
(1995) 10 DEL CK 0017
Delhi High Court
Case No: Suit No. 769 of 1993

Anz Grindlays Bank

APPELLANT

Vs

NHPC Ltd. and Others

RESPONDENT

Date of Decision: Oct. 10, 1995

Acts Referred:

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

Citation: (1995) 60 DLT 610

Hon'ble Judges: S.D. Pandit, J

Bench: Single Bench

Advocate: V.N. Kalra, M.S. Dutta, J.C. Seth and Mahendra Rana, for the Appellant;

Judgement

S.D. Pandit, J.

(1) This suit is filed by Anz Grindlays Bank against three defendants. It is the case of the plaintiff that on or about 2nd of April, 1992 plaintiff purchased from defendants 2 & 3 9% NHCP 1987 (B-Series) Bonds worth Rs. 2,58,95,000 .00 for a consideration of Rs. 2,20,10,750.00 . The said bonds are issued by defendant No. 1.

(2) It is the claim of the plaintiff that when they had purchased the said bonds they had also purchased Along with the said bonds the interest warrants to be issued by defendant No. I against the said bonds in favor of defendants 2 & 3. It is their claim that they were to get the interest warrants not only as on the date of transaction between the parties but also the interest warrants for the future. It is the further claim of the plaintiff that defendants 2 & 3 are not handing over the said interest warrants to them and they were not abiding by the terms of the contract between the parties. Therefore, plaintiff has filed the present suit to get a decree for recovery of interest warrants by way of issuing a mandatory injunction against defendants 2 & 3 to deliver them the interest warrants issued and issuable by defendant No. I. In the alternative the plaintiff-Bank has made a claim in cash of the amount which accrued against the interest warrants which, according to them, they are entitled to

get for non-delivery of the said interest warrants. They have further made a claim against defendant No. 1 by way of a decree of perpetual injunction to restrain defendant No. 1 from negotiating the interest warrants purchased by defendants 2 & 3 and to restrain them to get encashment of interest warrants issued by defendant No. 1 in their favor.

(3) It is not necessary to mention in detail the contentions raised on behalf of the defendants in the suit. It is suffice to mention that defendants 2 & 3 do not accept any of the claims made by the plaintiff against them. Their main contention is that there was no agreement between the parties and they had never agreed to give the interest warrants to the plaintiff and they had only sold the 9% NHPC (B-Series) 1987 Bonds. I am not going in detail regarding the other contentions raised by the defendants in this suit because I am only considering the question as to whether the present suit falls within the purview of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the said Act of 1993) and whether the present suit will have to be transferred to the Tribunal established under the said Act of 1993.

(4) It is the main contention of defendants 2 & 3 in the suit that the transaction between the parties is not at all covered by the said Act of 1993. It is contended on their behalf that plaintiff is seeking the relief of injunction and there is no relief claimed by the plaintiff of the recovery of debt and, consequently, the suit is not covered by the said Act of 1993. Section 17 of the said Act of 1993 reads as under:-

"17. Jurisdiction, powers and authority of Tribunals.-(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions/or recovery of debts due to such banks and financial institutions. (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

(5) Along with Section 17 of the said Act it is also necessary to consider the definition of "debt" as given in Section 2(g) of the said Act of 1993, which reads as under:-

Section 2(g):- "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institutions or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable on, the date of this application."

(6) The emphasized portion of the said definition of debt is governing the controversy raised in this suit. Admittedly, plaintiff is a bank and if the definition of

"banking business" as given in Section 6A of the Banking Regulation Act is considered then it would be quite clear that it is the business of a bank to indulge in sale and purchase of bonds. Therefore, the transaction which has taken place between the plaintiff and defendants 2 & 3 is a transaction covered under the definition of "banking business".

(7) As per the definition of "debt" any liability which is alleged as due by a bank against any person during the course of any business activity undertaken by the bank, in cash or otherwise, whether secured or unsecured, will amount to a debt. It is the case of the plaintiff-Bank that they had purchased the bonds worth Rs. 4,50,00,000.00 Along with interest warrants payable in future from defendants 2 & 3. It is the further claim of the plaintiff-Bank that though they had purchased the said bonds Along with interest warrants, defendants 2 & 3 are not handing over the interest warrants to them and, Therefore, they have come before this Court to recover from them the said interest warrants. Thus, the liability which the plaintiff-Bank is claiming against defendants 2 & 3 is the liability of handing over the interest bonds and that claim would fall within the definition of debt as given in Section 2(g) of the said Act of 1993.

(8) No doubt the plaintiff has made an alternative plea of money in lieu of handing over the interest warrants but merely because they have made the alternative claim in money, it could not be said that their claim would not amount to a debt within the definition of Section 2(g) of the said Act of 1993. It must be remembered that whenever the plaintiff is coming to a Court for getting possession of movable property, it is incumbent on him to make an alternative claim of money in lieu of movable property. Not only that claim is to be made by the plaintiff in the plaint, but under the provisions of Order Xx Rule 10 of the CPC it is also the mandatory duty of the Court whenever it passes a decree for delivery of movable property to make it clear in the decree to give the alternative relief in money in lieu of the movable property. The claim of the plaintiff is for recovery of interest warrants and, Therefore, it was incumbent on the plaintiff to make the alternative prayer for payment of money in cash in case the defendants fail to deliver the interest warrants. Because if such alternative relief is not made by the plaintiff or is not granted by the Court under the provisions of Order Xx of the Code of Civil Procedure, then the decree passed by the Court would remain a paper decree with no relief to the party. Therefore, merely because the claim of money by way of damages is claimed by the plaintiff against defendants 2 & 3 their suit will not go out of the provisions of the said Act of 1993.

(9) No doubt the plaintiff has made claim of decree of injunction against defendant No. I as well as defendants 2 & 3 but we have to see as to what is the real claim of the plaintiff. Merely because a decree for injunction is sought it could not be said that that claim is not a claim for recovery of debt, as contemplated by the said Act of 1993. The plaintiff wants injunction against defendant No.1 not to encash the

interest warrants in favor of defendants 2 & 3 and plaintiff also wants defendants 2 & 3 to be restrained by injunction not to get the interest warrants in their possession encased from defendant No.1. These two injunctions are sought by the plaintiff in order to get the real and final relief of getting the recovery of its debt from defendants 2 & 3. When the Tribunal is to pass a decree for recovery of debt, the Tribunal will have the necessary jurisdiction to give appropriate ancillary relief of injunction in order to see that its decree for recovery of debt becomes an executable decree. The injunctions sought in the suit are ancillary reliefs to the main relief of recovery of debt and those ancillary reliefs will have to go along with the main relief decree of recovery of debt. In view of the facts of the case it is not

(11) Therefore, in view of the discussion above, I hold that the suit in question is a suit for recovery of debt by a banking institution. The recovery sought in the suit is of the property worth more than Rs. 10,00,000/-. Consequently, the suit will have to be transferred to the Tribunal established under the said Act of 1993.

(12) I, Therefore, pass the following order:-

"1. Suit be transferred to the Tribunal established under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. 2. Parties to appear before the Joint Registrar on 30th November, 1995."