. Pending original application an application under Section 19(25) of the Act was also filed on behalf of respondent Nos. 1 and 2 for rejection of original application wherein it is stated that under the relevant clause of the agreement, the parties have agreed that all the disputes shall be subject to the jurisdiction of Delhi Courts and that the loan agreement was entered into at New Delhi Branch and loan facilities were also availed from New Delhi Branch of the Bank only and, hence, the Tribunal at Jaipur has no jurisdiction to entertain and decide the

application filed by the Bank. It was prayed that the Tribunal should pass an order rejecting the plaint/application for want of jurisdiction and vacate interim order passed by the Tribunal on 26.6.2000 and pass appropriate further orders.

12. We have perused the order passed by the Debt Recovery Tribunal, dated, 6.9.2000. The Tribunal, for the reasons recorded, has opined that no case is made out to vacate the order passed by the Tribunal on 26.6.2000 under which the Tribunal had restrained the defendants only regarding defendants No. 1's movable and immovable properties which were mortgaged/hypothecated to the Bank. By order dated, 5.7.2000, the Tribunal has ordered that the order of jurisdiction will be decided after obtaining pleas of both the parties i.e. after filing of the written statement by the defendants and that the question of jurisdiction will be determined after framing of issue on this point. As already noticed, the appeals were filed against the said order in the Appellate Tribunal at New Delhi.

13. According to Mr. Paras Kuhad, in view of the order dated, 20.7.2000 passed by Naolekar, J. The appeals filed by the respondents herein are not maintainable and that the said order was passed by agreement of the parties and that both the parties have agreed that the matter which is already pending before the Debts Recovery Tribunal, Jaipur for recovery of the debts may be decided by the Tribunal and, therefore, the agreed order cannot be made a subject-matter of appeal before the Tribunal. By the said order dated, 20.7.2000, the learned Judge has directed the Debts Recovery Tribunal to adjudicate and decide the matter within a period of three months from placement of the said order before the Tribunal and directed the Company Petition to be kept pending. Placing reliance on this order, Mr. Kuhad submitted that a bare perusal of the said order reveals that the respondents No. 1 has specifically agreed to the jurisdiction of the DRT, Jaipur. This statement was controverted by Mr. R.K. Anand, Counsel appearing for the respondents. It is not clear from the above order that the question of jurisdiction of the DRT which was raised by the respondent herein, was brought to the notice of the learned Single Judge. There is no indication in the order that the said fact was also brought to the notice of the learned Judge who was dealing with the Company Petition. Had it been brought to the notice of the learned Single Judge, the learned Judge would have issued appropriate direction. A reading of the order would show that the learned Judge was under the impression that since the matter is pending before the DRT for adjudication in regard to the recovery of the debts, the learned Judge has directed the Tribunal to decide the matter within a period,

no shelter can be taken by Mr. Kuhad on the question of deciding the jurisdiction issue by the Tribunal.

14. According to respondent Nos. 1 and 2, the petitioner Bank had filed the claim petition before the Tribunal at Jaipur on the strength of the four agreements dated, 21.9.95. The said agreement according to Sri Anand contains a jurisdiction clause vide which the parties are mutually agreed to resolve the dispute at the Court at Delhi only and thereby ousting jurisdiction of other Courts. The said clause is reproduced herein for ready reference :

"Agreement shall be subject to the jurisdiction of the Courts at Delhi."

15. It is also seen from the proceedings of the Tribunal dated 5.7.2000 that the respondents sought time to file reply to the original application. It is also seen that on the first date of appearance, the respondents raised the disputes regarding jurisdiction of the Tribunal at Jaipur to entertain the application. According to the respondents, all the documents pertaining to the said credit facilities were executed at Delhi and despite admitting fact that there is a specific agreement with regard to the jurisdiction, the Tribunal had failed to decide the issue of jurisdiction first, which is contrary to the laws. Therefore, Mr. Anand submitted that the question of jurisdiction ought to have been decided first.

16. We see much force and substance in the said submission of Mr. Anand. It is settled law that parties to an agreement can mutually choose and agree for adjudication of their disputes to a particular Court if different Courts have jurisdiction to try and entertain the disputes *inter se* the parties. It is also settled law that the parties who have signed the agreement are bound by that agreement. Under such circumstances, the Tribunal ought to have decided the question of jurisdiction first.

17. The respondents on 2.8.2000 also filed an application under Section 19(25) of the Act challenging jurisdiction of the Tribunal. However, after hearing detailed arguments advanced by both the parties on the interim application as well as the application challenging jurisdiction of the Tribunal, the Tribunal by order dated 6.9.2000 declined to vacate or modify the order dated 26.6.2000. The Tribunal, in our view, has failed to decide the issue of jurisdiction and kept the application of the respondents herein in abeyance on the ground that the same will be decided obtaining

pleas of both the parties as ordered vide order dated 5.7.2000. However, it is not in dispute that detailed submissions and arguments were advanced by both the parties. Though arguments were advanced by both the sides in regard to the maintainability of the appeals under Sections 17 and 20 to the Appellate Tribunal, we are not expressing any opinion on the said issue which, in our opinion, depends upon the order to be made by the Tribunal in regard to its jurisdiction to entertain and decide the plaint filed by the Bank. In our view Section 19(25) of the Act empowers the Tribunal to pass orders/directions to prevent abuse of its process or to secure ends of justice. In our view, the application under Section 19(25) challenging jurisdiction of the Tribunal is maintainable. The balance of convenience lies in favor of the respondents.

18. Mr. Paras Kuhad, on the other hand, submitted that the petitioner Bank is functioning as a Bank within the territorial jurisdiction of the DRT, Jaipur and it has its Registered Office at Jaipur within the territorial jurisdiction of the DRT, Jaipur as well as it has its Central Office at Udaipur. Further, the acceptance of the proposal for sanctioning the credit facilities, etc. have also taken place at Jaipur. The loan application of the respondent No. 1 was considered in the meeting of the Board of Directors of the Bank at Jaipur, as such, the application filed under Section 19 of the Act within the jurisdiction of the DRT, Jaipur.

19. In view of the above contentions, it is for the Debt Recovery Tribunal to decide the question of territorial jurisdiction first and then subject to the said decision on the jurisdiction issue to proceed further, We, therefore, direct the Debt Recovery Tribunal, Jaipur to decide the question of its territorial jurisdiction within one month from the date of receipt of this order. The parties to the action are permitted to file additional written pleas in support of their contentions in regard to the territorial jurisdiction of the Tribunal. It shall decide the jurisdiction issues as already indicated, within the time stipulated above in the meanwhile interim order passed by the DRT, Jaipur shall be in force. Likewise, the order passed by this Court staying proceedings which are pending before the Debt Recovery Appellate Tribunal, New Delhi, in Appeal No. 191/2000 shall be in force till the disposal of the decision in regard to the jurisdiction issue. The Debt Recovery Tribunal is directed to proceed now only with regard to the jurisdiction issue and proceed further to decide the case on merits subject to the final outcome of the order that may be passed.

20. In view of the above direction, there is no need or necessity to refer to the

decisions cited by Mr. Paras Kuhad contending that every order will not include the interim order, etc. Though, some judgments were also cited by the learned Counsel for the parties in regard to the maintainability of the writ petition and availability of the alternative remedy. We are not expressing any opinion in regard to the view taken in those judgments for the present case in view of our direction issued to the Tribunal to decide the question of jurisdiction.

21. The Writ Petition is disposed of accordingly.

Writ Petition disposed of accordingly.