United Bank Of India, Calcutta vs Abhijit Tea Co.Pvt.Ltd. And Ors on 5 September, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2957, 2000 (7) SCC 357, 2000 AIR SCW 3203, 2000 CLC 2159 (SC), (2000) 10 JT 125 (SC), 2001 (1) ALL CJ 143, 2000 (4) COM LJ 92 SC, 2001 (3) LRI 1315, 2000 (8) SRJ 453, 2001 ALL CJ 1 143, (2000) 4 ALLMR 875 (SC), (2000) 2 CAL HN 13, (2000) 4 COMLJ 92, (2001) 1 RECCIVR 168, (2000) 6 ANDHLD 55, (2000) 6 SCALE 283, (2000) 6 SUPREME 183, (2000) 4 ICC 573, (2000) 3 UPLBEC 2394, (2001) 1 BANKCLR 421, (2001) 43 ALL LR 602, (2000) 102 COMCAS 53, (2001) 1 MAD LJ 100, (2001) 1 BANKCAS 1, (2001) 1 MAD LW 272, (2001) BANKJ 1

Author: M. Jagannadha Rao

Bench: M. Jagannadha Rao, Doraiswamy Raju

PETITIONER:
UNITED BANK OF INDIA, CALCUTTA

Vs.

RESPONDENT:
ABHIJIT TEA CO.PVT.LTD. AND ORS.

DATE OF JUDGMENT: 05/09/2000

BENCH:
M. JAGANNADHA RAO J. & DORAISWAMY RAJU J.

JUDGMENT:

M. JAGANNADHA RAO, J.

L....I.....T.....T.....T.....T.....T.....T..J Leave granted.

The appellant Bank is the plaintiff in Suit No.410/85 which is pending on the file of the Calcutta High Court. The respondent-debtor is yet to file its written statement. By 31.12.98, an amount of Rs.31.13 crores is said to be due to the Bank. Initially, in the above suit, a compromise decree was passed by Ajit Kumar Sen Gupta, J. on 29.3.94. It was contended by the Bank that the compromise was based upon a non-existent agreement. On appeal, the said judgment was set aside by a Division Bench of the High Court on 11.8.98 consisting of Ajoy Nath Ray and Dipak Prakas Kundu, JJ.

describing the said judgment as "shocking". The Bench also observed:

> "It was as if a contract was being made attempted to be made out for the parties ....It is no part of the duty of the Court to make an agreement for the parties".

The Bench allowed appeal, awarding costs in a sum of Rs.75,000/-.

As part of the compromise, the learned Single Judge had stayed another suit on mortgage (O.C. (Mortgage) suit No.77 of 1991) filed by the Bank. But the Division Bench set aside the entire compromise decree.

Thereafter, the suit No.410 of 1985 filed by the appellant Bank stood restored before the learned Single Judge. In the meantime, the 'Recovery of Debts Due to Banks and Financial Institutions Act, 1993' (hereinafter called the 'Recovery Act, 1993) came into force in West Bengal. It is stated that it came into force in West Bengal on 27.4.1994. The debtor Company then filed an application T.No. 276 of 1999 that this suit by the Bank should remain on the original side of the Calcutta High Court and be not transferred to the Tribunal under the Act. The contention was that on the crucial date, 27.4.1994, the suit was not pending on the original side but the appeal was pending before the Division Bench and that under section 31(1), appeals did not stand transferred to the Tribunal. It was pleaded that even though the appeal was later allowed on 11.8.98 and the suit was remanded to the Single Judge, it was not a suit "immediately pending" on the original side of the High Court before the crucial date i.e. 27.4.94, in the High Court, as required by Section 31 of the Act. Therefore, it was not covered by Section 31 of the Act. This was the contention in the application filed by the respondent-company seeking retention of the suit on the original side of the High Court of Calcutta.

The above application filed by the respondent- company was allowed by another learned Single Judge on 3.9.99 and the Bank's suit was directed to be retained in the High Court on the basis that the Act did not apply. By the same order, the Registrar of the High Court was restrained from transferring the suit to the Tribunal.

Against the above order dated 3.9.99, the Bank has preferred the present appeal by special leave.

In this appeal, Sri Dhruv Mehta appeared for the appellant-Bank and contended that the High Court erred in not transferring the Bank's suit 410/85 to the Tribunal.

Elaborate arguments were addressed before us by Sri Shanti Bhushan, learned Senior counsel for the respondent-company and Dr. Rajeev Dhawan, learned Senior counsel for the guarantor. We shall deal with these contentions.

An additional point has been raised before us by the learned Senior counsel for the respondent company, Sri Shanti Bhushan that the debtor company had earlier filed suit No.272 of 1985 against the Bank in the High Court for specific performance of an agreement with the Bank and for perpetual and mandatory injunctions and that that suit was integrally connected with the Bank's suit. It was argued that inasmuch as a suit for specific performance and mandatory injunction could

not be transferred to the Debt Recovery Tribunal, this suit filed by the Bank, namely, suit No.410/1985 must also remain in the High Court. We asked learned Senior counsel for the Company and the learned Senior counsel for the guarantor as to whether the said suit by the company (suit No.272/1985) was or was not a suit, in substance, in the nature of a 'counter-claim' and if so, why sub-sections (8) to (11) of section 19 (as introduced by Act 1/2000 by Parliament) could not apply and as to why we should not hold that that suit also fell within the purview of the Act. Counsel submitted that that suit did not fall within the provisions of the Act.

The points that arise for consideration in the appeal are as follows:

> (1) Whether the suit No.410/1985 by the Bank which was disposed by judgment dated 29.3.94 and which judgment was set aside by the Bench on 11.8.98 and remanded to the Single Judge, could not be treated as pending immediately before the commencement of the Act on 27.4.94 (in West Bengal) and whether it could not be transferred to the Recovery Tribunal?
>
> (2) What is the combined effect of Sections 18 and 31 and of the Act on pending proceedings?
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> (3) Whether the pendency of suit No.272/1985 filed by the debtor company against the Bank for specific performance and for perpetual and mandatory injunctions raising common issues between parties in both these suits was a sufficient reason for retention of the Bank's suit No.410/85 on the original side of the High Court to be tried alongwith the Suit No.272/85 filed by the debtor company?
>
> (4) Whether the suit No.272/85 filed by the debtor company was, in substance, one in the nature of a "counter-claim" against the Bank and was one which also fell within the special Act by reason of section 19(8) to (11) of the Act (as introduced by Amending Act 1/2000) and if that be so, whether it could still be successfully pleaded by the respondent-company that the pendency of the company's suit 272/85 was a ground for retention of Bank's suit No.410/85 on the original side of the High Court?

Points 1 and 2:

> Was the Suit 410/85 filed by the Bank pending before the Single Judge on 27.4.94? That is the crucial question. That depends on the interpretation of Sections 18, 31 and 34 of the Act.
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> In the judgment of the High Court now under appeal before us, the learned Single Judge held that when the Act came into force on 27.4.94, the suit was not pending before the Single Judge as the compromise decree was passed on 29.3.94 and in fact the appeal against the said decree was pending before the Division Bench till 11.8.98 and therefore the suit would not stand transferred to the Tribunal. It was assumed that the suit would not get revived from its institution and that therefore it was not a

> suit pending 'immediately before the date of establishment of a Tribunal under this Act" i.e. 27.4.94, as required by section 31(1).

It was also observed that thee proviso to section 31(1) permitted only appeals pending on that date to be retained in the Civil Court (here the High Court) and that a remanded suit was not so saved by the proviso to section 31(1). A similar argument was advanced before us by the learned Senior counsel appearing for the respondent-company, Sri Shanti Bhushan and for the guarantors, by Dr. Rajeev Dhawan.

Now Section 31(1) of the Act reads as follows:

> Section 31: Transfer of pending cases:
>
> (1) Every suit or 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) ....."

It is true that under sub-clause (c) of Section 31, every suit or proceeding "pending before any Court immediately before the date of establishment of the Tribunal under the Act" shall stand transferred to the Tribunal. It is also true that under the proviso to section 31(1), appeals pending on the date do not stand transferred. The suit of the Bank was in fact, pending in appeal on 27.4.94. and it is clear that this provision for transfer does not apply to an appeal pending as aforesaid before any Court.

But, it is now well settled that an order of remand by the appellate Court to the trial Court which had disposed of the suit revives the suit in full except as to matters, if any, decided finally by the appellate Court. Once the suit is revived, it must, in the eye of the law, be deemed to be pending - from the beginning when it was instituted. The judgment disposing of the suit passed by the Single Judge which is set aside gets effaced altogether and the continuity of the suit in the trial court is restored, as a matter of law. The suit cannot be treated as one freshly instituted on the date of the remand order. Otherwise serious questions as to limitation would arise. In fact, if any evidence was recorded before its earlier disposal, it would be evidence in the remanded suit and if any interlocutory orders were passed earlier, they would revive. In the case of a remand, it is as if the suit was never disposed of (subject to any adjudication which has become final, in the appellate judgment). The position could have been different if the appeal was disposed of once and for all and the suit was not remanded.

Applying the above principle, we are of the view that the suit 410/85 filed by the Bank in 1985, even though it was disposed of by judgment dated 29.3.94, it stood revived with continuity by the remand order passed by the Division Bench on 11.8.98, and cannot be treated as a freshly instituted on 11.8.98 before the Single Judge but must, in the eye of the law, be treated as pending on the crucial day i.e. 27.4.94.

It was argued that on 27.4.94, the crucial date, if the appeal was pending before the Division Bench, the suit could not have also been pending simultaneously. The pendency of appeal before the appellate Court may be the de facto position. But, we are concerned here with the position in law, and as to the effect of the remand order. Once the appeal is allowed, the intermediate events - of disposal of the suit and the appeal - vanish into the air and the continuity of the suit before the trial Court is restored.

There is yet another important reason as to why the suit must be held as one falling within the Act. This reason flows from Section 18 of the Act, which reads as follows:

> Section 18: Bar of Jurisdiction:
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> On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."
>
> The bar of the said section, as we shall elaborate, applies and, in fact, Section 34 of the Act gives overriding effect to the provisions of the Act.
>
> Now, it is well settled that it is the duty of a Court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh, Interpretation of Statutes, 7th Ed.p.406). If, while a suit is pending, a law like the 1993 Act that the Civil Court shall not decide the suit, is passed, the Civil Court is bound to take judicial notice of the statute and hold that the suit - even after its remand - cannot be disposed of by it.
>
> In some statutes the legislature no doubt says that no suit shall be 'entertained' or 'instituted' in regard to a particular subject matter. It has been held by this Court that such a law will not affect pending actions and the law is only prospective. But, the position is different if the law states that after its commencement, no suit shall be "disposed of" or "no decree shall be passed" or "no court shall exercise powers or jurisdiction". In this class of cases, the Act applies even to pending proceedings and has to be taken judicial notice of by the civil Courts.
>
> A Constitution Bench of this Court in Shah Bhojraj Kuverji Oil Mills & Ginning Factory Vs. Subhash Chandra Yograj Sinha (1962(2) SCR 159 (AIR 1961 SC 1590)

was considering a situation where a law was made ousting the jurisdiction of the Civil Court where a suit was pending. The words used in the statute were 'a landlord shall not be entitled to the recovery of possession of any premises ....' These words were contained in the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947. It was held that the provision barring a decree to be passed applied to pending suits and applied at the time the decree was to be passed. Another Constitution Bench in Mst. Rafiquennessa and Anr. Vs. Lal Bahadur Chetri and Ors. (1964(6) SCR 876 = AIR 1964 SC 1511) held that the prohibition against passing a decree for possession would apply even at the appellate stage, unless of course, appeals were kept outside the impact of the new Act, as in the proviso to Section 31 of the Act. Even the appellate Court has to apply the law ousting its jurisdiction.

If indeed the contention of the learned Senior counsel for the respondents, Sri Shanti Bhushan and Dr. Rajeev Dhawan is to be accepted, a strange result would follow inasmuch as, on a combined reading of Sections 18 and 34 of the Act, the suit can neither be transferred to the Tribunal nor can it be decided by the learned Single Judge in view of the clear prohibition in Section 18 of the Act. If it is not to be transferred to the Tribunal and if it is to be retained in the Civil Court, without disposal as contended, then there will be a stalemate. It has to be kept perpetually pending in the Civil Court and necessarily the file has to be consigned to the record room. Or the plaint will have to be returned for presentation before the proper court or Tribunal. That was surely not the intendment of the Act of 1993. When this aspect was put to the learned Senior counsel for the respondents, there was practically no answer. It was, no doubt, faintly suggested by Dr. Rajeev Dhawan that the bar in section 18 does not apply to remanded suits but we are unable to agree. As stated earlier, they stand revived in law with continuity and therefore the bar under Section 18 clearly applies.

The above result is also reached by the application of the principle of purposive construction.

In regard to purposive interpretation, Justice Frankfurter observed as follows:

"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose ("Some Reflections on the Reading of Statutes) 47 Columbia LR 527 at 538) (1947)"

That principle has been applied to this very Act by this Court recently in Allahabad Bank Vs. Canara Bank (JT 2000(4) SC 411). If the said principle is applied, it is clear that the provision in section 31 must be construed in such a manner that, after the Act, no suit by the Bank is decided by the civil Court and all such suits are decided by the Tribunal.

Today, it is said that Rs.52,000 crores of monies are due to Banks and financial institutions from the borrowers. The Act of 1993 was indeed enacted to provide a speedy remedy for the recovery of these monies and for taking these suits out of the purview of the civil Courts. If speedy disposal is the purpose of the Act, then if the respondent's contention is accepted, this suit 410/85 instead of getting transferred to the Tribunal for expeditious disposal, would perpetually remain pending on the original side of the Calcutta High Court because of the prohibition in section 18 of the Act. Surely, that would place the Bank in a worse position after the 1993 Act than before inasmuch as before the Act, there was at least the possibility of the Bank's suit being decided by the civil Court on some future day, however, remote.

An argument was advanced by Dr. Rajeev Dhawan that the proviso to section 31 retained appeals in the Civil Court and hence the suit remanded in appeal would also get retained. It was also argued that there was no specific provision regarding remanded suits and this was a case of a 'causus omissus' and the said omission in the statute could not be filled by judicial interpretation. Otherwise, it would amount to judicial legislation. That was the argument.

We cannot agree with either contentions. The remanded suit cannot remain in the Civil Court with no chance of disposal. Again, our decision that the restoration of the suit is with continuity from the date of original institutions of the suit does not amount to legislation but is the result of the application of a fundamental principle of law applicable to the civil procedure. It cannot therefore be said that we have encroached upon the jurisdiction of the legislature.

In this context the following words of Justice Holmes are apposite. He said:

"I recognise without hesitation that Judges do and must legislate, but they do so only interstitially; they are confined from molar to molecular motion" (1917) (Southern Pacific Co. vs. Jensen 244 U.S. 205 at 221).

Again, Justice Cardozo said that though the powers of interpretation of the Courts are narrow, yet they can fill up gaps. He said:

"No doubt, the limits for the Judge are narrower. He legislates only between gaps. He fills the open spaces in the law" (B.Cargozo, The Nature of the Judicial Process (1921) at p. 131).

In the present case, we do not have to legislate, even interstitially.

There is yet another aspect of the matter. Even assuming that the suit was not pending 'immediately' before the establishment of the Tribunal before the Single Judge but came before him on remand after 27.4.94, the crucial date, and even assuming that the Registrar of the High Court could not have transferred the suit to the Tribunal on 27.4.94 as the appeal was pending before the Division

Bench, it would, in view of the prohibition in section 18, be necessary for the High Court to transfer the Bank's suit under Article 227 of the Constitution of India to the Tribunal.

For the aforesaid reasons, we hold that the principle of purposive interpretation is to be applied to sections 18 and 31 of the Act and that suit 410/1985 filed by the Bank in 1985 and which stood remanded by the appellate Court on 11.8.98 must in the eye of the law be deemed pending before the Single Judge and that it would stand transferred to the Tribunal. The High Court was, therefore, in error in retaining the same on the original side. Points 1 and 2 decided in favour of the appellant.

Points 3 and 4:

> As stated earlier, learned senior counsel for the respondents contended that the issues arising in the suit 410/55 filed by the Bank are integrally connected with the issues arising in the other Suit No.272 of 1985 filed by the respondent company against the Bank and that the said suit being one for specific performance, and perpetual and mandatory injunctions could not be tried by the Tribunal and that consequently, the suit by the Bank 410/85, which contains some common issues must be retained in the Civil Court (i.e. the High Court).
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> Learned senior counsel was then asked by us as to what in reality was the "substance" of the suit 272 of 1985 filed by the Company against the Bank and whether, it was indeed one falling within the purview of the 1993 Act as amended by Act 1 of 2000? The answer by the counsel was that it was not. We shall therefore consider this aspect in some detail.
>
> We shall first refer to the averments of the 1st respondent in its suit 272 of 1985 filed against the Bank. The plaint states that the plaintiff acquired the Tea estate from Kamini Tea Co. (Pvt.) ltd. in or about April, 1979, under a registered deed, that initially the shares in the plaintiff's company were held by 1st and 2nd plaintiffs, that at the instance of this Bank, the plaintiff 3 purchased the shares on 13.1.82, that in or about December 1981 and January 1982, it was "duly agreed" between the Bank and the Tea Company and the plaintiffs 3 and 4 and by plaintiff 2 that (i) 'defendant would not charge interest on its outstanding upto the season 1981-82 since July 1, 1981, (ii) that the said outstanding dues would be paid by plaintiff company at Rs. 75,000 p.m., (iii) that the Bank would extend credit facilities according to its needs from the season 1982-83, which advance interest would be recovered out of the proceeds of sale of Tea. It was also alleged that these terms would appear from the records and correspondence between the parties and also from the course of conduct and/or dealings. A dispute is also raised about the correctness of the amount claimed by the Bank as per its accounts. It was pleaded that a certain amount of Rs.1,55,951 paid by the Bank to workmen for 81-82 season had to be adjusted for 1981-82 which was a free-interest period, that similarly credit had to be given for Rs.64,083.10 for the season 1982-83, that the sum of Rs.7 lakhs sanctioned for 1983-84 at 13% interest was repayable by annual instalment of Rs.1 lakh from June 1984 and that excess

> interest at rate 3% was charged, that interest for 1984-85 on Rs.7 lakhs was to be at 15% p.a. and not 18% p.a., that for the year 1985- 86, the Bank advanced Rs. 5.22 lakhs and was charging 15% and it illegally stopped or suspended advances. It was contended that the correct position of the amounts due was shown in Schedule D of the plaint and that on the arrears due upto 81-82, no interest was to be charged, the moratorium was unilaterally withdrawn on 8.4.85 by the Bank, that interest could not have been charged from 1.7.81 to 31.3.85, that the letter 'E' of the plaintiff company agreeing to pay interest was void/voidable, that the demand by letter dated 11/12-4- 85 for Rs.3,31,25,054.27 inclusive of interest upto 31.3.1985 was wrong, mala fide and inflated. It was contended that the Bank guarantee for Rs.72,330 could not be encashed, that the defendant promised to render financial assistance and could not have stopped it and that the principle of promissory estoppel applied. Plaintiff 4 was a shareholder Director and plaintiffs 3 and 4 stood guarantee only for lawful dues, it was said. The plaint then referred to certain payments by the plaintiff upto a sum of Rs.14,25,000. It was said that the plaintiff was entitled to specific performance of the agreement as pleaded in para 4 of the plaint and to a perpetual injunction that the Bank should not charge interest upto 1981-82 and that with effect from 1.7.81, that only Rs.75,000 per month could be recovered. A mandatory injunction was sought for further financial assistance at less than Rs.10/- per Kg. per season w.e.f. 1985-86 season, for damages allegedly suffered by plaintiff and for rectification of accounts and to declare the letter of demand 'D' dated 8.4.85 as void.

From the above, it will be noticed that the plea of the Company is that there is an agreement not to charge interest and that that agreement is to be enforced, that interest is not liable to be charged on arrears or interest cannot be charged at a higher rate, that only Rs.75,000 is to be recovered per month and that the damages suffered by plaintiff are to be deducted and further financial assistance is to be given in future.

In our view, the above pleas raised by the respondent company are all inextricably connected with the amount claimed by the Bank. The plea of the company is that interest is not to be charged or is to be charged at a lesser rate, that instalments are to be permitted and more monies should have been advanced. In our view, these claims made by the Company in its suit 272/85 against the Bank amount to 'counter claim' and fall within sub-clauses (8) to (11) of section 19 of the Act (as introduced by Act 1/2000). The plea for deduction of damages is in the nature of a 'set off' falling under sub-clauses (6) and (7) of section 19. Sub-clauses (6) to (11) of section 19 read as follows:

> "(6) Where the defendant claims to set- off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set- off.
>
> (7) The written statement shall have the same effect as a plaint in a cross- suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of

the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to fine a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter- claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application make such order as it thinks fit."

Sub-clause (6) says that a 'set-off', if claimed, can be adjudicated by the Tribunal. Sub-clause (7) states that the written statement pleading a set-off shall have the same effect as a plaint in a cross-suit to be adjudicated by the Tribunal. Similarly, sub- clause (8) of section 19 permits a defendant to make a 'counter-claim' by way of an application and sub-clause (9) of section 19 states that such a 'counter-claim' shall have the same effect as a 'cross-suit' so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter claim as a 'cross-suit'. Sub-clause (11) of section 19 is important and it permits the Bank or financial institution to apply to the Tribunal that particular claim raised by the debtor against the Bank or financial institution, as the case may be, ought not to be disposed of by way of a counter-claim but that the debtor must be directed to file an independent action. The Tribunal would then consider whether the debtor should be directed to file an independent action in regard to any part of the debtor's claim.

In our view, the Company's suit 272/85 in so far claims a relief for specific performance, perpetual and mandatory injunctions, it is in substance in the nature of a counter-claim under sub-clauses (8) to (10) of section 19 and are in the nature of a counter-claim. The plea for deduction of damages is in the nature of a set-off falling within section 19(6) and (7). Both are equated to cross-suits. If a set-off or a counter claim is to be equated to a cross suit under section 19, afortiori there can be no difficulty in treating the cross-suit as one by way of set-off and counter claim, and as proceedings which ought to be dealt with simultaneously with the main suit by the Bank. In fact, the Bank has not objected to

such a course. Indeed, section 19(11) says that if any particular counter-claim raised in the suit 272/85 cannot be decided by the Tribunal while deciding the Bank's suit, the defendant may apply to the Tribunal for exclusion of such a counter-claim. But such a question does not arise in this case. In our view, in the context, the word 'counter-claim' in section 19(8) to (11) which is equated to a cross-suit, includes a claim even if it is made in an independent suit filed earlier. An agreement not to charge interest, the specific performance of which is claimed is nothing but a plea that the Bank could not charge interest. A permanent injunction directing the Bank not to charge interest because of an alleged agreement in that behalf is likewise a plea that no interest is chargeable. So far as the plea for further financial assistance is concerned, it is also, broadly, in the nature of a 'counter-claim'. All these fall under section 19(8) to (10). Again, the plea for deducting 'damages' though raised in the suit is indeed broadly a plea of "set off" falling under sub-clause (6) and (7) of section

19. Both the suits, the one by the Bank against the respondent (suit 410/85) and the other by the debtor against the Bank (suit 272/85) which raises claims or pleas in the nature of set-off or counter-claim are interconnected. The respondent's suit falls under sub- clauses (6), (7) and (8) to (11) of section 19, as stated above. Our decision in regard to the real nature of suit 272/85 has become necessary in the context of a plea by the debtor-company that the company's suit 272/85 is liable to be retained in the civil Court and on account of the plea that the connected suit by the Bank 410/85 is also to be retained. Such a plea, as shown above, cannot be accepted. Thus, both the suits are suits falling within the Act.

We, therefore, direct the Bank's suit 410/85 to be transferred by the Registrar, Calcutta High Court to the appropriate Tribunal under the Act. So far as the debtor-company's suit 272/85 is concerned, action has to be taken likewise by the Registrar in the light of our finding which finding has become necessary in view of the contention on behalf of the debtor company before us, as explained above.

For the aforesaid reasons, we hold under Point 3 that the pendency of the company's suit 272/85 in the High Court is not a ground for retaining the Bank's suit 410/85 in the Calcutta High Court. The suit 272/85 filed by the debtor company is also a suit to be necessarily tried only by the Tribunal. The pendency of the Company's suit 272/85 in the High Court is no reason for keeping the Bank's suit 410/85 in the High Court. The suit 410/85 is liable to be transferred to the Tribunal. Incidentally, we also hold that even suit 272/85 is to be tried only by the Tribunal.

The appeal is allowed. The order of the learned Single Judge is set aside and suit 410/85 is directed to be transferred by the Registrar, High Court to the Tribunal. In the light of our finding as to the real nature of the company's suit 272/85, it will be for the Registrar of the High Court to pass appropriate orders. We hope that appropriate orders will be passed in relation to suit 272/85 expeditiously, at any rate, within one month from today.

We direct the respondent-company to file its written statement in suit 410/85 within one month from today. We also direct the Tribunal to dispose of both the suits within a period of six months from today, the suits being very old suits of 1985. There will be no order as to costs.