A.No.1696 of 2020
in C.S.No.413 of 2017

P.T.ASHA, J.,

The 1st defendant in a suit for declaration is the applicant before this Court. The application has been filed to transfer the suit C.S.No.413 of 2017 to be tried along with O.A.No.196 of 2017 on the file of the Debts Recovery Tribunal II at Chennai. To appreciate the issue involved in the application it is necessary to briefly allude to the facts based upon which the suit has been filed by the 1st respondent herein.

The plaintiff's / 1st respondent's case in the plaint:

2. The suit C.S.No.413 of 2017 has been filed by the 1st respondent herein for a declaration that any security in the form of pledge / lien / charge created in respect of the Fixed Deposits of the plaintiff / 1st respondent is not binding on her, to direct the 1st defendant / applicant herein to return the original Fixed Deposit receipts and render true and proper accounts. The 1st respondent would contend that the 2nd defendant (since deceased) had

offered to assist the 1st respondent in her financial matters and in pursuance of this he had informed the 1st respondent that the applicant bank would offer ½ % interest over and above the other banks. With this promise of higher return of interest, the 1st respondent had invested her Fixed Deposit totalling a sum of Rs.3,40,04,000/- with the applicant bank. The 1st respondent had come into the said money from the sale of her shares of Ambadi Estate. She had opened three Fixed Deposit accounts.

3. Apart from the 1st respondent, the family members and family trust where holding Fixed Deposits with the appellant Bank for different amounts.

4. According to the 1st respondent, the Fixed Deposits were being renewed every year, in the year 2011 and 2012. The original Fixed Deposits which are renewed were also handed over to the 1st respondent. However, in the first week of December 2013, the 2nd defendant had taken the Fixed Deposit receipts for renewal. The originals were not returned to

the 1st respondent but however they had also not chosen to seek its return since the 1st respondent and her husband were mostly living at Malaysia.

5. Meanwhile, in October 2011 the 1st respondent's elder son, Sathappan wanted a loan of Rs.1,40,00,000/- for his personal use. Towards a portion of this loan they had decided to pledge one of the Fixed Deposits to the applicant bank to the tune of Rs.85,00,000/-. The 2nd defendant offered to personally process the said loan with the applicant bank and had asked the 1st respondent and her son to keep away from the applicant bank undertaking to complete the entire paper work relating to the loan. The 1st respondent and her son believing the words of the 2nd defendant had allowed him to interact with the Bank on their behalf.

6. The 1st respondent would further contend that now they come to learn that the applicant bank in collusion with the deceased 2nd defendant had opened another bank account in the name of the 1st respondent without her knowledge and signature and the money deposited into that account had

been siphoned off. That apart, the Fixed Deposits receipts were pledged using forged deposit receipts, since the original Fixed Deposit receipts were then in the possession of the 1st respondent. The 1st respondent would submit that with that money, the officials of the bank who had colluded with the deceased 2nd defendant started a restaurant. In fact, at the time of taking loan no official had personally interacted with the 1st respondent and obtained the KYC details. In fact, the 1st respondent's son was also servicing the loan amount by paying the interest. The applicant bank had collected over a sum of Rs.28,00,000/- and this amount has been misappropriated by the applicant bank.

7. It appears that the 1st respondent's son had contacted the applicant bank and he was provided with two pass books both with different addresses. In March 2013, since the 2nd defendant was away the 1st respondent's son had visited the bank personally. One of the employees of the applicant bank informed him doubtfully that the Fixed Deposits belonging to the family were also under the lien. The 1st respondent

attempted to get information about the same by sending her staff however they were unable to make any headway since the officials of the applicant bank were tight-lipped. The family trust's attempt to find out as to why the interest was not being credited to their account was also met with silence.

8. The 1st respondent had instituted the proceedings in the National Consumer Tribunal against the applicant bank but since the same involved letting in voluminous documents and examining witnesses, the 1st respondent had decided to move the Civil Court. The 1st respondent had also obtained a sale deed in respect of the property which belonged to the deceased 2nd defendant's father as compensation for the loss created by him on account of his fabricating and forging the signatures of the 1st respondent for obtaining the loan on the basis of fabricated and forged loan documents by fraudulently pledging the the 1st respondent's Fixed Deposits. Since the applicant bank was not coming forward with the correct details and were not returning the Fixed Deposits the 1st respondent was constrained to file the above suit for the reliefs detailed herein above.

Application for Transfer:

9. On receiving the summons in the above suit the applicant / 1st defendant has come forward with the instant application for transferring the suit to the file of the Debts Recovery Tribunal. According to the applicant bank, the 1st respondent had opened her savings account in Account No.11914 on 08.12.2010 and between 29.01.2011 and 25.08.2011 the 1st respondent had borrowed a sum of Rs.3,01,85,000/-. The loan was repayable with an interest at 19.40% per annum. As security for the loan, the 1st respondent had also deposited the original Fixed Deposit receipts.

10. Till the month of June 2013, the 1st respondent had regularly paid interest and thereafter started committing a default. Since the interest was not forthcoming, the applicant bank had adjusted the amounts due from the Fixed Deposit dues under the loan account. The applicant would submit that despite several request the 1st respondent had not come forward to regularise the account. The applicant would submit that they have instituted

proceedings for recovery of money before the Debts Recovery Tribunal, Chennai and the issues involved in the suit as well as the application are the same and the same can be adjudicated before the Debts Recovery Tribunal.

11. The applicant was advised to file an application for transfer earlier, however since the 1st respondent was actively participating in the proceedings before the Debts Recovery Tribunal, the applicant had not filed the application for transfer. However, since the present suit has reached the trial stage the applicant is constrained to file the above application for transfer.

12. The applicant would submit that the Section 18 of Recovery of Debts Due to Bank and Financial Institution Act, hereinafter referred to as the RDDBFI Act, ousted the jurisdiction of the Civil Courts. Further, the relief in the suit has become infructuous as the amounts due under the Fixed Deposits have been adjusted towards loan. The suit, according to the applicant is nothing but a case of forum shopping. The applicant would

further submit that the claim as made out in the suit was put forward in the form of counter claim before the Debts Recovery Tribunal and therefore there is no impediment to transfer the proceedings to the Debts Recovery Tribunal.

Counter of the 1st respondent / plaintiff:

13. The 1st respondent would contend that the application has been moved at an highly belated stage particularly when the suit is now in the stage of framing issues. The 1st respondent would further contend that the petition before the Debts Recovery Tribunal had reached the arguments stage and arguments were made by both the sides and thereafter the Presiding Officer had retired without delivering judgement.

14. It is the case of the 1st respondent that the Savings Bank Account as stated by the applicant bank had not been opened by the 1st respondent. The signature in the said application form is a rank forgery. In fact, the 1st respondent had opened a Fixed Deposit account with the applicant bank

with specific instructions that the interest on the Fixed Deposit had to be accumulated in her account. The bank should be directed to produce the original account opening form which would clearly justify these contentions of the 1st respondent. The original Fixed Deposit receipts when it was renewed in the year 2013 was not returned by the deceased 2nd defendant to the 1st respondent and since most of the time the 1st respondent and her husband were living at Malaysia they had not followed up the return of the Fixed Deposit receipts. Further, the applicant bank has not issued any prior notice before adjusting the amounts from the Fixed Deposit towards the alleged loan.

15. The 1st respondent would further submit that since serious allegations of fraud has been made out in the suit, the same has to be gone into in great detail by letting in evidence which cannot be adjudicated before the Debts Recovery Tribunal since the relief claimed is a common law remedy. The counter claim which is provided for in the Debts Recovery Tribunal proceedings may not be adequate and an effective substitute for a

suit. That apart, if an appeal has to be filed against the order in the application before the Debts Recovery Tribunal, the appeal to the appellate authority would necessarily involve payment of 75% of the claim as a pre-deposit before getting the appeal numbered. The 1st respondent would submit that being the plaintiff she is the dominus litus to choose the appropriate forum.

Submissions:

16. Mr. R.Umasuthan, learned counsel appearing on behalf of the applicant would submit that the 1st respondent had deposited the following amounts with the applicant bank:

S.No.	***Name of the Depositor***	***Deposit Date***	***Amount deposited in Rupees***
1	Mrs.N.Umayal Achi	10.12.2010	1,00,00,000/-
2	Mrs.N.Umayal Achi	10.12.2010	1,00,00,000/-
3	Mrs.N.Umayal Achi	10.12.2010	1,40,04,000/-

17. A sum of Rs.3,01,85,000/- was borrowed by the 1st respondent from the applicant Bank. The details of the borrowal are given herein below:

S.No	***Name of the Borrower***	***Date of loan application***	***Amount Borrowed in Rupees***
1	Mrs.N.Umayal Achi	29.01.2011	90,00,000.00
2	Mrs.N.Umayal Achi	30.06.2011	89,50,000.00
3	Mrs.N.Umayal Achi	25.08.2011	1,22,35,000.00
	Total		3,01,85,000.00

18. The learned counsel would submit that the borrowal was against the pledge of these Fixed Deposits. Till the month of June 2013 the 1st respondent was servicing the interest correctly, thereafter, she had fallen into arrears. He would submit that since there was a default, the applicant had filed O.A.No.196 of 2017 for recovery of a sum of Rs.65,43,408.28 together with interest. The learned counsel would submit that the 1st respondent had actively participated in the proceedings by filing reply statement as well counter proof affidavit and arguments in the application

had also been advanced and it was only the Judgement that had to be pronounced. It is thereafter that the 1st respondent has come forward with the suit in question in the year 2019.

19. He would therefore contend that the suit is much after the filing of the OA and should therefore be transferred. He would further submit that the suit is more in the nature of a counter claim and further the 1st respondent had not made any claim against the 2nd defendant and on his death they have given up the relief against the legal heirs of the 2nd defendant. The relief now sought for in the suit is only against the applicant Bank.

20. He would submit that under Section 17 of the RDDBFI Act, the jurisdiction has been exclusively vested with the Tribunal to entertain and decide application from Banks and Institutions for recovery of debts due to them. Under Section 18 of the RDDBFI Act, the jurisdiction of other Courts have been ousted.

21. He would further submit that under Section 19 (8) of the RDDBFI Act, a counter claim and set off can also be entertained by the Debts Recovery Tribunal. He would argue that it is well open to the 1st respondent to raise all these pleas in the form of the counter claim in the proceedings before the Debts Recovery Tribunal. The learned counsel would also draw attention to the Court to the pleadings of the 1st respondent in his plaint where it shows that there was a borrowal by the 1st respondent's son and that the interest was being paid by the 1st respondent son.

22. He would also submit that since the 1st respondent has got the sale deed executed by the 2nd defendant's father in their favour as compensation for the 2nd defendant's collusive and dishonest conduct, the applicant bank cannot be asked to pay compensation as demanded in the suit. Further, he would contend that issues in the suit and the application before the Debts Recovery Tribunal overlap and therefore the suit should be transferred to the Debts Recovery Tribunal since the proceedings before the

Debts Recovery Tribunal is at the stage of the arguments. The learned counsel has relied upon the following Judgements in support of his contentions:

"i. ***(2000) 7 SCC 357*** – Union Bank of India Vs. Abhijit Tea Co. Pvt. Ltd and others.

ii. ***(2006) 5 SCC 72*** – Indian Bank Vs. ABS Marine Products (P) Ltd.

iii. ***(2007) 1 SCC 97*** – State Bank of India Vs. Ranjan Chemicals Ltd and others.

iv. ***(2009) 8 SCC 646*** - Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation.

v. ***(2015) 13 SCC 635*** – Bank of Rajasthan Limited Vs. VCK Shares and Stock Broking.

23. The learned counsel would rely upon the case of ***Abhijit Tea Co. Pvt. Ltd,*** to Substantiate his argument that once the plea raised by the respondent in a suit is inextricably connected with the proceedings before

the Debts Recovery Tribunal, the suit should be transferred and tried along with the proceedings before the Debts Recovery Tribunal. He would contend that ultimately the Honourable Supreme Court had held that since the plea raised by the debtor against the petitioner was more in the nature of set off or counter claim and therefore the said application along with the suit was directed to be transferred to Debts Recovery Tribunal. He would argue that similar circumstances exist in the present case. He would bring to the notice of the Court the Judgement in ***ABS Marine Products (P) Ltd***, where the Honourable Supreme Court which is once again a two member bench had distinguished the Judgement in ***Abhijit Tea Co. Pvt. Ltd.***

24. The Judgement in ***Ranjan Chemicals Ltd. and another*** had followed the dicta laid down in ***Abhijit Tea Co. Pvt. Ltd***. Thereafter, in the case of ***Nahar Industrial Enterprises Limited,*** the Honourable Supreme Court had analysed the Judgements in ***Abhijit Tea Co. Pvt. Ltd***, ***ABS Marine Products (P) Ltd*** and ***Ranjan Chemicals Ltd. and another*** and had come to the conclusion that the Court has no jurisdiction to transfer the

proceedings since the Debts Recovery Tribunal cannot be considered to be a Civil Court as contemplated under Section 25 of the Code of Civil Procedure. Therefore, there was no express power of transfer under the Debts Recovery Tribunal. The learned Judges had gone on to state that the Debts Recovery Tribunal though having the trappings of Court is not a Court. In paragraph no.69 of the said Judgement, the learned Judges had also held as follows:

> *"Civil court is a body established by law for administration of justice. Different kinds of law, however exists, constituting different kinds of courts. Which courts would come within the definition of the civil court have been laid down under the Code of Civil Procedure itself. Civil Courts contemplated under Section 9 of Code of Civil Procedure find mentioned in Sections 4 and 5 thereof. Some suits may lie before the Revenue Court, some suits may lie*

before the Presidency Small Causes Courts. The Code of Civil Procedure itself lays down that the Revenue Courts would not be courts subordinate to the High Court"

25. The issue as to whether the suit containing a counter claim or claiming a set off filed by the debtor to be tried before the Debts Recovery Tribunal under the RDB Act or must be tried by Civil Court has been referred to a larger Bench. In the Judgement reported in ***(2015) 13 SCC 635.***

26. Per contra, P.L.Narayanan, learned counsel appearing on behalf of the 1st respondent would submit that the application is hit by latches and by estoppel. With reference to the issue of estoppel the learned counsel would argue that though the applicant bank had entered appearance in the year 2017 in this suit they have come forward with this application only in the year 2020. Before the Debts Recovery Tribunal, the entire matter was

argued and at no point of time did the applicant bank seeks to have the suit transferred, to be heard along with the OA pending before the Debts Recovery Tribunal.

27. He would submit that this application has now been moved after the suit is at the stage of framing issues and after the Presiding Officer of the Debts Recovery Tribunal had been transferred after hearing entire arguments in the OA. He would submit that if the Judgement had been pronounced by the Tribunal, the suit would still continue to be pending and the application of transfer could not have been filed. Therefore, he would submit that the present application not only suffers from latches but the applicant bank is also estopped from questioning the Jurisdiction of the Civil Court.

28. He would further submit that the 1st respondent had raised serious allegations of fraud against the Bank officials and the same can be tried only by the Civil Court and the proceedings before the Debts Recovery Tribunal

being summary in nature it would be difficult to establish the same by letting in oral and documentary evidence. He would submit that though the issue of the Jurisdiction of the Debts Recovery Tribunal to try a claim of set off or counter claim has been referred to a larger bench however no orders have been pronounced and as on date the Judgement in ***Nahar Industrial Enterprises*** holds the field. In respect of this argument, the learned counsel has relied on the following Judgements:

"i. ***2013 (16) SCC 16*** – State of Maharashtra and another Vs. Sarva Shramik Sangh, Sangli and others.

ii. ***Manu/up/0798/2009*** – United India Insurance Co. Ltd Vs. Rekha Rani and others

iii. ***Mani/up/2610/2012*** – Chandra Sekhar Rawat and others Vs. State of U.P. And others.

29. He would place strong reliance on the Judgement in ***Nahar Industries Enterprises*** to state that the suit cannot be transferred to the

Debts Recovery Tribunal. He would also counter the argument made by Mr.Umasuthan, that the suit is not maintainable since the 1st respondent has got sale deed registered in their favour by the 2nd defendant's father by stating that the sale deed would clearly state that the sale was only in partial discharge of the 1st respondent claim. He would further contend that in the sale deed it has been clearly stated that the Fixed Deposit of the 1st respondent has been operated without her authority, which is a categoric admission. He would submit that these are issues which could be tried only by the Civil Court and not by the Debts Recovery Tribunal. Therefore, he would pray for the dismissal of the above application.

Discussion:

30. The short issue which is involved in the above application is whether the suit now pending before this Court can be transferred to the Debts Recovery Tribunal. The suit that has been filed by the 1st respondent is one for a declaration that the security created on the Fixed Deposit receipts is without the authority of the 1st respondent and the said loan

agreements are rank forgery. It is also a categoric contention that the officials of the applicant bank and the 2nd defendant had colluded together to open a Savings bank account in her name and this savings bank account in her name was obtained without her authority or without her signature.

31. The suit has been filed in the year 2016 which was however been numbered in the year 2017 and the same is prior in time to the proceedings initiated by the applicant bank before the Debts Recovery Tribunal. The applicant bank has contested the proceedings before the Debts Recovery Tribunal fully and the matter was posted for orders when the Presiding Officer had retired. At not point of time when the matter was pending before the Tribunal had the applicant bank taken out an application to have this suit transferred to the Debts Recovery Tribunal to be heard along with O.A.No.196 of 2017.

32. Therefore, there is definitely a delay and latches on the part of the applicant bank. In the Judgement of ***Nahar Industrial Enterprises***, the

Honourable Supreme Court has traced the history of the Debts Recovery Act in paragraph nos.17 and 18 of the said judgement.

33. The learned Judges has considered the Judgements in: (i) ***Union Bank of India Vs. Abhijit Tea Co. Pvt. Ltd and others, (ii) Indian Bank Vs. ABS Marine Products (P) Ltd and (iii) State Bank of India Vs. Ranjan Chemicals Ltd and others***, to answer the question as to whether by reason of the transfer the jurisdiction of the Civil Court can be taken away or otherwise conferred upon the Tribunal. The Bench had considered the provisions of Section 31 of the RDDBFI Act to hold that there was no express power of transfer under the RDDBFI Act.

34. The powers of transfer as provided under Section 23, 24 and 25 of the Code of Civil Procedure was considered and the learned Judges held that though the tribunal has the trappings of the Court, it is not the Court and therefore since the tribunal was not the Court, the suit pending on the file of the Civil Court could not be transferred to the Tribunal. The Bench

had proceeded to make the following observations:

"105. The Civil Court indisputably has the jurisdiction to try a suit. If the suit is vexatious or otherwise not maintainable action can be taken in respect thereof in terms of the Code. But if all suits filed in the Civil Courts, whether inextricably connected with the application filed before the Debts Recovery Tribunal by the banks and financial institutions are transferred, the same would amount to ousting the jurisdiction of the Civil Courts indirectly. Suits filed by the debtor may or may not be counter claims to the claims filed by banks or financial institutions but for that purpose consent of the plaintiff is necessary.

106. It is furthermore difficult to accept the contentions of the respondents that the statutory provisions contained in section 17 and 18 of the Debts Recovery Tribunal Act have ousted the jurisdiction of the civil court as the said provisions clearly state that the jurisdiction of the civil court is barred in *relation only to applications from banks and financial institutions for recovery of debts due to such banks and financial institutions.*

107. A civil court is entitled to decide the respective claims of the parties in a suit. It must come within the purview of the hierarchy of courts as indicated in Section 3 of the Code. It will have jurisdiction to determine all disputes of civil nature unless the same is barred expressly by a statute or by necessary implication.

108. Although some arguments have been advanced before us whether having regard to the provisions of Sections 17 and 18 of the Act the civil court jurisdiction is completely ousted, we are of the view that the jurisdiction of the civil court would be ousted only in respect of the matters contained in Section 18 which has a direct co-relation with Section 17 thereof, that is to say that the matter must relate to a debt payable to a bank or a financial institution. The application *before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt. It must further be noted in this respect that had the jurisdiction of the civil courts been barred in respect of counterclaim also, the statute would have said so and Sections 17 and 18 would have been amended to introduce the provision of counterclaim"*

Ultimately, the bench held that the transfer of the suit to the Debts Recovery Tribunal by the Court of Punjab and Haryana was not correct.

35. In the light of such an authoritative pronouncement which still holds the field, the application for transfer filed by the applicant bank, that too with an inordinate delay and after allowing the proceedings before the Debts Recovery Tribunal to reach the stage of orders, is not maintainable and deserves to be dismissed and is accordingly dismissed.

02.11.2020

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P.T.ASHA, J.,

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Pre-delivery Order in
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C.S.No.413 of 2017

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