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RIGHT OF BORROWER TO INITIATE PROCEEDINGS AGAINST A BANK OR FINANCIAL INSTITUTION IN A CIVIL COURT – CONFLICT RESOLVED BY THE SUPREME COURT

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On 10 November 2022, a three Judge bench of the Supreme Court of India (“**SC**”) in *Bank of Rajasthan Limited v. VCK Shares & Stock Broking Services Limited*, 2022 SCC OnLine SC 1557, resolved the conflict regarding the position of a suit instituted by a borrower against a bank while a bank’s claim was pending before DRT. The conflict arose as there were varying judicial views and hence a reference was made to a three-judge bench.

BACKGROUND

In the facts, Bank of Rajasthan Limited (“**Bank**”) sanctioned a term loan to VCK Shares & Stock Broking Services Limited (“**Borrower**”) in 1994. A further credit overdraft facility was granted in 1995 (“**OD**”). The OD was secured by the pledge of shares, stocks, and securities of various companies. Owing to the Borrower’s default, the Bank instituted proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“**RDB Act**”) before the Debts Recovery Tribunal, Kolkata (“**DRT**”) seeking recovery of its dues. The Borrower entered appearance before the DRT and additionally filed a civil suit before the Calcutta High Court (“**HC**”) against the Bank seeking *inter alia*, a decree for sale of the pledged shares and recovery of sale proceeds. Thereafter the Bank sold the pledged shares to adjust the amounts against the dues, in response to which the Borrower filed a second civil suit before the HC seeking *inter alia*, a declaration that the sale of shares was void along with a decree for return of pledged shares and a declaration that no sum was payable by the Borrower to the Bank.

The Bank filed applications seeking dismissal of the suits on the ground that the suits were not maintainable and that the HC lacked jurisdiction as the same vested with the DRT. The HC, in the first instance allowed the Bank’s applications, but on appeal, the finding was overturned. Aggrieved, the Bank appealed to the SC.

The reference arose in 2014 noticing an apparent conflict of views in the judgments of the SC in *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*, (2000) 7 SCC 357, (“**Abhijit Tea**”); *Indian Bank v. ABS Marine Products (P) Ltd.*, (2006) 5 SCC 72, (“**ABS**”); *State Bank of India vs. Ranjan Chemicals Ltd.*, (2007) 1 SCC 97, (“**Ranjan Chemicals**”) and *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation*, (2009) 8 SCC 646 (“**Nahar**”). *Abhijit Tea* held that jurisdiction was conferred upon the DRT to try a counterclaim and set-off under Section 19 of the RDB Act. However, in *ABS* it was held that the jurisdiction of a civil court was not barred for a borrower against a bank for any relief, but what was barred was an application by a bank or a financial institution for recovery of its debts. Additionally, in *ABS*, while referring to *Abhijit Tea*, the SC held that an independent suit can be deemed to be a counterclaim and can be transferred to DRT only upon satisfaction of two conditions - that the subject matter of the bank’s suit and the suit of the defendant against the bank were

inextricably connected inasmuch as a decision in one suit would affect the decision in the other, and that both parties agree for the suit being considered as a counter claim in the bank's application before the Tribunal. However, in *Ranjan Chemicals* and *Nahar*, there were observations that ran contrary to *Abhijit Tea* and *ABS*. Therefore, in the reference order, it was mentioned that there was a need to bring consistency amongst the conflicting views.

The following questions were framed by the SC:

"(a). Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT?"

(b). If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?"

(c). Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?"

Findings and observations of the SC

The SC considering the provisions of the RDB Act and the Code of Civil Procedure, 1908 ("**Code**") answered the reference as follows:

- There is no provision under the RDB Act by which the remedy of a civil suit by a defendant against a bank is ousted. A defendant may file a counterclaim in the DRT or initiate proceedings under the Code.
- The Legislature did not contemplate the exclusion of jurisdiction of the civil court in respect of a claim filed by a defendant against a bank and nor has it contemplated any amendment to enhance the powers of the DRT in this respect. It held that the expanse of the reliefs a defendant may claim in a suit can go beyond mere adjustments of amounts of claim, which the DRT would not have the power to adjudicate.
- The SC held that there is no power vested in a civil court to transfer an independent proceeding instituted by a defendant to be tried alongside a recovery proceeding before the DRT. The SC held that a suit can be transferred or directed to be filed in another court only as mandated per the Code and not in any other manner.
- On the issue of whether consent is required for the transfer of a suit, the SC held that once there is no power of transfer in a civil court, consent of a borrower would not lend power to the civil court. The SC also cautioned that the process envisaged under the RDB Act ought not to be impeded in any manner by filing of a separate suit : "The suit would take its own course while a petition before the DRT would take its own course".

Ultimately, the SC answered the reference by holding that *Abhijit Tea* and *Ranjan Chemicals* did not lay down the correct legal position. *Indian Bank* and *Nahar* were held to be correct except to the extent that they allow the transfer of a suit from a civil court to a DRT.

Comments

This judgment has brought to conclusion a much litigated issue relating to the jurisdiction of civil courts and the DRT in proceedings instituted by borrowers against banks and financial institutions in the nature of cross-suits or otherwise, and the same will be of immense value to litigants caught in endless protracted lawsuits and cross-suits before the DRT and the civil court. The emphasis by the SC on the fact that the DRT being a statutory tribunal will not have the jurisdiction to entertain suits involving inquiries beyond the contours of the powers of the DRT under the RDB Act is a welcome development as is the clarification of the position that an independent suit pending before a civil court cannot be transferred to a DRT.

- *Thriyambak J. Kannan (Partner) and Aditya Mukerjee (Associate)*

For any queries please contact: editors@khaitanco.com

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