

(2002) 11 DEL CK 0154

Delhi High Court

Case No: IA. No's. 5971-5972 of 2002 in S. No. 1270 of 1985

Punjab and Sind Bank

APPELLANT

Vs

Rama Minerals and Chemicals
and Others

RESPONDENT

Date of Decision: Nov. 15, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 151, 24
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 17, 18, 19, 2, 31

Citation: (2003) 1 BC 388 : (2003) 115 CompCas 883 : (2003) 66 DRJ 550 : (2003) 42 SCL 1

Hon'ble Judges: Surinder Kumar Aggarwal, J

Bench: Single Bench

Advocate: Ajit Singh, for the Appellant; Rakesh Munjal and Sumant De, for Defendant No. 6, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Agarwal, J.

IA. No. 5971/2001

1. This order will dispose of application under Order 9 Rule 13 read with Section 151 CPC for setting aside ex-parte decree dated 20.2.1998 moved by defendant No. 6 as per amended memo of parties (defendant No. 5 as per original memo of parties).

2. The plaintiff, Punjab and Sind Bank, filed a suit for recovery of Rs. 7,69,340.36 together with interest thereon. The amount is recoverable by selling the immovable properties mortgaged by defendant No. II with the bank. The defendants were proceeded ex-parte. On 20th February, 1998 ex-parte decree was passed. It is pleaded that the defendants were never served summons/notices. The defendants became aware of the decree only on receipt of the recovery notice from the

Recovery Office after execution proceedings were initiated by the Debt Recovery Tribunal No. 2, Delhi. It is pleaded that the applicant was residing at Saharanpur, where he was working since 1968; as per the service report, defendants including applicant were not found at the given address on 6.5.1986; the service report dated 21.8.1986 shows that summons/notices were returned back with the report "refused" and as per the service report of 25.9.1986 summons were returned "unserved", "not residing at the given address". Thus, it is pleaded that the service reports are self-contradictory. The defendants were served by publication in English daily "Statesman" on 20.1.1987 having circulation in Delhi. The same could not be read by the applicant as the same was not in circulation in U.P. The applicant was working as a Senior Chemist in Star Paper Mills Ltd., Saharanpur, U.P. and did not have the knowledge of the suit. It is pleaded that the applicant did not execute any document, and thus has prayed for setting aside the decree dated 20.2.1998.

3. Notice of the application was issued. Learned counsel for the plaintiff raised a preliminary objection that the decree to be executed aside judgment and decree is not maintainable in this court and would be maintainable only before the Debt Recovery Tribunal (for short "DRT") constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). There is some typographical error in the order dated 2.5.1988. The defendants 4 to 7 were in fact proceeded ex-parte on 20.4.1987 and not on 20.4.1988. Learned counsel for the applicant argued to the contrary.

4. Learned counsel for the applicant argued that in this case, defendants were proceeded ex-parte and ex-parte decree was passed against them on 20.2.1998 by this court. Therefore, the order proceeding ex-parte on 20.4.1987 can only be set aside by this court and not by the Tribunal. Learned counsel argued that the court which passed the decree along has the jurisdiction to set aside the same. In support of his submission, reliance was placed on the Supreme Court decision in Krishna Singh v. Mathura Ahir and Ors. AIR 1982 SC 636 and in Official Receiver, Bangalore v. Sellamma AIR 1973 Mys 154.

5. Law in this regard is settled. The decretal amount being a debt as envisaged u/s 2(g) of the Act would fall u/s 17 and 18 of the Act, which gives exclusive jurisdiction to the DRT under the Act. Section 31 of the Act deals with the transfer of the cases. It reads as under:

"31. Transfer of pending cases, - (1) Every suit of 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 Tribunals; and

(b) the Tribunal may, on receipt of such records, proceeding 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 u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit."

6. The reading of the aforesaid section shows that even the execution proceeding pending in the Civil Court when the Act came into force stood transferred to the Tribunal if the amount for which the execution application was filed was over Rs. 10 lacs as held by the Supreme Court in Punjab National Bank, Dasuya v. Chajju Ram and Ors. 2000 ISJ (Banking) 631. In this case, admittedly, the decree sought to be executed is above Rs. 50 lacs, Therefore, the suit and proceedings thereon stood transferred by operation of law.

7. In another decision, the Supreme Court in Hara Parbati Cold Storage v. UCO Bank 2000 ISJ (Banking) 657, it was laid down that the suits originally instituted in the High Court or transferred to it would get transferred by operation of Section 31 of the Act. It was held:-

"4. The fact that the suit was originally filed in the Assistant District Court and was transferred u/s 24 of the CPC to the Original Side of Calcutta High Court to be tried in its extraordinary jurisdiction, in our opinion makes no difference, if initially a suit is filed on the Original Side of the High Court, such a suit is liable to be transferred if it exceeds the pecuniary limits mentioned in the above said Act. This is a consequence of Section 31 of the Act. There is no difference between suit originally instituted on the Original Side of the High Court and those suits subsequently transferred to the High Court from a civil court u/s 24 of the C.P.C. Both types of suits get automatically transferred to the Tribunal and the High Court has no jurisdiction to deal with the matter ." (emphasis supplied)

8. Again in a recent decision, the Supreme Court in Union of India v. Delhi High Court Bar Association 96 (2002) DLT 726 (SC), while upholding the validity of the Act, it was held as under:-

"25. With the establishment of the Tribunals, Section 31 provides for the transfer of pending cases from Civil Courts to the Tribunal. We do not find such a provision being in any way bad in law. Once a Debt Recovery Tribunal has been established, and the jurisdiction of Courts barred by Section 18 of the Act, it would be only logical that any matter pending in the Civil Court should stand transferred to the Tribunal. This is what happened when the Central Administrative Tribunal was established. All cases pending in the High Courts stood transferred. Now that exclusive jurisdiction

is vested in the Banking Tribunal, it is only in that Forum that Bank cases can be tried and, Therefore, a provision like Section 31 was enacted." (emphasis supplied)

9. Thus, by virtue of Section 31 of the Act, the suit and all proceedings emanating there from stood transferred to the DRT constituted under the Act. Therefore, the application for setting aside ex-parte decree dated 20.2.1998 or any other previous order passed during the trial could be moved only before the DRT instituted under the Act and not in this Court.

For the foregoing reasons, application is rejected. Any observation made herein shall not affect the merits of the application, when moved before the Court of competent jurisdiction.

IA. No. 5972/2002

For the reasons stated in I.A. No. 5971/2002, this application is dismissed as not maintainable.