

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

O.S.A.No.40 of 2018

R.Subramanian .. Appellant/1st Respondent/Plaintiff

Vs.

1. The Hongkong and Shanghai
Banking Corporation Ltd.,
Nagabramha Towers,
No.76 Cathedral Road,
Chennai - 600 097. ..1st Respondent/Applicant/1st Defendant

2. M/s.Subhiksha Trading Services Ltd.,
Cabin A, 2nd Floor, Habib Complex,
5, Durgabai Deshmukh Road,
R.A.Puram, Chennai - 600 028.

Now in Liquidation,
M/s.Subhiksha Trading Services Ltd.,
Rep. By Official Liquidator Madras High Court,
Corporation Bhawan,
29, Rajaji Salai,
Chennai - 600 001. ..2nd Respondent/Respondent/2nd
Defendants

Prayer: Appeal filed under Order XXXVI Rule 1 of the O.S. Rules
and Clause 15 of the Letters Patent against the Order dated
01.02.2017 passed in Application No.2809 of 2012 in C.S.No.786
of 2011 on the file of this Court.

A. No. 2809/2012 in C.S. No. 786/2011:

Application filed under Order XIV Rule 8 of Madras High
Court Original side Rules and with order VII Rule 11(C) of the
Civil Procedure Code 1908 to reject the plaint in C.S. 786/2011.

For Appellant : Mr.Prakash Goklaney

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Appellant.

2.Since this Court is disposing of the main Original Side Appeal at the admission stage itself, this Court is not inclined to issue notice to the Respondents.

3.The Appellant/Plaintiff has preferred the present Original Side Appeal against the order dated 01.02.2017 in Application No.2809 of 2012 in C.S.No.786 of 2011.

4.Earlier, the Learned Single Judge, while passing the impugned order in Application No.2809 of 2012 in C.S.No.786 of 2011 [filed by the 1st Respondent/Defendant against the Appellant/1st Respondent/Plaintiff and another seeking to reject the Plaint in C.S.No.786 of 2011 under Order XIV Rule 8 of the Madras High Court Original Side Rules read with Order VII Rule 11(C) of the Civil Procedure Code, 1908], on 01.02.2017, at paragraph 17, had observed the following:

"17.Though the learned counsel for the original plaintiff/1st respondent herein has relied upon the judgment of the Hon'ble Supreme Court reported in (2009) 8 SCC 646 (NAZAR INDUSTRIAL ENTERPRISES LIMITED v. HONG KONG AND SHANGHAI BANKING CORPORATION), the same is not applicable to the facts of the present case. In the said judgment, the issue was with regard to the derivative contracts, which were alleged to be the violation of Foreign Exchange Management Act, 1999 as well as the circulars and guidelines issued by the Reserve Bank of India. Only taking note of the derivative contracts, the civil Court Jurisdiction was retained by the Hon'ble Supreme Court. Therefore, this Court is of the view that the present suit is nothing but abuse of process of law. The plaintiff, having approached the DRT for the similar issue can very well agitate the same before it."

and allowed the application.

5.According to the Learned Counsel for the Appellant/Plaintiff, he was the Managing Director of M/s Subhiksha Trading Services Limited (STSL) a subsidiary company of ICICI Bank and its subsidiary M/s ICICI Venture Fund Management Company Limited. The version of the Appellant is that STSL had entered into agreements for borrowings from Banks for its expansion programmes and for financing its working capital requirements.

Further, the loans were sanctioned to STSL to the extent of Rs.800 Crores by various banks including the 1st Respondent/Bank.

6.It comes to be known that since STSL had entered into loan agreements for Rs.800 Crores with the banks the guarantees of the Appellant were also obtained for such amount despite the net worth of the Guarantor having been between Rs.2 to 5 Crores in the said periods when the Guarantees were taken. Because of the reason that loans were not being borrowed by the Appellant, according to him, the funds in his hands were no manner altered by the loans granted by the lender banks to STSL and as such, the lack of his ability to meet the demands if any under the Guarantee by the Banks was known both to the Appellant and to the banks at all times.

7.The stand of the Appellant is that the Guarantees were taken by the Banks only for reasons of procedural compliance and there was no expectation of the banks of any ability to recover the monies intended to be advanced by them to STSL from the Appellant as the Appellant's limited resources were always known to the lender banks to STSL so much, so that not even any security was ever sought by the lender banks of STSL from Appellant despite the large amounts for which guarantees were obtained from the Appellant. In fact, it is the plea of the Appellant that STSL underwent serious financial difficulties in the year 2009 and the operations came to be suspended. Thereafter, STSL had to face claims by the lenders banks at Debts Recovery Tribunal and in the said proceedings, the Appellant was arrayed as Guarantor and the monies claimed as due by STSL were also claimed from the Appellant as though under the Guarantee.

8.The principle stand on behalf of the Appellant is that the 'Guarantees were void ab initio' under Part 1 of Section 56 of the Contract Act, 1872 as the contract was known to both parties to be impossible of performance even at the time of the same being entered into. The position that impossibility of performance under Section 56, according to the Appellant, is to be construed as practical impossibility. Further, the Appellant had filed Civil Suit No.786 of 2011 on the file of this Court seeking the following reliefs:

"(i)Declaring that the documents dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007 claimed as guarantees, executed by the plaintiff in favour of the 1st Defendant in respect of the debts of the 2nd Defendant company as void ab initio and unenforceable.

(ii) For a permanent injunction restraining the first defendant bank or any other person claiming through or under them from in any manner making or pursuing a claim against the plaintiff in connection with the deeds of guarantee dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007, which are void ab initio.

(iii) For costs of the suit."

9. In the said Suit in C.S.No.786 of 2011, the 1st Respondent/ Bank filed an Application No.2809 of 2012 [seeking to reject the Plaint under Order VII Rule 11 C.P.C.], in which, the impugned order dated 01.02.2017 was passed.

10. The contention of the 1st Respondent/Bank before the Learned Single Judge was that the suit filed by the Appellant as Plaintiff was barred by Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [hereinafter referred to as 'the RDDBFI Act, 1993'] although according to the Appellant such bar was only in respect of suits filed by Banks and Financial Institutions against borrowers and not in respect of suits against Banks and Financial Institutions.

11. At this juncture, the Learned Counsel for the Appellant/Plaintiff strenuously takes a plea that there is no bar on suits against Banks and Financial Institutions created by Section 18 of the RDDBFI Act, 1993 and in fact, the Application of the 1st Respondent/Bank should have been dismissed by the Learned Single Judge with exemplary costs.

12. The Learned Counsel for the Appellant/Plaintiff cites the decision of the Hon'ble Supreme Court in Indian Bank V. ABS Marine Products (P) Limited reported in (2006) 5 SCC 72 at page 74 wherein, it is observed and held as under:

"It is evident from Sections 17 and 18 of the Debts Recovery Act that civil court's jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debts. The jurisdiction of civil courts is not barred in regard to any suit filed by a borrower or any other person against a bank for any relief. The Calcutta High Court had jurisdiction to entertain and dispose of the suit filed by the borrower when it was filed and continued to have jurisdiction to entertain and dispose of the said suit. There is no provision in the Act for transfer of suits and proceedings, except Section 31 which relates to suit/proceeding by a bank or financial institution for recovery of a debt. In the

present case, the Debts Recovery Tribunal, Calcutta, was established long prior to the filing of the Company's suit against the Bank. Since the said suit was filed long after the date when the Tribunal was established and was not a suit or proceeding instituted by a bank or financial institution for recovery of a debt, it did not attract Section 31.

Sections 19(6) to 19(11) (as introduced by Act 1 of 2000), are merely enabling provisions. Significantly, Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings. The only change that had been made was to enable the defendants to claim set-off or make a counterclaim as provided in Sections 19(6) to 19(8) in applications already filed by the banks or financial institutions for recovery of the amount due to them."

13. The Learned Counsel for the Appellant/Plaintiff refers to the decision of the Hon'ble Supreme Court in *Nahar Industrial Enterprises Limited V. Hong Kong and Shanghai Banking Corporation*, (2009) 8 SCC 646 wherein it is held that 'Debts Recovery Tribunal is neither civil Court nor Court subordinate to High Court and that the provisions of Sections 22 to 24 are not applicable'. Further, in the said decision, it is laid down that 'unless jurisdiction of civil Court is ousted expressly or by necessary implication, civil court will have jurisdiction to try all types of suits'. Moreover, it is pointed out in the said decision that 'the Jurisdiction of Civil Court under RDDB Act, is barred only in respect of recovery of debts due to banks and financial institutions but not beyond the same'.

14. The Learned Counsel for the Appellant seeks in aid of the decision *Sri Chandru and another V. K. Nagarajan and 4 others*, reported in 2012 (3) CTC 785 wherein it is held that 'the Bank loan availed by father, would be binding on Plaintiffs children'. Further, in the aforesaid decision, at page 786, it is observed as under:

"Courts have a duty to see whether genuine grounds have been made out to attract the jurisdiction of the Civil Court. No generalisation could be made as to when a Civil Suit is maintainable or when the

jurisdiction of the Civil Court is ousted. In the facts and circumstances of each case, it is to be examined whether there is genuine grievance to be redressed in the Civil Court. In V. Thulasi v. Indian Overseas Bank, 2011 (3) CTC 801, this Court held that the suit is specifically barred under Section 34 of the Act and the Plaint is liable to be rejected."

15. The Learned Counsel for the Appellant also cites the decision of the Hon'ble Supreme Court in Jagdish Singh V. Heeralal and others, (2014) 1 SCC 479 wherein it is held that 'irrespective of issue of maintainability of civil suit, remedy lay under Section 17 where Bank (secured creditor) adopts any measure as contemplated under S.13(4) for enforcement of its security interest, including sale of secured assets, in respect of which Respondents 1 to 5 were claiming an interest and that High Court erred in holding that civil Court had such jurisdiction.'

16. Also, in the aforesaid decision at page 480, it is observed as follows:

"Section 17 of the SARFAESI Act confers a right of appeal to "any person", including the borrower, if that person is aggrieved by any of the "measures" taken by the secured creditor under Section 13(4). A further appeal can be preferred to the Appellate Tribunal under Section 18 of the SARFAESI Act.

The expression "any person" used in Section 17 of the SARFAESI Act is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) of the SARFAESI Act. Therefore, the expression "any person" referred to in Section 17 would take in the Plaintiffs in the suit i.e. Respondents 1 to 5 herein, as well. Thus, irrespective of the question whether the civil suit is maintainable or not, under the SARFAESI Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the SARFAESI Act, in case the Bank (secured creditor) had adopted any measure including the sale of the secured assets in respect of which the plaintiffs (Respondents 1 to 5 herein) claim and interest.

Section 34 of the SARFAESI Act ousts the

civil court jurisdiction. Section 13 deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the SARFAESI Act. When the secured creditor proposes to proceed against the secured assets, Section 13(4) envisages various measures to secure the borrower's debt. One of the measures provided by the SARFAESI Act is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in Section 13(4) has got a statutory right of appeal to the DET under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the SARFAESI Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under Section 13(4) of the SARFAESI Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under Section 13(4), the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under Section 13(4) of the SARFAESI Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the SARFAESI Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

17. The Learned Counsel for the Appellant relies on the decision in Cambridge Solutions Limited V. Global Software Limited, (2016) 7 MLJ 641 wherein it is held as follows:

"The plaintiff having already invoked the jurisdiction of the DRT cannot sustain the suit by invoking the original jurisdiction of this Court for the very same relief. However, it is at liberty to take up the cause before the DRT. Also, even according to the

plaintiff, the fact about attachment and issuance of duplicate debentures, came to their knowledge in early. But, the suit has been filed only in a year later. The reasons given by the plaintiff is not acceptable as even according to them, they had parted with huge money to the 3rd defendant and if the allegations of fraud are true, they ought to have approached the tribunal at the earliest. Therefore, we are of the view that the plaintiff would have no cause of action to set at naught the recovery proceedings initiated as per law and the orders passed by the competent authority having jurisdiction. Also, the suit is barred by the provisions of the RDDB Act. The learned judge has failed to consider the averments in the plaint with the documents carefully and has rather travelled with the contentions and probabilities of the case. The learned judge also failed to consider the implied bar under the RDDB Act. Hence, the order of the learned judge in application is set aside. The plaint is rejected. The plaintiff is at liberty to work out his remedy as per the provisions of the RDDB Act as against the 3rd defendant, if so advised. For the reasons stated above and in view of the fact that the suit is held to be not maintainable, the order in Original Application cannot survive. Hence, the same is set aside."

18. The Appellant filed a counter before the Learned Single Judge to the Application No.2809 of 2012 in C.S.No.786 of 2011 (filed by the 1st Respondent/Bank) by taking a plea that it is a matter of record that his Guarantees were taken by the 1st Respondent/Bank as a mere formality knowing fully well that the same were not unenforceable etc. Also, the Appellant took a plea that the Plaint can be rejected in the following cases:

- "(a) where it does not disclose a cause of action;
- (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 returned 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;

(e)where it is not filed in duplicate;
(f)where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of these valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

19.The Appellant/Plaintiff had also took a stand that the claim of the Bank is barred by the provisions of the Sections 17 and 18 of the RDDBFI Act, 1993 which is claimed to vest exclusive jurisdiction of Tribunal only relate to suits filed by the Banks and not to suits filed by persons like him against the Banks.

20.The Learned Counsel for the Appellant contends that there is no judicial finding that the guarantee is valid or enforceable and that the DRT merely wanted to decide the issue of discharge at the stage of final enquiry and further it is settled law that every person is entitled to exercise and avail multiple remedies and the theory of election does not arise except where the remedies are repugnant and inconsistent and a choice was made between the various remedies. Further, when the proceedings before the Tribunal are without jurisdiction there is no necessity for the Respondent to argue at the Tribunal. Moreover, the Debts Recovery Tribunal is not empowered to give a relief of declaration that the guarantee is void and unenforceable.

21.It is remembered that the 1st Respondent/Bank filed Application No.2809 of 2012 in C.S.No.786 of 2011 stating that in the suit itself the Appellant/Plaintiff had candidly admitted that the Applicant/Bank had advanced monies to the 2nd Respondent/ M/s.Subhiksha Trading Services Limited and that he was the Managing Director thereof and that the said Subhiksha Trading Services Limited defaulted in payment of dues to the Applicant/Bank and he stood as Guarantee for the dues and that the 1st Respondent /Bank filed O.A.No.176 of 2011 before the Debts Recovery Tribunal, Chennai for recovery of sum of Rs.98,47,12,513/-.

22.The fact of the matter is that the Tribunal, according to the 1st Respondent/Bank, had refused to discharge the Appellant/Plaintiff and in fact, the Appellant/Plaintiff filed an Appeal before the Debts Recovery Appellate Tribunal which had not yielded the results in his favour and therefore, the Appellant had filed the present suit together with an interim application.

23.The simple point that arises for consideration is whether the Appellant/Plaintiff is liable to pay necessary monies to the 1st Respondent/Bank as Guarantor or otherwise is purely within the domain/jurisdiction of the Tribunal. When the Tribunal was seized of the matter after hearing the arguments in the Original Application, when final orders are passed, during the interregnum, the Appellant /Plaintiff had filed the present Suit in C.S.No.786 of 2011 in regard to the enforcement of guarantees admittedly executed by him to and in favour of the Bank.

24.In this connection, a reading of Section 18 of the RDDBFI Act, 1993 unerringly points out that it imposes bar on a Civil Court from exercising jurisdiction or power only pertaining to matters mentioned in Section 17 of the Act. Section 17(1) of the Act confers jurisdiction on a Tribunal to entertain and determine the application from bank or recovery of debts due to such banks and financial institutions. Viewed in that perspective, the instant claim made by the Appellant/Plaintiff in Application No.2809 of 2012 in C.S.No.786 of 2011 is clearly barred in Law and resultantly, the Plaint in C.S.No.786 of 2011 is liable to be rejected as per ingredients of Order VII Rule 11 (d) of the Civil Procedure Code.

25.It is to be remembered that even though the provisions of Civil Procedure Code are not strictly applicable to the Debts Recovery Tribunal's proceedings, yet, the Tribunal by adopting its own procedure mainly guided by the Principles of Natural Justice can resort to its own procedure and deal with the matters which arise for determination before it. When the O.A.No.176 of 2011 was pending before the Debts Recovery Tribunal and when final orders were passed by the Tribunal and when the arguments of the 1st Respondent/Bank were completed at that point of time, the Appellant/1st Respondent/Plaintiff had thought fit to project the Plaint in C.S.No.786 of 2011 seeking the reliefs (i) Declaring that the documents dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007 claimed a guarantees, executed by the plaintiff in favour of the 1st Defendant in respect of the debts of the 2nd Defendant company as void ab initio and unenforceable and (ii) for a permanent injunction restraining the first defendant bank or any other person claiming through or under them from in any manner making or pursuing a claim against the plaintiff in connection with the deeds of guarantee dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007, which are void ab initio etc., in the considered opinion of this Court, are per se not maintainable and obviously the Appellant/ Plaintiff has indulged forum shopping.

26.One cannot brush aside an important fact under the RDDBFI Act, 1993, there is no complete ouster of jurisdiction of the

Civil Court. The Ouster is very much by means of the ingredients of Section 18 which ordinarily points out that no Court or authority can try matters for recovery of debts in regard to the reliefs which do not relate to debts. Mere running of the eye of the ingredients of Section 17 of the 1993 Act, there is little doubt that the Civil Court can still retain jurisdiction, in regard to the reliefs which do not pertain to debts.

27. In fact, the RDDBFI Act, 1993 is a valid piece of legislation and the same is held to be not violative of Article 14 and is not unreasonable as per decision of the Hon'ble Supreme Court in Union of India V. Delhi High Court Bar Association reported in AIR 2002 SC 1479. After all, the primordial object and purpose of the creation of the Debts Recovery of Tribunal is to provide an expeditious adjudication and Recovery of Debts Due to Banks and Financial Institutions. No wonder, the said Act is a Special Law, for which, the Tribunal and Appellate Tribunals are created by Statute.

28. It is to be noted that the filing of the suit by the Appellant/ Plaintiff in C.S.No.786 of 2011 on the file of this Court, obviously in his individual capacity and not in his status as Managing Director, manifestly exhibits his lack of bona fides.

29. It is pertinently pointed out by this Court that in terms of Section 17 read with 18 of the RDDBFI Act, 1993, the jurisdiction of the Civil Court is ousted and the Tribunal constituted under the Act alone has jurisdiction to recover the magnitude of debt as per decision Omeshwar Baldwa V. Vasavi Co-operative Urban Bank Limited, reported in 2010 (1) D.R.T.C. 167 special page 179 (A.P.).

30. Indeed, the RDDBFI Act is primarily enacted for the purpose of recovery of loans granted by the Banks and Financial Institutions. As such, if the suit is a suit for recovery of debt and also for sale or realisation of securities which would be ancillary to the purpose of recovery of debt, such a suit would be a suit substantially for recovery of debt and therefore, the said suit is not maintainable before a Civil Court. If the cause of action is such that it can be tried by the Tribunal alone the jurisdiction of the Civil Court, without haziness, is ousted. Also that, while determining the matter, the Tribunal can decide peripheral matters. After all, the aim of RDDBFI Act is to provide a speedy mode for Banks and Financial Institutions to recover their 'Debts'.

31. In the present case, admittedly, the 1st Respondent/Bank had initiated O.A.No.176 of 2011 and objections were filed by the Appellant/Plaintiff. When the 1st Respondent/Bank had initiated a remedy available to them before the Tribunal, then,

it is not open to the Appellant/Plaintiff to file a suit in C.S.No.786 of 2011 seeking the necessary reliefs viz., declaring that the documents dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007 claimed as guarantees, executed by the Plaintiff in favour of the 1st Defendant in respect of the debts of the 2nd Defendant company as void ab initio and unenforceable and (ii) for a permanent injunction restraining the first defendant bank or any other person claiming through or under them from in any manner making or pursuing a claim against the plaintiff in connection with the deeds of guarantee dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007, which are void ab initio etc.

32. Moreover, when the debt falls under the definition of the Act, any dispute arising out of the same is to be determined by the Tribunal duly constituted for that purpose, in the considered opinion of this Court. Once a remedy is provided under the RDDBFI Act, 1993 which is a Special enactment, there will be a ouster of jurisdiction by a Debtor or a Guarantor to approach the Civil Court.

33. It is to be pointed out that the term 'Debt' defined under Section 2(g) of the Act means any liability which is alleged as due from any person by a Bank during the course of any business activity undertaken by the Bank, in cash or otherwise, whether secured or unsecured, subsisting on, and legally recoverable on, the date of the application, as per decision Tapan Kumar Mukhoty V. Bank of Madura Limited, 2001 D.R.T.C. 91 at page 99 (Cal.)

34. It is to be made mention of Section 17 of the RDDBFI Act, 1993 that a Tribunal shall exercise, on and from appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to them. Section 18 of the Act creates a bar that no Court or other authority can thereafter exercise any jurisdiction, powers or authority (except the Supreme Court, and the High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in Sections 17 as per decision of the Hon'ble Supreme Court in the State Bank of Bikaner and Jaipur V. Ballabh Dass and Company, 2001 D.R.T.C. at page 22 at special page 25.

35. It is to be pointed out that the provisions of RDDBFI Act, 1993 confer exclusive jurisdiction on the 'Tribunal' and the 'Recovery Officer' in respect of Debts Due to Banks and Financial Institutions Act, 1993. To put it precisely, as on date, when the RDDBFI Act, 1993 came into force on 24.06.1993, the Tribunal (which was established on 30.11.1994) has ample jurisdiction to deal with matters in regard to the matters specified for adjudication of disputes.

36.As per Section 17 of the Act, 1993, a Civil Court cease to have jurisdiction and the term 'Debt' as per definition of Section 2(g) of the Act means any liability in cash or otherwise incurred during the course of any business activity. It includes 'secured' or an 'unsecured' debt. Even the inclusive of 'Interest' will come within the ambit of 'Debt'. Whether 'Debt' is a fraudulent one or not can very well be agitated/ascertained before the DRT based on the averment/allegation that it is fraudulent. Therefore, it cannot take away the purview of Tribunal's Jurisdiction and the 'Liability' is legally recoverable if it is not hit by limitation, in the considered opinion of this Court.

37.No wonder, the RDDBFI Act, 1993 is to provide a speedy remedy for recovery of debts because of the considerable difficulties experienced thereto. Ordinarily, a suit by a borrower against bank itself is not barred by virtue of Section 18 of the Act. However, the Debts Recovery Tribunal constituted under the RDDBFI Act having exclusive jurisdiction to entertain and decide claims of banks and financial institutions for recovery of debts due to them can deal with disputes arisen between the parties. In fact, no Civil Court or authority shall exercise jurisdiction in respect of the debts, claims arising under the Act. Section 19(22) of the Act empowers the Tribunal to adjudicate the liability in regard to the recovery of debts due to banks and financial institutions and after adjudication, a certification can be issued. Undoubtedly, the 'Liability of surety' is co-extensive with that of Debtor/Borrower as per Section 128 of the Indian Contract Act, 1872. Further, the jurisdiction of Civil Court is barred in regard to an application by a bank or financial institution for recovery of debts.

38.The Tribunal constituted under the RDDBFI Act, 1993 is a creation of statute and bound by rules framed under the Act, 1993 and guided by the principles of natural justice. The Tribunal is not bound by procedures laid down by Civil Procedure Code but it can seek the aid of principles of Civil Procedure Code by applying the same wherever it matters. It cannot be gainsaid that underlying Civil Procedure Code cannot be ignored by the Tribunal inspite of the fact the Tribunal has to regulate its procedures. The remedies provided to a 'Person' under the RDDBFI Act, 1993 are not only effective, but, efficacious one too.

39.In so far as the Order VII Rule 11(d) of the Civil Procedure Code is concerned, it is one of the exceptions to the right of a person to file a Civil Suit under Section 9 ought to

be strictly construed the prohibition thereunder against maintainability of suit must be apparent from the averments made in the Plaint. It is to be shown that the suit is barred by under any Law. The Plaint can be rejected under Order VII Rule 11(d) C.P.C. on the basis of averments made in the Plaint.

40. In the present case on hand, the 1st Respondent/Bank had already filed O.A.No.176 of 2011 before the Tribunal seeking passing of an order in directing the 2nd Respondent/2nd Defendant and the Appellant/Plaintiff to pay a sum of Rs.984,742,513.11 with interest at 18.1.% for working capital loan and 15.5% for overdraft with monthly rests from the date of this application till realization etc. Therefore, when the Appellant/Plaintiff seeks a declaratory relief in the suit that the documents dated 28.04.2005, 30.05.2006, 09.02.2007, 02.04.2007 and 30.11.2007 claimed as guarantees, executed by him in favour of the 1st Respondent/Bank in respect of the debts of the 2nd Respondent/2nd Defendant company as void ab initio and unenforceable etc. these reliefs in the considered opinion of this Court can be claimed before the Tribunal and also can be dealt with by the Tribunal when pleas in this regard are raised and necessary findings be rendered. However, the Appellant has invoked the jurisdiction of this Court in filing the present suit which is inadmissible in Law. It is pertinently pointed out by this Court that in Law even an 'Illusory Cause of Action' created by an ingenious drafting of Plaint will result in rejection of Plaint under Order VII Rule 11 of the Civil Procedure Code.

41. In view of the foregoing, this Court is of the considered view that the Learned Single Judge had rightly h.eld that 'the present suit is nothing but abuse of process of law and the plaintiff, having approached the DRT for the similar issue can very well agitate the same before it and resultantly, rejected the plaint', which is free from material irregularities and legal infirmities. Consequently, the Original Side Appeal fails.

42. In fine, the Original Side Appeal is dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Sgl

O.S.A.No.40 of 2018

SP(08/03/2018)