

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

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Decided on: March 03, 2020

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CS(COMM) 1066/2018

SANJAY GUPTA

..... Plaintiff

Represented by: Dr. Jose P. Verghese, Adv. with
Mr. Dhruv Jose, Adv.

Versus

BANK OF MAHARASHTRA

..... Defendant

Represented by: Mr. V. K. Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The plaintiff has filed the present suit with the following prayers:

(a) Declare that defendant owes to the plaintiff, ₹1,73,24,589/- (Rupees One Crore Seventy Three Lakhs Twenty Four Thousand Five Hundred and Eighty Nine only), the excess amount taken from him, with interest @ 18% p.a. from 2012;

(b) Pass a decree of permanent injunction against the defendants, not to restrain the plaintiff from approaching another Bank, willing to restructure the loan with reduced rate of interest;

(c) Pass a decree of permanent injunction against the Defendants, restraining them from unduly interfering with Credit-rating process of the plaintiff'

(d) Direct the Defendant to upgrade the NPA status of the Plaintiff and its account to standard category.

(e) The cost of the suit may also be awarded in favour of the plaintiff and against the defendant.

(f) Any other relief or reliefs as this Hon'ble court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants".

2. Prior to the institution of this plaint, plaintiff had instituted a plaint being CS (COMM) 899/2018 on the same cause of action as pleaded in the present suit. The said plaint was rejected by this Court vide the judgment dated 22nd May, 2018, both on the grounds that the plaintiff had not paid the proper Court fees as also that the suit was not maintainable, and noted as under:-

"3. The plaintiff has instituted this suit for (i) permanent injunction restraining the defendant Bank of Maharashtra from restraining the plaintiff from approaching another Bank and from interfering with Credit Rating Process of the plaintiff; (ii) declaration that the defendant Bank owes to the plaintiff the excess amount taken by the defendant Bank from the plaintiff with interest @ 18% per annum from the year 2012; (iii) mandatory injunction directing the defendant Bank to restructure the loan of the plaintiff and charge the plaintiff only that prevailing market rate of interest which the other Banks are charging and to enhance the cash credit limit of the plaintiff from Rs.650 lakhs to Rs.1,000 lakhs; (iv) mandatory injunction directing the defendant Bank to render all time

bound assistance to the plaintiff; (v) mandatory injunction directing the defendant Bank to issue a letter addressed to all credit agencies in order to facilitate the Credit Rating of the plaintiff; (vi) mandatory injunction directing the defendant Bank to permit the plaintiff to run a parallel account; (vii) mandatory injunction directing the defendant Bank to upgrade the NPA status of the plaintiff; (viii) mandatory injunction directing the defendant Bank to make available all statements, documents and certificates to the plaintiff.

4. The plaintiff, in paras 33 to 35 of the plaint, qua valuation has pleaded as under: “33. That the plaintiff is entitled for declaration of above Rs.1,00,00,000/- (Rupees One Crore) with 18% interest from 2012. 34. The captioned suit is a „commercial dispute” as defined U/s. 2(c)(i) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and for the purpose of jurisdiction, the suit is valued above Rs.1,00,00,000/-, and the requisite fixed court fee of Rs.200/- has been paid. 35. That for the relief of permanent injunction, valuation is made for Rs.130/- and court fee of Rs.13/- affixed herewith.” and filed this suit with the court fee of Rs.230/-.

5. Though the Registry of this Court raised objection about the valuation of the suit but the counsel for the plaintiff insisted on having the suit listed before the Court.

6. However, the counsel for the plaintiff today has not cited any provision of law as per which the valuation done of the plaint is correct and only states that this is a commercial suit.

7. Attention of the counsel is invited to the dicta of this Court in Mukesh Kumar Gupta Vs. Rajneesh Gupta 2016 SCC OnLine Del 3148, Soni Dave Vs. Trans Asian Industries Expositions Pvt. Ltd. AIR 2016 Del 186 and Laxmi Narayan

Vs. Navneet (2017) 240 DLT 247 holding that the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 does not deal with the valuation of the suits for the purposes of court fee and jurisdiction which is governed by the Court Fees Act, 1870 and the Suits Valuation Act, 1887.

8. As far as the reliefs claimed of declaration and injunction are concerned, as per Section 8 of the Suits Valuation Act, the valuation for the purposes of jurisdiction has to be the valuation for the purposes of court fees and as per Section 7(iv)(c) of the Court Fees Act, the valuation of a suit to obtain a declaratory decree or order, where consequential relief is prayed, has to be according to the amount on which the relief sought is valued in the plaint or memorandum of appeal. If the plaintiff values the relief at Rs.1 crore as has been purported to be done, appropriate court fees thereon has to be paid and if the plaintiff wants to value the suit at Rs.200/-, the suit has to go before the Civil Judge.

9. Though Article 17(iii) of Schedule II to the Court Fees Act permits a suit for declaration where no consequential relief is prayed, to be filed with a fixed court fee but the plaintiff, as would be obvious from the above, is seeking consequential relief as well.

10. The plaint is thus liable to be rejected on this ground alone.

11. However attention of the counsel is also drawn to Radnik Exports Vs. Standard Chartered Bank (2014) 7 HCC (Del) 393 followed in judgment dated 26th April, 2017 in CS(COMM) No.246/2017 titled Shiva Industries and Holdings Ltd. Vs. Tata Teleservices Ltd. laying down that the suit, insofar as claiming the reliefs in the nature of defences to a claim of a Bank

entitled to approach the Debt Recovery Tribunal (DRT) under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act), is not maintainable.

12. The relief sought of declaration of the amounts being due from the defendant Bank to the plaintiff is also misconceived, inasmuch as the plaintiff, if has any monetary claim, has to sue for recovery thereof and cannot claim declaration under Section 34 of the Specific Relief Act, 1963.

13. The suit qualifies as a „fantastic one“ and the plaint is rejected”.

3. A perusal of the judgment of this Court dated 22nd May, 2018 rejecting the earlier plaint of the plaintiff reveals that the said plaint was not only rejected for want of proper Court fees and because a suit for simplicitor declaration under Section 34 of the Specific Relief Act, 1963 was not maintainable but also because of the fact that reliefs sought in the suit were in the nature of defences to a claim of the bank entitled to approach Debt Recovery Tribunal for the recovery of debts due to banks and financial institutions and thus the suit was not maintainable.

4. This Court reiterated its earlier decision in Radnik Exports (supra), wherein it was held as under:-

“19. The preamble to the DRT Act describes the same as "an Act to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto"; Section 3 thereof provides for establishment of tribunals to be known as DRTs, to exercise the jurisdiction, power and authority conferred thereon by the Act. Section 17 provides that such a tribunal shall exercise the jurisdiction, power and authority to entertain and

„decide“ applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 provides that no Court or other authority shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters specified in Section 17. Section 19, while laying down the procedure to be followed by the DRTs, in sub section (1) thereof provides for filing of an application by the bank or the financial institution which has to recover any debt from any person; in sub section (4) thereof provides for issuance of notice to show cause by the DRT to the person from whom recovery is sought, as to why the relief of recovery prayed for should not be granted; sub section (5) thereof provides for such person from whom recovery is sought to present a written statement of his defence; sub section (20) thereof provides for passing of a final order by the DRT on such application of the bank for recovery, after giving the applicant bank and the defendant an opportunity of being heard.

20. From the procedure prescribed in Section 19 supra, to be followed by the DRT, it is evident that the DRT, in adjudication / decision of the applications of the bank / financial institution for recovery of debts, while deciding on the entitlement of the bank / financial institution to such debt is to also adjudicate / decide the cause shown by the defendant in such application, of the bank / financial institution being not entitled to the relief of recovery sought. If the DRT were to be not authorized, or to not have jurisdiction or power or authority to decide on such defence of the defendant to an application for recovery filed before it, sub sections (4) and (5) of Section 19 would not have provided for issuance of a notice to show cause to such a defendant or for filing of a written statement / defence by such defendant and passing of an order on the application for recovery only thereafter. Were the DRT to have jurisdiction, power and authority to allow or disallow an application by a bank / financial institution for recovery of debt, by considering only the claim of the bank / financial

institution and were to not have jurisdiction, power and authority to rule on the merits of the defence of the defendant to such an application, the provisions aforesaid of Section 19 of the Act would not have provided for issuance of notice and opportunity to such defendant to show cause and of passing of the final order on such application of bank / financial institution only after giving opportunity of hearing not only to the bank / financial institution but also to the defendant to such an application of the bank or financial institution. The use in Section 17 (1) of the Act of the words "decide applications from the banks and financial institutions for recovery of debts due" entails, in the light of the aforesaid provisions of Section 19 a decision also on the defence raised to such applications. This is further re-enforced from sub sections (6) and (8) of Section 19 which permit a defendant to such an application, to besides presenting his defence, also claim a set-off or make a counterclaim and from sub sections (7) and (9) which provide for such set-off and counterclaim to be having the same effect as a cross suit and which require the DRT to pass a final order not only on the claim of the bank but also on the set-off or counterclaim of the defendant to such an application. This is yet further fortified from Section 20 providing for appeals to the DRAT not only by the bank but also by any person aggrieved from the order of the DRT. If the DRT were not to adjudicate and decide of the defence of the defendant to the application for recovery of debt, there would have been no need to provide for an appeal to the DRAT by such a defendant. Similarly Sections 22 and 23 while providing for powers of the DRT and DRAT and the right to legal representation, treat the applicant bank / financial institution and the defendant equally, by providing for examination of witnesses as well as legal representation, by both. Had the DRT no jurisdiction, power and authority to adjudicate on the defence of the defendant, there would have been no need to provide for legal representation by the defendant or for the defendant to examine witnesses.

21. I thus conclude that the DRT vide Section 17 supra has the jurisdiction, power and authority to decide on the defence to

an application for recovery of debt filed before it. Once the DRT is held to have such a power, the jurisdiction of the Civil Court to declare existence of a state of affairs which is a defence to a claim before the DRT, has to be necessarily held to be barred”.

5. Supreme Court in State Bank of India Vs. Ranjan Chemicals Ltd. and Another, (2007) 1 SCC 97, dealing with the issue whether a separate suit was maintainable in the nature of a defence to a claim of a bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 held that even a claim of set off would fall under Sub-Section (6) to (11) of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and thus, the proceedings are required to be instituted before the Debt Recovery Tribunal. In para 5 and 6, the Supreme Court held as under:-

“5. Then the question is whether the cause of action put in suit by the company could be considered to be one in the nature of a set off or a counter claim within the meaning of Section 19 of the Recovery of Debts Act. It is clear from sub sections 6 to 11 of Section 19 of the Act that the Recovery Tribunal has the jurisdiction to entertain a claim of set off or a counter claim arising out of the same cause of action and has also the power to treat the counter claim as a cross suit. Therefore, if the claim of the company in the suit partakes the character of a cross action founded on the same cause of action, the same could be tried by the Debt Recovery Tribunal. In United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Ors., [2000] 7 SCC 357, this Court interpreted the expression counter claim in sub Sections 8 to 11 of Section 19 as including even a claim made in an independent suit and a claim for damages based on the same transaction as being broadly a plea of set off falling under sub Sections 6 and 7 of Section 19 of the Act. With respect, we see no reason

to differ from the reasoning and conclusion therein in that regard. It is therefore clear that the claim made by the company in the suit filed by it could be considered as a claim for set off and/or as a counter claim within the meaning of Section 19 of the Act.

6. Even otherwise, after the amendment of Order VIII Rule 6A of the Code of Civil Procedure by Act 104 of 1976, for maintaining a counter-claim, the cross action need not even arise out of the same cause of action or be intrinsically connected with the cause of action sued upon. Any right or claim in respect of a cause of action accruing to the defendant against the plaintiff can be made the subject matter of a counter-claim. Section 19(8) of the Act is also on the same lines. Therefore, there can be no objection to treating a claim in favour of the Company arising out of the Loan transaction and/or rehabilitation package as a counter-claim in the application filed by the Bank before the Debt Recovery Tribunal”.

6. Parties agree that OA has been filed by the defendant bank before the Debt Recovery Tribunal wherein, the plaintiff has filed his written statement and thus, the parties are before the Debt Recovery Tribunal for the same cause of action based on which the present suit has been instituted.

7. Considering the fact that for the same cause of action, the earlier plaint of the plaintiff has also been rejected being not maintainable and parties are taking their remedies for the same cause of action before the DRT, the present suit is also dismissed.

I.A. 10585/2018 (u/O XXXIX R 1&2 CPC by P)

I.A. 13565/2018 (u/O XXXIX R 1&2 CPC by P)

I.A. 13997/2018 (u/S 151 CPC by P)

I.A. 14326/2018 (u/S 151 CPC by P)

I.A.5169/2019 (u/O VI R 17 CPC by P)

Applications are dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

MARCH 03, 2020

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