M/S Ruby Knitting Industries and ors. Vs. Central Bank of India and anr.

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SooperKanoon Citation : sooperkanoon.com/700207

Court : Delhi

Decided On : Aug-10-2001

Reported in : [2001]107CompCas584(Delhi); 93(2001)DLT829; 2001(60)DRJ266

Judge : Mr. Vijender Jain, J.

Acts : Recovery of Debts (due to Bank and Financial Institution) Act, 1993 - Sections 17, 19(5), (6), (7), (8) and (9) and 31

Appeal No. : Suit No. 2049/1993

Appellant : M/S Ruby Knitting Industries and ors.

Respondent : Central Bank of India and anr.

Advocate for Def. : Mr. Vinay Sharma, Adv.

Advocate for Pet/Ap. : Mr. Abhinav Vashisht, Adv

Disposition : Suit transferred to debt recovery tribunal

Judgement :
ORDER

Vijender Jain, J.

1. Mr. Vashisht has contended that the suit at this stage cannot be transferred to the Debt Recovery Tribunal as the suit has been instituted prior in time and there

is no jurisdiction of the Debt Recovery Tribunal to deal with the relief as prayed for in the suit. The suit which has been filed by the plaintiff is prior to the suit filed by the bank before the Debt Recovery Tribunal. It has been contended by Mr. Vashisht that this suit was filed in the year 1993 with the prayer for Prohibitory, Mandatory injunction and also for damages. The respondent bank has filed the proceedings for recovery before the Debt Recovery Tribunal earlier at Jaipur which was subsequently transferred to the Debt Recovery Tribunal Chandigarh. Mr.Vashist further contended that in terms of Section 19 of the Act suit which has been instituted by the plaintiff prior to the filing of the proceedings by defendant cannot be transferred. He has contended that it is only after an application for recovery of the debt has been filed by the bank plaintiff can file any counter claim. It has been contended that the right to file any counter claim. It has been contended that the right to file counter claim or agitate any right or claim as a defendant in terms of sub section (5),(6),(7),(8) and (9) of Section 19 of the Act is only available after the proceedings for recovery has been instituted by the Bank. It has also been contended before me that the matter can be agitated before this Court in terms of sub-section 11 of Section 19 of the Act.

2. On the other hand, learned counsel appearing for the defendants has contended that after the amendment in the year 2000 to the Recovery of Debts (due to Bank and Financial Institution) Act 1993, the Tribunal has been vested with the jurisdiction to try counter claim or any other claim including the claim for damages and, thereforee, the suit cannot be tried in this Court and the suit has to be transferred to the Debt Recovery Tribunal. He has further contended that what has been contended before this Court by Mr.Vashisht with regard to interpretation of Section 17 of the Act, regarding jurisdiction, power and authority of the Tribunal if taken to its logical conclusion then all the suits which were transferred by this Court which were instituted prior to coming into force of the Debt Recovery Tribunal have to be transferred back to this Court. Learned counsel for the defendant has further contended that from the reading of Section 31 of the Act the Legislative intention is manifest that every suit or proceedings which were pending before any court immediately before the date of establishment of a Tribunal shall stand transferred on that date.

3. I have given my careful consideration to the arguments advanced by the learned counsel for the parties. The Parliament in enacting Recovery of Debts due to Bank and Financial Institutions Act, 1993 has established the Debt Recovery Tribunal. Sole object of enacting the Act was considerable difficulties faced by the bank and financial institutions in recovering loans. In view of the number of cases pending before various Courts in the country and huge figure of the debt involved to the bank and financial institutions and considering the adverse effect of locking up of such huge amount of public money and for the purpose of better utilization and recovery and for the well fare of the public said Act was enacted. After the enactment of the said Act suits instituted by the banks were transferred to the Debt Recovery Tribunal but claims for set off or other claims which were incidental to the counter claim and connected to the said cause of action in one way or the other were still tried in the Courts. It was to clarify that situation the Legislature in its wisdom incorporated amendment in the year 2000. Section 19 which came by way of amendment in the year 2000 has taken care of such kind of cases which are in the nature of counter claim or any other claim or damages filed by the borrowers. Sub section (8) of Section 19 deals it in the following manner:

Sub Section (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 filing of the application but before the defendant has delivered his defense or before the time limited for delivering his defense has expired, whether such counter claim is in the name of a claim for damages or not'

4. A harmonious reading of Section 31 of the Act makes it clear that a counter claim, any right or claim for damages in respect of a cause of action accruing to the defendant (in this case the plaintiff) even earlier than the filing of application, can be agitated the only limit is that defendant should do so before he has delivered his defense or time granted for defense had not expired. Section 31 of the Act invests jurisdiction on the Tribunal for getting suit or proceedings transferred to the Debt Recovery Tribunal read with Section 19 of the Act gives wide amplitude of powers to the Tribunal to try the case of the plaintiff. If every suit

or proceedings could be transferred which were filed prior to the commencement of the Act under Section 31 of the Act, why the suit and the proceedings which have been instituted earlier in time could not be transferred pursuant to Section 31 of the Act, more so when the legislature has inserted by amendment, jurisdiction on the tribunal to deal with counter claim, damages or any other claim. I do not see any merit in the submission of the learned counsel for the plaintiff that by reading Section 17 along with Section 31 of the Act, the Tribunal is not vested with the jurisdiction to entertain the present relief prayed in the plaint.

5. I transfer the suit to the Debt Recovery Tribunal at Chandigarh.