

United Bank Of India vs The Debts Recovery Tribunal & Ors on 8 April, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1381, 1999 AIR SCW 1057, (1999) 2 ALLMR 570 (SC), 1999 (2) ALL MR 570, 1999 (3) ADSC 493, (1999) 2 PUN LR 1, 2000 (5) COM LJ 103 SC, 1999 (2) SCALE 485, 1999 (2) LRI 483, 1999 (4) SCC 69, (2000) 5 COM LJ 103, 1999 (2) ALL CJ 1383, 1999 (5) SRJ 386, (1998) 76 DLT 261, (1999) 2 JT 574 (SC), (1999) BANKJ 788, (1999) 2 MAD LJ 80, (1999) 2 MAD LW 523, (1999) 2 MAHLR 453, (1999) 2 RAJ LW 355, (1999) 3 SCJ 81, (2000) 1 BANKCAS 662, (1999) 4 SUPREME 1, (1999) 2 RECCIVR 493, (1999) 2 SCALE 485, (1999) 2 ALL WC 1513, (1999) 1 CAL HN 130, (1999) 96 COMCAS 602, (1999) 3 CALLT 18, (1999) 3 CIVLJ 682, (1999) 3 ICC 42, (1999) 122 PUN LR 1, (1999) 2 BANKCLR 327

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Bench: M.B.Shah

PETITIONER:
UNITED BANK OF INDIA

Vs.

RESPONDENT:
THE DEBTS RECOVERY TRIBUNAL & ORS.

DATE OF JUDGMENT: 08/04/1999

BENCH:
G.B.Pattanaik, M.B.Shah

JUDGMENT:

PATTANAIAK, J.

Leave granted.

The appellant, United Bank of India filed a suit in the High Court of Calcutta which was registered as Suit No. 276 of 1991, claiming different reliefs against the three defendants. While the suit was pending, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the Act') to provide for the establishment of tribunals for

expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto. The Act came into force on 24th of June, 1993. By operation of Section 31 of the Act, the suit in question stood transferred to the Debts Recovery Tribunal, established under the Act and was renumbered as Transferred Application No. 163 of 1996. The respondents moved an application before the tribunal, contending thereunder that the tribunal had no jurisdiction to entertain suit in question in view of the nature of the reliefs prayed for and as such, plaint should be returned to the plaintiff for being filed in the High Court itself. The tribunal disposed of the applications filed by the defendants holding that the tribunal has the jurisdiction to decide the claim of the plaintiff. The three defendants, thereafter filed three separate applications under Article 227 of the Constitution of India, challenging the orders passed by the tribunal. By the impugned order, the High Court set aside the order of the tribunal on a finding that under the Act, the tribunal gets jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions but the plaintiff's claim in question cannot be held to be a 'debt' as defined in Section 2(g) of the Act inasmuch as the claim is of an undetermined sum, which is required to be ascertained upon an inquiry to be conducted by the tribunal. The High Court was also of the view that the suit as framed, is one for damages and compensation which is required to be quantified before a decree to be passed and such a suit will not be within the purview of the provisions of the Act in question. With these conclusions, the applications of the defendants having been allowed, the plaintiff has approached this court.

Mr. G.L. Sanghi, the learned Senior Counsel, appearing for the plaintiff-appellant contends that the plaint read as a whole on the basis of averments made and the reliefs sought for, it cannot be held to be a suit for damages but on the other hand, it is essentially a suit for realisation of money due to a bank which has become due in course of the business activity undertaken by the bank and as such it is a suit for recovery of a debt under Section 2(g) of the Act and the High Court committed error in holding that the tribunal had no jurisdiction. Mr. Sanghi, further contended that while deciding the question as to whether the claim in question can be adjudicated upon by the tribunal constituted under the Act, the substance of the matter has to be looked into. According to Mr. Sanghi, a suit for recovery of debt from one of the defendants does not cease to become so merely because certain ancillary and incidental relief has been sought for against some other defendants. Mr. Sanghi, lastly urged that the very purpose and object of the Act will be frustrated if the suit in question is not allowed to be disposed of by the tribunal constituted under the Act and on the other hand is relegated to the ordinary civil court as has been ordered by the High Court in the impugned Judgment. According to Mr. Sanghi, the expression 'debt' in Section 2(g) is of wide amplitude and there should be no justification to give a narrower meaning and thereby limiting the jurisdiction of the tribunal.

Mr. Gupta, the learned Senior Counsel, appearing for the defendants on the other hand contended that the plaintiff's claim is one for damages and compensation which would again be dependant upon the inquiry or receiving information from the defendants 2 and 3 with regard to the refund pay orders and the statement of accounts thereof. According to Mr. Gupta, howsoever wide the expression 'debt' in Section 2(g) of the Act may be, it will certainly not encompass within itself the claim of the plaintiff-bank, as there has been no borrowing from the plaintiff-bank by the defendant

No. 1 and, therefore, the High Court was fully justified in coming to the conclusion that the tribunal has no jurisdiction to entertain the suit in question.

In view of the rival stand of the parties, the short question that arises for consideration is, as to whether the said claim of the plaintiff can be said to be a claim for recovery of debts due to the plaintiff as provided under Section 17(1) of the Act. The answer to this question in turn would depend upon the meaning of the expression 'debt' as defined in Section 2(g) of the Act. Before we examine the two provisions referred to above, it is to be borne in mind that the procedure for recovery of debts due to the banks and financial institutions which was being followed, resulted in a significant portion of the funds being blocked. To remedy the locking up of huge funds, the Finance Minister introduced "The Recovery of Debts Due to Banks and Financial Institutions Bill, 1993", which was passed by the Parliament and the Act has come into existence. The statement and objects of the Act as reflected in the Bill introduced by the Minister in the Parliament may be extracted hereunder in extenso:

"Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country. The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill.

The Act and the relevant provisions will have to be construed bearing in mind the objects for which the Parliament passed the enactment. The prime object of the enactment appears to be to provide for the establishment of tribunals for expeditious

adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto.

The expression 'debt' has been defined in Section 2(g) to mean: "Sec.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 institution 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 the application."

Section 3(1) provides for establishment of tribunal which reads as under:

"Section3(1): The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act."

Section 17(1) provides the jurisdiction, powers and authority of tribunal which reads as under:

"Section 17(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 for recovery of debts due to such banks and financial institutions".

Section 18 bars the jurisdiction of other courts and authority on and from the appointed day to exercise any jurisdiction in relation to the matters specified in Section

17. Section 31 is the provision for transfer of pending cases which reads as under:

"Section 31: (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) Where any suit or other proceedings 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 proceedings to the Tribunal; and (b) the Tribunal may, on receipt of such records, proceed 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 under Section 19 from the stage which was reached before such transfer or from any earlier stage or de-novo as the Tribunal

may deem fit."

But we are not really very much concerned with the aforesaid provision since the suit in question had in fact been transferred to the tribunal. At this stage it will be necessary to notice a few authorities cited at the bar. Mr. Gupta, for the respondents relied upon the decision of this court in Union of India vs. Raman Iron Foundry, (1974) 2 SCC 231, in support of his contention that the plaintiff's claim cannot be held to be a debt within the meaning of Section 2(g) of the Act. In the aforesaid case, the issue before the court was whether in view of Clause 18 of the General Conditions of Contract contained in standard form of contract, can the Government exercise the right to retain the money due to the contractor even before the claim against the contractor is satisfied. Thus Clause 18 of the General Conditions of Contract was for consideration and considering the same, the court repelled the stand of Union of India that it can retain the sum of the contractor, even before the claim of the Union against the contractor is adjudicated upon. We do not think that this decision is of any assistance for adjudicating the lis in question in the case in hand.

Mr. Sanghi, the learned Senior Counsel, appearing for the appellant relied upon the decision of this court in Kesoram Industries & Cottton Mills Ltd. vs. Commissioner of Wealth Tax (Central) Calcutta, reported in 1966(2) SCR 688, in support of his contention that the plaintiff's claim would be a debt. In the aforesaid case, the court was considering as to what is the meaning of the expression 'debt' as it was required to ascertain whether a liability to pay income tax and super tax on the income of the accounting year would be a 'debt' within the meaning of Section 2(m) of the Wealth Tax Act. This decision to our mind will be not of much assistance inasmuch as the expression 'debt' has been defined in the Act in question though the general meaning of 'debt' may be of a persuasive value in interpreting the expression 'debt' in the Act but it is too well settled that where an expression in any Act has been defined, the said expression will have the same meaning and is not necessary to find out what is the general meaning of the expression. In the aforesaid case, the court noticed as to how the word 'debt' was interpreted in Webb vs. Stenton (1883) 11 Q.B.D.,518,527, wherein it was held a 'debt' is a sum of money which is now payable or will become payable in the future by reason of a present obligation, debitum in praesenti, solvendum in futuro. After noticing a large number of authorities, the court also held that all the decisions agree that the meaning of the expression 'debt' may take colour from the provisions of the concerned Act; it may have different states of meaning, but the following definition is unanimously accepted; a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation.

In the case of State of Punjab vs. S. Rattan Singh, (1964)5 SCR 1098, on which Mr. Sanghi has also relied upon, the question for consideration was whether in view of Sections 4 and 11 of the Patiala Recovery of State Dues Act, a civil court can have jurisdiction to decide if a person is a defaulter or not. After examining the provisions of Sections 4 and 11 of the said Recovery Act, this court came to hold:-

"It is reasonable to conclude that the provisions of Section 4 of the Act empower the head of the department to determine not only the amount of State dues recoverable but also the liability of the alleged defaulter to pay those debts. It follows, therefore,

that in view of provisions of Section 11 of the Act, no civil court can have jurisdiction to determine these two matters, such as determining the amount of State dues recoverable and the liability of the alleged defaulter to pay the amount."

In the case in hand, there cannot be any dispute that the expression 'debt' has to be given the widest amplitude to mean any liability which is alleged as dues from any person by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint have to be looked into and then find out whether notwithstanding the specially created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such tribunal is ousted. With the aforesaid principle in mind, on examining the averments made in the plaint, we have no hesitation to come to the conclusion that the claim in question made by the plaintiff is essentially one for recovery of a debt due to it from the defendants and, therefore, it is the tribunal which has the exclusive jurisdiction to decide the dispute and not the ordinary civil court. In this view of the matter the High Court was in error to hold that the dispute in question is not entertainable by the tribunal under Section 17 of the Act. We, accordingly set aside the impugned order of the Calcutta High Court and direct that the suit in question which stood transferred to the tribunal, constituted under the Act and was registered as Transferred Application No.163 of 1996 be disposed of by the tribunal in accordance with law. These appeals are allowed but in the circumstances, without any order as to costs.