

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.69/2009**

% **Date of Decision: 03.02.2009**

Sh.Ravinder Prakash Punj Plaintiff

Through Mr.Amit S.Chadha, Sr.Advocate with
Mr.Raman Gandhi, Advocate.

Versus

The Hongkong & Shanghai Banking Corpn. Ltd. Defendant

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The plaintiff has filed the suit for declaration, specific performance, permanent and mandatory injunction seeking the following reliefs:-

- a) Pass a decree for declaration against the defendants and its associates, agents and assigns thereby declaring that there exists a legally enforceable and binding compromise between the parties settling all the four aforesaid recovery petitions filed by the defendant before the Hon'ble Debt Recovery Tribunal viz. a) O.A No.79/1995 namely HSBC v. M/s.Punj Sons Pvt Ltd & Ors; b) O.A No.670/1995 namely HSBC v. M/s.Lloyd Rockwool Pvt Ltd & Ors; c) O.A No.590/1996 namely HSBC v. M/s.PIBCO Ltd & Ors and O.A No.34/1995, HSBC v. Super Urethane Products Pvt Ltd & Ors;

- b) Pass a decree for specific performance against the defendant, its associates, agents and assigns thereby enforcing the said compromise entered into between the plaintiff and the defendant wherein an amount of Rs.12 lacs was paid towards full and final settlement of all recovery claims as detailed in para 1 of the plaint;
- c) Pass a decree for mandatory injunction against the defendant, its associates, agents and assigns thereby directing the defendant to deliver the title deeds of the property, No.10, Prithvi Raj Road, New Delhi-110003, to the plaintiff and his brothers and other family members being the owners of the said property;
- d) Pass a decree for permanent injunction thereby permanently injunctioning the Hon'ble Debt Recovery Tribunal –II, from proceeding and trying the four recovery petitions viz. a) O.A No.79/1995 namely HSBC v. M/s.Punj Sons Pvt Ltd & Ors; b) O.A No.670/1995 namely HSBC v. M/s.Lloyd Rockwool Pvt Ltd & Ors; c) O.A No.590/1996 namely HSBC v. M/s.PIBCO Ltd & Ors and O.A No.34/1995, HSBC v. Super Urethane Products Pvt Ltd & Ors;
- e) Award the cost of the suit in favour of the plaintiff and against the defendant.”

2. The plaintiff seeks reliefs in respect of four petitions pending before Debt Recovery Tribunal being O.A No.79/1995, HSBC v. M/s.Punj Sons Pvt. Ltd. & Ors; O.A No.670/1995, HSBC v. M/s.Lloyd Rockwool Pvt. Ltd. & Ors; O.A No.590/1996, HSBC v. M/s.PIBCO Ltd. & Ors and O.A No.34/1995, HSBC v. Super Urethane Products Pvt. Ltd. & Ors. In the present suit for declaration, specific performance, permanent and mandatory injunction all the parties in the four O.As have not been impleaded as parties and the suit has been filed by plaintiff who is alleged to be respondent No.3 in all the recovery

petitions in the capacity as a guarantor against the bank, Hongkong & Shanghai Banking Corporation.

3. The plea of the plaintiff is that the figures given in the four petitions for recovery pending before the Debt Recovery Tribunal, being Rs.63,18,233/-; Rs.30,33,543/-, Rs.31,53,911/- and Rs.29,88,260/- respectively, are deceptive figures as the principal claim of the defendant is far less than the amount which is sought to be recovered by the defendant in the four petitions pending before the Debt Recovery Tribunal.

4. The plaintiff who alleges himself to be a guarantor states that nothing is due to the defendant bank and that the defendant bank is withholding the title documents of the prime property at Prithviraj Road belonging to the plaintiff, his brothers and other family members. The plaintiff has contended that with a view to settle all the four claims of the bank/defendant an amount of Rs.12 lakhs had been paid in the year 2005 in full and final settlement of all the claims of the bank.

5. It is asserted by the plaintiff that the written statements had been filed on behalf of plaintiff in all the above mentioned recovery petitions raising various defenses available to the plaintiff against the defendant bank.

6. According to the plaintiff despite the settlement pursuant to which Rs.12 lakhs was paid in full and final settlement of claims raised by the bank in the four petitions before the Debt Recovery Tribunal, the defendant bank is pursuing the recovery claims.

7. Though the plaintiff is seeking specific performance of the alleged compromise whereby Rs.12 lakhs was paid in settlement of the claims and for mandatory injunction to deliver the title deeds, at the same time it is contended that the suit is not for redemption of mortgage. The plea of the plaintiff is ex-facie unacceptable. The plaintiff cannot contend that he is not seeking redemption of mortgage because his plea is that he has paid an amount of Rs.12 lakhs in full and final satisfaction of the claim of the bank/defendant and, therefore, the bank is liable to return the title deeds.

8. The plaintiff has also contended that though applications, setting out the existence of the compromise pursuant to which an amount of Rs.12 lakhs was paid in full and final settlement of all the claims of the Bank, were filed in each of the petitions before the Debt Recovery Tribunal, however, the Tribunal declined to hear them constraining the plaintiff to file four Civil (Misc) Main petitions.

9. The Civil (Misc) petitions of the plaintiff were disposed of by this Court by order dated 28th November, 2008 in C.M(Main) No.1323-25/2008 and 1330/2008 with a direction to the Tribunal to decide the applications of the petitioners.

10. The applications filed by the plaintiff in each of the four petitions for recovery pending before the Debt Recovery Tribunal have been disposed of by order dated 1st January, 2009. Though the learned counsel for the plaintiff on various dates argued vehemently that the applications before the Debt Recovery Tribunal have been dismissed, however, the learned counsel did not reveal that the Debt Recovery Tribunal has not rejected the plea of the plaintiff that there was a settlement between the plaintiff and bank pursuant to which an amount of Rs.12 lakhs has been paid in full and final settlement of all the claims of the Bank.

11. On being asked as to why appeals have not been preferred before the Learned Appellate Tribunal if the applications have been dismissed, the learned counsel kept on insisting that the present suit is also maintainable. The learned counsel for the plaintiff has relied on State Bank of India v. Ranjan Chemicals Ltd. & Anr, (2007)1 SCC 97 and Indian Bank v. ABS Marine Products Pvt. Ltd., JT 2006(5) SC 281, to

contend that the present suit is not barred under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

12. This fact that though the applications have been dismissed, however, the plea of the plaintiff that there was an alleged compromise pursuant to which an amount of Rs.12 lakhs had been paid and therefore the plaintiff is entitled for return of property documents has not been rejected and has been kept open to be decided after evidence was not disclosed by the learned counsel for the plaintiff while arguing and it transpired after perusal of the order of the Debt Recovery Tribunal on the applications of the plaintiff.

13. From the order dated 1st January, 2009 it is apparent that though the applications of the plaintiff in four petitions before the Debt Recovery Tribunal have been disposed of, however, the plea of the plaintiff that there was an alleged settlement and pursuant to that settlement an amount of Rs.12 lakhs had been paid in full and final satisfaction of all the claims of the defendant bank against the debtors in the four petitions and therefore the plaintiff is entitled to return of documents of property which had been mortgaged has been left open to be decided after evidence. The relevant para of the order of the Debt Recovery Tribunal on the applications of the plaintiff is as under:-

“ From the perusal of the record, it may be noted that in the course of the cross examination, the applicant has moved the above stated application. On perusal of the averments of both the sides and the documentary evidence filed by them in support of their respective contentions, it is established that the question and issues, have been raised at the belated stage which cannot be adjudicated upon without appreciation of evidence. As I stated earlier, the cross-examination is being recorded. On the basis of the material available on the record, it can easily be presumed that this application has been moved on behalf of the defendant No.3 simply to drag this litigation with a view to defeat the recovery process. It may further be mentioned here that that RDDB & FI Act was enacted with a view to dispose off the bank recovery cases on speedy trial basis in a summary manner. As indicated earlier, the application is pending since 1994. In the last 13 years, the evidence could not be completed. Without entering into the cause leading the delay of the disposal of the present case, I am of the opinion that it would be just, proper and appropriate to dispose off the issues taken in this application in the final order only.

I, therefore, dispose off this application with the direction that the issue raised in this application may be argued by the defendants at the time of final arguments.”

14. If the issues raised by the plaintiff regarding settlement of all the claims of the defendant in the four recovery petitions pursuant to payment of Rs.12 lakhs and for the release of documents of mortgaged property are yet to be decided by the Debt Recovery Tribunal after completion of evidence in this regard, the plaintiff cannot file a separate suit seeking the same relief before this Court. The plaint of the plaintiff is barred under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

15. If the plea of the plaintiff is that the question of settlement and satisfaction of all the claims of the defendant bank should have been decided without evidence and the application could not have been disposed of without deciding these issues at this stage, then the plaintiff should have filed an appeal, if maintainable, before the Appellate Tribunal or some other proceedings. The order of the Debt Recovery Tribunal dated 1.1.2009 cannot be challenged in the garb of present suit.

16. The plaintiff is also aggrieved by the observation of the Debt Recovery Tribunal while disposing of the applications of the plaintiff that the applications were filed to simply drag the litigation with a view to defeat the recovery process. Even for expunging that observation or to challenge any portion of the said order the remedy was to file an appeal against the order dated 1st January, 2009 passed on the applications in the four petitions and not to file a separate suit seeking a decree of permanent injunction to stay the proceedings before the Debt Recovery Tribunal in four petitions detailed hereinabove.

17. Whether the amount of Rs.12 lakhs has been paid by the plaintiff and if so whether the amount has been paid in full and total satisfaction of all the claims of the defendant bank in the four petitions, are questions to be adjudicated by the Debt Recovery Tribunal and not

by this Court in a separate suit. If the amounts claimed by the defendant bank has been satisfied, then for a decree of redemption and release of property documents of the plaintiff, the appropriate forum is the Debt Recovery Tribunal and not this Court.

18. The pleas raised by the plaintiff are ex-facie barred under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the suit is nothing but a sheer abuse of process of law.

19. The plaintiff has also alleged that the procedure adopted by the Tribunal is bad in law and violates all the norms of course of justice for disposal of matters. Even for this grievance the plaintiff should have filed an appeal before the Appellate Tribunal and not a suit for declaration, specific performance, permanent and mandatory injunction.

20. The precedents relied on by the plaintiff are distinguishable and on the basis of their ratio, the plaintiff cannot contend that his suit for adjudication of the defenses raised in the four petitions, which are yet to be adjudicated, are to be decided separately by this Court. In State Bank of India (Supra) the Supreme Court had held that the counter claim in respect of damages against the bank on the bank's failure to

fulfill its obligation while making available the cash credit facility and not honoring its commitments in time to release the working capital which was agreed to as part of a rehabilitation process of the company and as a result of which the company had suffered losses leading to the Board of Industrial and Financial Reconstruction recommending its winding up, shall be maintainable. It was held that the counter claim for damages on failure of the bank to fulfill its commitment was alien to the claim made by the bank before the Tribunal and, therefore, the suit for recovery of damages was not hit by the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the jurisdiction of the Civil Court was not affected. The Apex Court had held that the question to be considered is whether in the nature of the respective claims arising out of loan transaction, it was just and proper to order a joint trial of the two causes and whether there was anything in the Act which prevented the Debt Recovery Tribunal from entertaining the claim made by the plaintiff in the suit. In the case of the present plaintiff the defense set up regarding satisfaction of the amounts claimed by the defendant bank on alleged payment of Rs.12 lakhs pursuant to alleged compromise is still pending adjudication before the Debt Recovery Tribunal. In the circumstances, there is no ground to segregate the defense of the plaintiff and to try it separately in the present suit. The plea of the plaintiff that the claims of the bank stood satisfied on payment of Rs.12 lakhs pursuant to alleged compromise and the claims of the defendant bank for recovery of

amount are inextricably interlinked and are pending adjudication before the Debt Recovery Tribunal and cannot be adjudicated separately.

21. The plea of the learned senior counsel, Mr.Amit Chadha that first summons should be issued in the present case and after the defendant bank appearing and consenting to the transfer of the case to the Debt Recovery Tribunal, the suit be sent to Debt Recovery Tribunal for adjudication, is also without any legal basis and is not sustainable in the facts and circumstances. Since the plea of the plaintiff that an amount of Rs.12 lakhs has been paid in full and final settlement of all the amounts due to the banks in the four petitions is already pending adjudication before the Debt Recovery Tribunal, the same is not to be entertained in the present suit and thereafter to be transferred to the Tribunal. The suit of the plaintiff is not maintainable and is barred under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

22. The learned counsel for the plaintiff has also relied on Indian Bank (Supra) where the borrower had sued the bank for damages for not releasing the sanctioned loan in accordance with the agreement. The borrower had claimed an amount of Rs.25,38,58,000/- as damages with interest for non disbursal of the loans. In those circumstances it was held that while the claim of the bank was for an ascertained sum

due from the borrower, the claim of the borrower was for damages which required determination by the Court as to whether the bank was liable to pay damages and, thereafter assessment of quantum of such damages. The Supreme Court had held that the claim of the bank was not dependant on the claim of the borrower for damages. In contradistinction, in the present case the claims of the bank are not disputed. What is stated is that towards the claims of the bank in the four petitions, an amount of Rs.12 lakhs has been paid by the plaintiff/guarantor in full and final settlement and, therefore, the claims are satisfied and mortgage on the property of the plaintiff is to be redeemed and the documents of the property on which mortgage had been created should be released to the plaintiff.

23. Though the plaintiff is seeking a decree for redemption in the suit, however, for the reasons only known to the plaintiff it is also stated in the plaint that he is not claiming a decree for redemption. Merely by stating that the plaintiff is not claiming a decree of redemption and is only claiming specific performance of the alleged agreement arrived at between the parties, the nature of the suit will not change. In any case the said pleas of the plaintiff are pending adjudication before the Debt Recovery Tribunal and in the circumstances there are no grounds to try them separately in the suit which has been filed by the plaintiff. The suit of the plaintiff in the

present facts and circumstances is barred under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and is a sheer abuse of process of law and, therefore, the plaint is rejected with a cost of Rs.10,000/- payable by plaintiff to Delhi High Court Legal Aid Services Authority.

FEBRUARY 03, 2009
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ANIL KUMAR, J.