

Manjit Kumar and anr. Vs. Oriental Bank of Commerce and ors.

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Court : DRAT Delhi

Decided On : Dec-04-2001

Judge : A Srivastava

Appellant : Manjit Kumar and anr.

Respondent : Oriental Bank of Commerce and ors.

Judgement :

1. Heard Mr. Sandeep Sethi, Advocate for the appellants. Mr. Sanjeev Bhandari has appeared for respondent Bank. He also made submissions.

The impugned order has been passed on an application moved by the appellants under Order VII Rule 11 of the CPC saying that the recovery application of the respondent Bank is barred by law. I have perused Order VII Rule 11 of CPC, which reads as follows : (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; 2. The appellants appear to rely on Clause (d) of the aforesaid rule according to which, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Learned Counsel for the appellant says that the claim of the respondent Bank is not covered within the definition of "debt" as given in Section 2(g) of the Recovery of Debts Due to

Banks and Financial Institutions Act.

Learned Tribunal below has rejected the appellants' application on the basis of a judgment of Hon'ble the Delhi High Court in J.U. Mansukhani & Company and Anr. v. Presiding Officer and Ors., AIR 2000 Delhi 103.

3. Under the aforesaid Clause (d), the plaint is to be rejected if the suit appears from the statement in the plaint to be barred by law. At that stage, the contested facts stated by the defendant in the application under Order VII Rule 11 are not to be considered and only plaint averments have to be seen. Therefore, the defendant has the right to file his written statement and take pleas of jurisdiction on facts. Plea of lack of jurisdiction of a Court/Tribunal is generally based on facts unless the law specifically bars jurisdiction of that Court or Tribunal in a particular matter. The Tribunal below has only said that it is competent to deal with the recovery application of the respondent Bank on the basis of the averments in that application. The Tribunal below has only dealt with the application under Order VII Rule 11 and not on the plea of the appellants on the basis of any facts which may be stated in the written statement. The impugned order is only on application under Order VII Rule 11, In view of the above discussion, I see no error in the same. The appellants may file written statement stating their facts relating to the jurisdiction of the Tribunal and take a plea of jurisdiction.

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