

# Dispute Resolution Hotline

March 15, 2013

## WRIT JURISDICTION OUSTED VIS-A VIS ORDERS OF RECOVERY TRIBUNALS - YET AGAIN!

### INTRODUCTION

The Supreme Court in the recent judgment of T. P. Vishnu Kumar v. Canara Bank P.N. Road, Tiruppur and Ors<sup>1</sup>, reiterated the principle that when specific remedy is made available to a party, invocation of writ jurisdiction under Article 226 of the Constitution of India is not permissible in matters of recovery of debts. Writ jurisdiction of the Court cannot be invoked to test the validity/correctness of every interim order passed by the Debt Recovery Tribunal ("DRT") under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("Act").

### FACTUAL MATRIX

The present case arises from an appeal against the Madras High Court ("Mad HC") Division Bench judgment<sup>2</sup> wherein the appeals against Single Bench judgment were allowed on the ground of availability of alternate remedy under Section 20 of the Act.

Canara Bank ("Respondent Bank") had filed application before the DRT for recovery of amounts of INR 29, 68,161.93/- with interest @ 17% per annum with respect to Open Cash Credit facilities granted to T. P. Vishnu Kumar ("Appellant") herein. These amounts were granted on the mortgage of other immovable properties and guarantee given by other partners of the partnership firm formed along with the Appellant herein. The debts were acknowledged by the Appellant however over a period of time the accounts maintained with the Respondent Bank became irregular and monies were not received leading to issuance of notices. The Appellant filed its response and submitted their inability to file detailed written statement in the absence of non-production of accounts by Respondent Bank. The Appellant filed separate interim applications seeking production of entire accounts and other relevant documentation. All the interim applications were dismissed by DRT.

In furtherance thereof, the Appellant filed writ petition under Article 226 of the Constitution before Single Bench of Mad HC for issuance of writ of mandamus directing Canara Bank to produce statement of accounts. The Appellant contended that merits of the matter should be decided in a trial and same cannot be dealt with at the interim stage. Further, such applications cannot be admitted without entire documents being submitted as the same were absolutely necessary for filing detailed written statement. The Respondent Bank contended that the Tribunal is permitted to make such orders and give directions on discovery and production as it deems fit. The Single Bench held that non-furnishing of documents amounted to prejudice against the Petitioner and allowed the writ petition directing the Respondent Bank to submit the documents.

The said decision was appealed by Respondent Bank before Division Bench as despite alternate remedy prevailing under the Act writ jurisdiction was invoked. The appeal was allowed leading to the present petition before the Supreme Court.

### ISSUE

The only issue to be determined before the SC was whether existence of alternate remedy barred invoking the jurisdiction of the civil court.

### JUDGMENT AND ANALYSIS

The SC held that writ petitions cannot be filed in case of recovery of dues unless there exists any statutory violation or proceedings are conducted in an arbitrary, unreasonable and unfair manner. If the Act itself provides for a mechanism or an alternate remedy, writ jurisdiction of the High Court cannot be invoked as the same would defeat the very objective of enacting a separate statute and establishing a specialized Tribunal.

The purpose of the Act was ensuring speedy recovery of bank dues. Due to severe delay in adjudicating and disposing such cases, banks and financial institutions like any other litigants were subjected to go through a process of pursuing the cases for recovery through civil courts for unduly long periods, leading to the trapping of crores of rupees in litigation proceedings, which the banks could not re-advance, leading to enactment of the Act and DRT to assure expeditious recovery proceedings and speedy adjudication of matters concerning debt recovery of banks.

The Tiwari Committee which recommended the constitution of a Special Tribunal for recovery of debts due to banks and financial institutions stated in its report that the exclusive jurisdiction of the Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings.

Section 17 of the Act provides that the DRT shall have jurisdiction to "entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions and Section 18 of the Act clearly bars the jurisdiction of other authorities and courts except the Supreme Court and High Courts under Articles

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226 and 227 of the Constitution. It is a settled law that any provision ousting the jurisdiction of civil court must be strictly construed<sup>3</sup>.

The Tribunals and the Appellate Tribunals established to bring about special procedural mechanism for speedy recovery of the dues of banks and financial institutions have also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of Civil Courts for frustrating the proceedings initiated by the banks and other financial institutions. The SC in Allahabad Bank vs. Canara Bank & Anr<sup>4</sup>. held that the Act confers exclusive jurisdiction on the Tribunal. That being the position, the parties have to agitate their grievances only before the said forum, DRT and not before this Court under Article 226 of the Constitution or any other forum.

Further, the said law was reiterated again in Punjab National Bank vs. O. C. Krishnan & Ors<sup>5</sup>. , wherein the SC held that "the Act was enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, itself namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions."

The Supreme Court in Kohinoor Creations and Ors. v. Syndicate Bank<sup>6</sup> held that all matters within the purview of the Act are to be dealt by the specialized tribunal, DRT and Appellate Tribunal constituted only for this purpose and no other body or forum can deal with these disputes. The bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT.

Not only in relation to the applicability of the Act and approaching DRT, the SC in United Bank of India vs Satyawathi Tondon and Ors<sup>7</sup>. observed that it is a matter of serious concern that despite repeated pronouncements, the High Court's continue to ignore the availability of statutory remedies under the DRT and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues.

It is surprising to note that the Mad HC in the past has itself ruled against approaching civil courts; invoking writ jurisdiction in case of recovery of debts by banks<sup>8</sup> however had allowed it in the present case. The present judgment is one more attempt to clarifying the law and creating awareness among the litigants in relation to recovery of dues from banks and financial institutions.

Failing to nip the bud of frivolous invocation of writ remedy under Article 226 and 227, in this case resulted in a delay of more than five years. If justice delayed is justice denied, then justice has certainly been denied to Canara Bank despite SC's proverbial rap on Mad HC's (single bench) knuckles.

- Payel Chatterjee, Moazzam Khan & Vyapak Desai  
You can direct your queries or comments to the authors

<sup>1</sup> SLP (Civil) Nos. 1258-1260 of 2013

<sup>2</sup> W.P. No. 14428 to 14430 of 2008

<sup>3</sup> Sahebgouda v. Ogeppa, (2003) 6 SCC 151

<sup>4</sup> 2000 (4) SCC 406

<sup>5</sup> 2001 (6) SCC 569

<sup>6</sup> 2005 (2) Arb. LR 324 (Delhi)

<sup>7</sup> 2010 (2) DRTC 457 (SC)

<sup>8</sup> Mohan Murti Shandilya v. Union of India, Writ Petition No.7560 of 1997

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