



WP No.13555 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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Vijaya Bank (Amended)
ARM Branch, No.144, Moore Street,
Chennai-600 001.
Rep.by its Chief Manager.

As

Bank of Baroda,
having its Head Office at Baroda Bhavan
R.C.Dutt Road, Alkapuri,
Baroda 390007,
having its local office at
Stressed Asset Recovery Branch,
No.144, Moor Street, Chennai 1
(Substituted as per order dated 30/9/2019
in WMP No.26838/2019)

: Petitioner

Versus

- 1.R.V.S.Ashok Kumar,
Proprietor, Nathiras Export
- 2.M/s.Meezan Trading Company,
No.201, 4th Cross Street, Colombo-11.
- 3.Habib Bank AB Zurich,
149-151, Main Street,



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Post Box No.315, Colombo-11.
4.Hatton National Bank Ltd.,
No.481, T.B.Jaysh Mawatha,
Colombo-10

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 20.11.2015 in M.A.No.150 of 2008 on the file of DRAT, Chennai and quash the same and consequently direct the DRAT, Chennai to allow the I.A.No.519 of 2005 on the file of DRT-II, Chennai as prayed for.

For Petitioner : Mr.M.Arun Kumar,
for M/s.Sampath Kumar & Associates

For Respondents 1, 2 : No appearance

For Respondent No.3 : Not ready in notice

For Respondent No.4 : Mr.T.Poornam

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

The petitioner is impugning an order dated 20.11.2015 by which petitioner's case that respondent No.4 has taken over the liability of respondent No.3 to petitioner was rejected.



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2. In the impugned order, the Debt Recovery Appellate Tribunal has recorded that respondent No.4 denied that it took over respondent No.3 and it was the case of respondent No.4 that it took over only certain assets and liabilities of respondent No.3. Respondent No.4's case is, it never took over this alleged liability of respondent No.3 to petitioner.

3. The Debt Recovery Appellate Tribunal therefore came to a factual finding that petitioner failed to prove that the liability of respondent No.3 to petitioner has been taken over by respondent No.4.

4. Counsel for petitioner brought to our notice a letter dated 23.02.2024 issued by the Central Bank of Sri Lanka, copy whereof is annexed at page 55 to the typed set, in which the Central Bank of Sri Lanka has confirmed that the Sri Lanka Branch of Habib Bank AG Zurich - respondent No.3 was acquired by Hatton National Bank Ltd i.e. respondent No.4 in October, 2002. Petitioner has not been able to prove what this acquisition is.



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5. Counsel for respondent No.4 - Hatton National Bank Ltd, relies on a compilation filed by him, in which there is a letter dated 26.12.2003 from Habib Bank AG Zurich i.e. respondent No.3 to Hatton National Bank Ltd i.e. respondent No.4, in which it is stated that the liability referred to therein has not been transferred to respondent No.4.

The letter reads as under:

*“DEBTS RECOVERY TRIBUNAL
APPLICATION NO.2351/2001
VIJAYA BANK VS (1) RVS ASHOL KUMAR,
(2) MEEZAN TRADING
CO
.
(3) HABIB BANK A.G ZURICH, 149-151, MAIN
STREET, COLOMBO*

We write to confirm to you that the above case was not a liability transferred by Habib Bank AG Zurich (HBZ) Colombo Branch Officers to Hatton National Bank Ltd., (HNB) or take over by HNB from HBZ Colombo Branch offices on the takeover of specific assets/liabilities/properties of the Colombo Branch Offices of Habib Bank AG Zurich nor was it a liability shown in the Books/records of Habib Bank AG Zurich Colombo Branch Offices.

The above confirmation is made in response to your letter of date and for purposes of record.”

6. There is also a letter dated 22.06.2004 from the Central Bank of



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Sri Lanka to petitioner, in which it is recorded that certain information was sought from the Central Bank of Sri Lanka on the premise that Habib Bank AG Zurich had been acquired by Hatton National Bank Ltd. and thereby merged with Hatton National Bank Ltd. The Central Bank of Sri Lanka has clarified that when Habib Bank AG Zurich decided to close down its branch at Sri Lanka, Hatton National Bank Ltd acquired assets and liabilities, as set out in the agreement between the two parties and thereby, the license issued to Habib Bank AG Zurich to operate in Sri Lanka has been cancelled. The fact that the liability of Habib Bank AG Zurich to petitioner has not been transferred to Hatton National Bank Ltd has been confirmed in the letter referred to earlier.

7. In the circumstances, since these are factual issues, we are unable to conclude that the order passed by the Debt Recovery Appellate Tribunal was erroneous. Petition dismissed. There will be no order as to costs.

(K.R.SHRIRAM, CJ.)

(SENTHILKUMAR RAMAMOORTHY, J.)

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