



2023:DHC:9308-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.12.2023

+ **W.P.(C) 13524/2019, CM Nos.54779/2019 & 8674/2023**

STATE BANK OF INDIA

..... Petitioner

versus

DOON VALLEY RICE MILLS LTD. AND ORS..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Bheem Sain Jain, Adv.

For the Respondents : Mr. R. Wali & Mr. Khalid Abdullah, Advs.
for R-1.

Mr. Shahrukh Inam & Ms. Usha Singh, Advs.
for R-2.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioner (State Bank of India – hereafter ‘**the SBI**’) has filed the present petition impugning an order dated 25.10.2019 (hereafter ‘**the impugned order**’) passed by the learned Debts



Recovery Appellate Tribunal, Delhi (hereafter '**the DRAT**') in IA No.187/2019 in Appeal No.417/2018 captioned *M/s Doon Valley Rice Ltd. v. State Bank of India & Others*. Respondent No.1 (Doon Valley Rice Mills Ltd. – hereafter '**DVR**') had filed the aforementioned application (IA No.187/2019) seeking waiver of any pre-deposit under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter '**the RDB Act**'). The learned DRAT had allowed the said application and by the impugned order had decided to entertain DVR's appeal.

2. DVR had preferred the said appeal aggrieved by the order dated 21.11.2017 passed by the learned Debts Recovery Tribunal-II, Chandigarh (hereafter '**the DRT**'), whereby it had allowed the SBI's application (IA No.1403/2017) seeking rejection of the respondents' counterclaim as not maintainable.

3. The SBI contends that the impugned order violates Section 21 of the RDB Act and that it is not open for the learned DRAT to entertain an appeal of a person indebted to bank(s) and/or financial institution(s) without deposit of a minimum of 25% of the debt due. It is DVR's case that there is no requirement of a pre-deposit as its appeal before the learned DRAT is confined to the rejection of its counterclaim and not the issuance of the Recovery Certificate.

4. In view of the above, the principal question to be addressed is whether there is any requirement for making any pre-deposit under Section 21 of the RDB Act to maintain an appeal preferred against



rejection of a counterclaim made against the concerned bank/financial institution.

FACTUAL BACKGROUND

5. The aforesaid controversy arises in the following context.

6. The SBI had extended the credit / loan facility to DVR sometime in the early 1990's. SBI claims that DVR defaulted in servicing the loans advanced. Consequently, on 19.06.2002, SBI filed an Original Application (being OA No.425/2002) against DVR and the Guarantors (persons who had guaranteed DVR's repayment obligations) for recovery of the outstanding amount payable to it.

7. The learned DRT by an order dated 04.11.2011 allowed the SBI's Original Application (OA No.425/2002) and issued a Recovery Certificate. DVR had also filed a counterclaim, however, the same was dismissed. DVR claimed that it had incurred a loss of ₹15,41,62,780/- and after adjusting the amount of ₹8,37,46,752.97/-, the balance amount of ₹7,50,40,318.81/- was payable by the SBI. The learned DRT held that since the amount of counterclaim exceeded the SBI's claim, the counterclaim was not maintainable and it had no jurisdiction to decide the same. Accordingly, it rejected DVR's counterclaim. Insofar as the SBI's claim is concerned, the learned DRT determined that a sum of ₹6,04,28,763.97/- was due and issued a Recovery Certificate for the said sum of ₹6,04,28,763.97/- along with *pendente lite* and future



2023:DHC:9308-DB



interest at the rate of 12% per annum from the date of filing the Original Application (OA No. 425/2002).

8. Aggrieved by the order dated 04.11.2021, DVR filed two appeals. The first in respect of the learned DRT's decision to issue Recovery Certificate in respect of the SBI's claim, and the second against the order dated 04.11.2021 rejecting its counterclaim. DVR claimed that pursuant to its complaints, investigation was conducted by the officials of the SBI and they had found that excessive interest was charged from DVR and that the acts of the concerned branch officials had caused losses to DVR. DVR contended that the reports were not produced despite orders passed by the learned DRT.

9. The learned DRAT allowed the said appeals by an order dated 06.04.2015 and remanded the matter to the learned DRT for reconsideration of DVR's contention regarding counterclaims and to further consider the import of the investigation reports.

10. The SBI had challenged the learned DRAT's order dated 06.04.2015 by filing a writ petition before the High Court of Punjab and Haryana (CWP No.3729/2016 captioned ***State Bank of India v. Debts Recovery Appellate Tribunal & Ors.***). The said writ petition was disposed of by an order dated 24.08.2017. The High Court of Punjab and Haryana did not interfere with the order dated 06.04.2015 passed by the learned DRAT and directed the learned DRT to decide the counterclaim within a period of three months from the date of receipt of the said order.



2023:DHC:9308-DB



11. Before the learned DRT, SBI filed an application (IA No.1403/2017) praying that DVR's counterclaim be rejected. The said application was allowed by an order dated 21.11.2017.

12. DVR challenged the said order by filing a writ petition before the High Court of Punjab and Haryana (CWP No.17412/2018) captioned ***M/s Doon Valley Rice Limited. v. The Debt Recovery Tribunal & Ors.*** The said petition was dismissed as withdrawn with liberty to DVR to take recourse to alternate remedies available to it. Thereafter, DVR filed an application (Miscellaneous Application No.49/2018) before the learned DRT for review of its order dated 21.11.2017. The said review petition was dismissed by the learned DRT by an order dated 24.07.2018 on the ground that it was barred by limitation.

13. Thereafter, DVR filed an appeal (Appeal No.417/2018) impugning the order dated 21.11.2017 rejecting DVR's counterclaim as well as the order dated 24.07.2018 rejecting the review petition. DVR also filed an application seeking waiver of pre-deposit which was allowed by the learned DRAT by the impugned order.

14. It is relevant to note that in its appeal, DVR had averred that it was not necessary for DVR to make a pre-deposit. According to DVR, Section 21 of the RDB Act was not applicable as its appeal was against an order declining to entertain the counterclaim. Without prejudice to the said contention, DVR also submitted that it had deposited a sum of ₹50,00,000/- in the earlier appeal, which was disposed of by an order dated 06.04.2015 and that the said amount was still lying in a fixed



deposit with the Registry of the learned DRAT. DVR's application was allowed by the impugned order.

REASONS & CONCLUSION

15. As noted hereinbefore, the only controversy that requires to be addressed is whether an appellant, before the learned DRAT, challenging an order of rejection of its counterclaim, is required to make a pre-deposit under Section 21 of the RDB Act.

16. At the outset, Mr. R. Wali, learned counsel appearing for DVR had clarified that DVR was not seeking any relief to interdict the enforcement of the Recovery Certificate that was issued in favour of the SBI. He clarified that DVR was not questioning the learned DRT's determination of the amount of debt payable to the SBI and the SBI is at liberty to enforce the same. He clarified that DVR's appeal was limited to questioning the learned DRT's decision to allow the SBI's application to reject DVR's counterclaim on the ground that it has no jurisdiction to entertain the same.

17. Mr Jain, learned counsel for the SBI submitted that the language of Section 21 of the RDB Act is unambiguous and an appeal by any person from whom any debt is due could not be entertained unless the said appellant had deposited 50% of the debt so due. At best, the learned Debts Recovery Appellate Tribunal could reduce the said amount of pre-deposit to 25% of the amount of debt due but it could not



reduce the amount any further. He argued that since a debt was due from DVR, as determined by the learned DRT, it was required to make a pre-deposit notwithstanding that it had not challenged the determination of the debt or the issuance of a Recovery Certificate.

18. Section 20 of the RDB Act contain provisions regarding an appeal to the Debts Recovery Appellate Tribunal. In terms of Sub-section (1) of Section 20 of the RDB Act, any person aggrieved by any order made (other than the consent order) or deemed to have been made by a Debts Recovery Tribunal under the RDB Act, may appeal to the Debts Recovery Appellate Tribunal.

19. Section 21 of the RDB Act, which is at the centre of the controversy in this petition reads as under:

“21. Deposit of amount of debt due, on filing appeal.—

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent. of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due to be deposited under this section.”



20. In *Vijay Prakash D. Mehta v. Collector of Customs, (1988) 4 SCC 402*, it was observed that: -

“9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

13. It is not the law that adjudication by itself following the Rules of natural justice would be violative of any right — constitutional or statutory without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant....”

21. In *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad, (1999) 4 SCC 468* : the Supreme Court had observed:

“8.This Court said that right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is a statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute, however, in regard to an appeal, the position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well.”

22. It is well settled that remedy of an appeal is not an inherent right but a right conferred by the statute. It follows that the said right can be



curtailed or restricted by the statute. (*Vijay Prakash D. Mehta v. Collector of Customs:(supra)* and *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of City of Ahmedabad & Ors.(supra)*).

23. In *Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A. Kasliwal & Ors.:(2021) 3 SCC 549*, the Supreme Court had considered the provisions of Section 21 of the RDB Act and has held as under:

“13. A perusal of the provision which employs the phrase “appeal shall not be entertained” indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty per cent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five per cent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver.....”

24. Thus, the question whether the Debts Recovery Appellate Tribunal has any discretion to waive the condition of pre-deposit is no longer *res integra*. It has been authoritatively held that the condition of making a pre-deposit is mandatory and the Debts Recovery Appellate Tribunal’s discretion is limited to reducing the amount to 25% of the debts as determined by the Debts Recovery Tribunal under Section 19 of the RDB Act.



25. The reference to the debt – a part of which is required to be deposited in terms of Section 21 of the RDB Act to maintain an appeal – is a debt determined under Section 19 of the RDB Act. This indicates that the reference to an appeal under Section 21 of the RDB Act is an appeal in a matter where the debt has been determined under Section 19 of the RDB Act. Under Section 20(1) of the RDB Act, an appeal lies to the Debts Recovery Appellate Tribunal against any order made or deemed to have been made by the Debts Recovery Tribunal under the RDB Act (other than a consent order). It follows that the condition of pre-deposit under Section 21 of the RDB Act would apply only in cases where the appeal is in respect of an order passed by the Debts Recovery Tribunal in a proceeding in relation to the action instituted by a bank or a financial institution under Section 19 of the RDB Act. The reference to an amount of debt as determined by the Tribunal under Section 19 of the RDB Act further indicates that the condition of pre-deposit is applicable after the Debts Recovery Tribunal has determined the amount under Section 19 of the RDB Act.

26. A literal reading of Section 21 of the RDB Act does suggest that the appeal by a person indebted to a bank and/or financial institution would not be entertained unless the said person deposits 50% of the amount of debt due, as determined by the Debts Recovery Tribunal under Section 19 of the RDB Act. However, Section 21 of the RDB Act is required to be construed in the context of the claim made by the concerned bank or financial institution in the Original Application filed under Section 19(1) of the RDB Act. If the language of Section 21 of



the RDB Act is understood literally, a person who is indebted to any bank or financial institution or consortium of banks or financial institutions to the extent as determined by the Debts Recovery Tribunal, would be unable to maintain an appeal under Section 21 of the RDB Act before the Debts Recovery Appellate Tribunal until, the said person has complied with the condition of making the necessary pre-deposit of the debt so determined, notwithstanding that the said person's appeal is not in respect of the proceedings concerning that bank or financial institution. Clearly, this is not the legislative intent for imposing the said condition. The condition of pre-deposit of a part of the debt determined under Section 19 of the RDB Act, must be confined to the proceedings relating to the claim made by a bank or financial institution in the Original Application filed under Section 19(1) of the RDB Act. Therefore, a person would be unable to maintain an appeal without making the requisite pre-deposit in respect of any order passed by the Debts Recovery Tribunal in respect of the Original Application wherein the debt of the concerned Bank or financial institution has been determined. Section 21 of the RDB Act cannot be construed any wider. The person filing an appeal in respect of an order passed by the Debts Recovery Tribunal in an action instituted by a bank is not required to deposit the debts adjudicated in another case. To illustrate this further, in an Original Application filed by Bank A, the Debts Recovery Tribunal determines that the borrower is liable to pay an amount of ₹1,00,000/-. Bank B institutes another Original Application and the borrower is aggrieved by an order passed in the Original Application



filed by Bank B. The borrower is not required to deposit any part of ₹1,00,000/- being the debt determined by the Debts Recovery Tribunal in the Original Application preferred by Bank A for maintaining the appeal against an order in the Original Application instituted by Bank B.

27. In *Seaford Court Estates Ltd. v. Asher:(1949) 2 All ER 155 (CA)* Lord Denning, LJ has observed as under:

“When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give “force and life” to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

28. The aforesaid passage has been referred to by the Supreme Court in various decisions including in *M. Pentiah v. Muddala Veeramallappa:1960 SCC OnLine SC 37*, *Bangalore Water Supply and Sewerage Board v. A. Rajappa & Others:(1978) 2 SCC 213* and *Union of India v. Sankalchand Himatlal Sheth & Another:(1977) 4 SCC 193*. The Courts have consistently held that the provision must be interpreted in the light of its legislative intent. In *R.L. Arora v. State of U.P. & Ors.:1964 SCC OnLine SC 19*, the Supreme Court had observed that:



“9.literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning, of the words used in a provision of the statute.”

29. Section 21 of the RDB Act must be interpreted bearing in mind the legislative intent. The RDB Act (erstwhile, Recovery of Debts Due to Bank & Financial Institutions Act, 1993) was enacted by the Parliament on 27.08.1993 and was brought in force with effect from 24.06.1993 with an object to expedite recovery of debts due to banks and financial institutions and other matters connected with it. The Statement of Objects and Reasons for enacting the said Act is set out below:

“Statement of Objects and Reasons.—Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the



banks and financial institutions could be realised without delay. In 1981, a Committee under the chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the report of Narasimham Committee. Whereas on 30-9-1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs 5622 crores in dues of public sector banks and about Rs 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.”

30. As is apparent from the plain reading of the Statements of Objects and Reasons for enacting the RDB Act, one of the principal objectives was to ensure an expeditious procedure for recovery of debts due to the banks and financial institutions. It was found that a large number of funds were blocked due to delay in recovery of the same and the banks and financial institutions were facing legal and other difficulties in recovering the same. Section 21 of the RDB Act must be read in context of the aforesaid objective for enacting the RDB Act. It is apparent that the purpose was to ensure that recovery of debts due to banks and financial institutions are not held up on account of protracted legal proceedings. Thus, although Section 20 of the RDB Act enables any



person to file an appeal against an order passed by the Debts Recovery Tribunal, Section 21 imposes an additional condition on the debtor to make a pre-deposit of a part of the debt due in order to maintain an appeal. Clearly, the object of imposing the condition was to ensure that recovery of debts to the banks / financial institutions are not held up on account of the appellate proceedings. Section 21 of the RDB Act would thus have no application where the appellate proceedings do not relate to the proceedings culminating in adjudication of the debt or its recovery and does not in any manner impinge on the right of a bank or financial institution to continue with the proceedings to recover the debts as determined by the Debts Recovery Tribunal.

31. In the present case, the respondents are not seeking to appeal any order passed by the learned DRT in respect of the claims made by the petitioner in its application under Section 19(1) of the RDB Act. The learned DRT has determined the amount of debts due by DVR to SBI and issued the Recovery Certificate which, the learned counsel appearing for the respondents has clarified, is not the subject matter of challenge before the learned DRAT. He has also clarified that the respondents' appeal does not in any manner seek to impugn or impede enforcement of the learned DRT's order for recovery of the debt payable to SBI.



32. DVR's appeal is in respect of an order passed in its counterclaim to the extent that the same has not been entertained by the learned DRT. It is well settled that a counter-claim is a separate action, though instituted by the defendant in the suit filed by the plaintiff.

33. In *Jag Mohan Chawla & Anr. v. Dera Radha Swami Satsang & Ors.:(1996) 4 SCC 699*, the Supreme Court has explained as under:

“5.The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (*sic* protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment....”

34. In *Vediammal and Ors. v. M. Kandasamy and Ors.:(1997) 1 MLJ 529*, the Madras High Court had observed as under:

“27.A counter-claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the plaintiff. It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings; defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as in the counter-claim, and both are disposed of by a common judgment (Order 8, Rule 6-A(2), C.P.C. says that



there can be a final judgment in the same suit, both on the original claim and counter-claim). In common parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together.' In view of the legal position under Order 8, Rule 6-A, C.P.C. a counter-claim or set-off can be made in many forms in a suit. But they need not be given separate numbers. The counter-claim is also said to be a weapon on evidence and enables the defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which gives a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him. Originally, there was a doubt whether the counter-claim filed in a suit for recovery of money and whether there should be nexus to the cause of action on which the suit is instituted."

35. Undisputedly, a counterclaim is in effect a separate and independent action although it, may be instituted in an application filed by the bank or financial institution under Section 19(1) of the RDB Act. For all intents and purposes, the counterclaim is required to be considered as an independent action.

36. It is material to note that the RDB Act (earlier known as Recovery of Debts Due to Bank & Financial Institutions Act, 1993) did not contain any provisions to enable a defendant in an application under Section 19(1) under the said Act to file an application to claim set-off or make any counterclaim. This was one of the grounds on which the Recovery of Debts Due to Bank & Financial Institutions Act, 1993 was declared as unconstitutional by this Court in *Delhi High Court Bar Association vs. Union of India: AIR 1995 Delhi 323*. While an appeal against the said decision of *Delhi High Court Bar Association vs.*



2023:DHC:9308-DB



Union of India (*supra*) was pending in the Supreme Court, the Recovery of Debts Due to Bank & Financial Institutions Act, 1993, was amended by the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 (1 of 2000) (w.r.e.f. 17-1-2000) to subsequently enable a defendant to claim a set-off or raise counterclaims in an application filed by the bank or financial institutions under Section 19(1) of the said Act. Thereafter, the Supreme Court upheld the provisions of the Act, as amended in *Union of India and Another v. Delhi High Court Bar Association and Others*:(2002) 4 SCC 275.

37. In *Indian Bank v. ABS Marine Products (P) Ltd.*:(2006) 5 SCC 72, the Supreme Court held that on a plain reading of Sections 17 and 18 of the RDB Act, a Civil Court's jurisdiction would be barred only in regard to applications by a bank or financial institution for recovery of its debt. The Supreme Court held that the jurisdiction of a Civil Court was not barred in regard to any suit filed by the borrower or any other person against a bank for any relief. The Court further observed that Sub-sections (6) to (11) of Section 19 of the RDB Act are enabling provisions to enable the filing of a counter-claim. The Supreme Court explained that the only effect of Sub-sections (6) to (11) of Section 19 of the RDB Act, as amended, is that a defendant can claim a set off of any ascertained sum of money legally recoverable from a bank / financial institution from any demand raised by that bank or financial institution. It could set up a counterclaim against the bank or financial institutions “*in respect of a cause of action accruing to such defendant*



against the bank/financial institution, either before or after filing of the application, but before the defendant has delivered his defence or before the time for delivering the defence has expired, whether such a counterclaim is in the nature of a claim for damages or not.”

38. It is also relevant to refer to the decision of the Supreme Court in ***Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.:(2023) 1 SCC 1***, wherein the Supreme Court considered the following questions which were referred to it on account of conflict in the opinion in ***United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Ors.:(2000) 7 SCC 357*** and ***Indian Bank v. ABS Marine Products (P) Ltd.:(supra)***:

“(a). Whether an independent suit filed by a borrower against a bank or financial institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT?

(b). If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

(c). Is the jurisdiction of a civil court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a bank or financial institution?”

39. In its decision in ***Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd. (supra)***, the Supreme Court noted the view of the Court in ***Indian Bank v. ABS Marine Products (P) Ltd.:(supra)*** and



held that there were no restrictions on the power of a Civil Court under Section 9 of the Code of Civil Procedure, 1908 unless expressly or impliedly excluded. Thus, a person who was defendant in the application filed by a bank or financial institution under Section 19(1) of the RDB Act could prefer an independent suit. The said defendant also had the option to file the counterclaim in view of Sub-section (6) and Sub-section (8) of Section 19 of the RDB Act. Further, the Supreme Court held as under:

“45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the Bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.”

40. Additionally, the Supreme Court had also noticed that even in a case where a defendant has invoked the jurisdiction of the Debts Recovery Tribunal by filing a counterclaim, the Bank has the right to seek that the claim be relegated to a Civil Court and the Debts Recovery Tribunal was empowered to do so at the final adjudication stage. However, the Supreme Court also made it abundantly clear that in case a defendant exercises his option to file an independent suit, the claim being under the RDB Act would continue to proceed expeditiously in terms of the procedure established under the RDB Act. The Supreme Court, accordingly, answered the question (c) in the negative. The Supreme Court further held that the Civil Court has no power to transfer



the suit whether by consent or otherwise and accordingly, answered questions (a) and (b) as referred to it.

41. The said judgment also makes it amply clear that a counterclaim is an independent action. A defendant can either pursue its cause of action by filing a suit against the bank or financial institution that has instituted a claim under Section 19 of the RDB Act or it can file a counterclaim.

42. Thus, for all intents and purposes, the counterclaim is to proceed as an independent action although it may be tried along with the application under Section 19(1) of the RDB Act preferred by the bank / financial institution.

43. Bearing in mind the scheme of the RDB Act, which permits filing of a separate claim, we are unable to accept that an appeal against denial of a counterclaim can be subject to the condition of making a pre-deposit of debt determined as due and payable to a bank / financial institution pursuant to its application under Section 19(1) of the RDB Act.

44. The condition proscribing entertainment of an appeal preferred by a person until the said person has deposited the 50% of the amount of debt as determined by the Debts Recovery Tribunal under Section 19 of the RDB Act would thus clearly not extend to an appeal which does not arise from an order passed by the Debts Recovery Tribunal in respect of any determination for the amount of debt due and payable by



2023:DHC:9308-DB



the said person or in connection with the said claim. As noticed above, a counterclaim is to be treated as a separate action and therefore, an appeal by a defendant against denial of his counterclaim would be maintainable without making any pre-deposit under Section 21 of the RDB Act. We must also clarify that pendency of an appeal would not in any manner interdict, restrict or impede the proceedings for recovery of debts determined by the Tribunal in accordance with the provisions of the RDB Act. It follows that a defendant filing an appeal against an order of the Debts Recovery Tribunal denying its counterclaim will not be entitled to seek any interim relief in respect of the recovery of debts determined as due and payable by the said person to the claimant bank / financial institution.

45. In view of the above, we consider it apposite to reject the present petition. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 22, 2023
'gsr'