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BHANU CONSTRUCTION CO. PVT. LTD.
v.
ANDHRA BANK, HYDERABAD AND ORS.

NOVEMBER 28, 2000

B

[M. JAGANNADHA RAO AND DORAISWAMY RAJU, JJ.]

C

Recovery of Debts due to Banks and Financial Institutions Act, 1993—Sections 2(c), 18 and 31—Order passed by Civil Court subsequent to passing of the Act but before establishment of Tribunal under the Act—Held, within the jurisdiction of the Civil Court—Held, since the “appointed day” under the Act is the date of setting up of the Tribunal and not the day of passing of the Act.

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Appellant company referred disputes in contracts entered into with National Thermal Power Corporation (N.T.P.C.) to arbitration proceedings claiming Rs. 23 crores. Respondent-banks filed a suit before the Civil Court for recovery of Rs. 19 crores from the company and filed an interlocutory application seeking a direction that the said amount be deposited by N.T.P.C. before the Civil Court if it becomes payable to the company in arbitration proceedings. The Civil Court, by an order dated 20.9.94, directed N.T.P.C. not to pay the company any amount until further orders. The company filed a writ petition before the High Court against the order of the Civil Court. Single Judge allowed the writ petition on the ground that, with the passing of Recovery of Debts due to Banks and Financial Institutions Act, 1993 on 24.6.93, the Civil Court has no jurisdiction. The Tribunal under the Act was set up on 30.11.94. Division Bench, concurring with the Single Judge Held that Civil Court has no jurisdiction. It, however, allowed the appeal by two banks since no decree has been passed by the Civil Court. Hence this appeal by the company.

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The company contended that the order of the Civil Court dated 20.9.94 was without jurisdiction as it was passed subsequent to the passing of the Act on 24.6.93.

Disposing of the appeals, the Court

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HELD: 1.1. It will be noticed from the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 that the “appointed day”

in relation to a Tribunal means the day on which the Tribunal is established and not the day on which the Act came into force. In the present case, it is not in dispute that the Tribunal was established on 30.11.94 subsequent to the passing of the order of the Civil Court. It is true that the Civil Court passed an order on 20.9.94 after the Act had come into force. But for the purpose of Section 18 of the Act what is relevant is not the date of passing of the Act but the date of the establishment of the Tribunal. Therefore 24.6.93 is not relevant but it is the date of establishment of Tribunal namely the 30.11.94 that is relevant. The impugned order, in the present case, was passed by the Civil Court on 20.9.94 prior to the establishment of the Tribunal on 30.11.94. Therefore, the Single Judge as well as the Division Bench were wrong in concluding that the order of the Tribunal was without jurisdiction.

[133-G-H; 134-A-B]

1.2. Section 31 of the Act deals with the transfer of pending cases. According to Section 31(2)(b), the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceedings, so far as may be, in the same manner as in the case of an application made under Section 19 of the Act from the State which was reached before such transfer or from any earlier stage as the Tribunal may deem fit. Therefore, now that the suit has been transferred to the Tribunal, it will be for the appellant to seek appropriate reliefs before the Tribunal. If the appellant wants any modification or vacation of the interim order passed by the civil court on 20.9.94, it can move the Tribunal. [134-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7056-57 of 2000.

From the Judgment and Order dated 10.2.99 of the Andhra Pradesh High Court in W.A. No. 1144/97 and W.A.M.P. No. 3941 of 1998.

P.N. Mishra, S. Misra, B. Swain, A. Kumar, R.N. Patnaik, R. Roy and Abhijit Sengupta for the Appellants.

V.R. Reddy and P.P. Singh for the Respondents.

The Judgment of the Court was delivered:

Special Leave granted.

These appeals are preferred by the appellant against the judgment dated 10.2.99 of the Division Bench of the High Court of Andhra Pradesh in

A W.A. No. 1144 of 1997 and W.A.M.P. No. 3941/98. The Bench set aside the judgment of the learned Single Judge and directed parties to approach the Tribunal under The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called the 'Act').

B The brief facts in the appeals are that the appellant company entered into contracts with National Thermal Power Corporation. It appears that the National Thermal Power Corporation terminated the contracts and encashed the bank guarantee for 234 lacs on 4.12.87. The action of the N.T.P.C. was questioned and a learned Single Judge of the High Court had earlier held that action of the N.T.P.C. was illegal and directed to refund the amount collected under the bank guarantee. The Division Bench of the High Court held that the suit was of a Civil nature and could not be adjudicated in proceedings under Article 226 of the Constitution of India.

C Thereafter the appellant raised a dispute with regard to the contracts and sought for arbitration in all the said three contracts. The appellant company filed its claim to the tune of Rs. 23 crores. According to the appellant the two respondents Banks anticipated that the appellant was likely to receive substantial amount from the N.T.P.C. and therefore, the banks (namely the Andhra Bank and the State Bank of India) filed a suit being O.S. No. 191/93 before the 2nd Additional Judge, City Civil Court Hyderabad on 27.8.93 seeking recovery of an amount of Rs. 19 crores. Alongwith the application they filed an interlocutory application seeking direction that the N.T.P.C. to deposit the amount that may become payable to the appellant in arbitration proceedings, before the Court. On the said application an order was passed by the Civil Court on 20.9.94 directing the Power Grid Corporation of India under Order XXXVIII Rule 5 read with Order XXI Rule 46 not to pay the appellant company, any money until further orders from the Civil Court. The idea was that the amounts, if any, payable by the said Corporation should be available in the event any decree is passed in favour of the Banks in their suit.

D The above said order dated 20.9.94 was challenged by the appellant in the High Court by way of writ petition No. 3329/95 and the same was allowed by the High Court on the ground that the abovesaid suit was instituted on 27.8.93, and the impugned order of the civil court which was passed on 20.9.94, subsequent to the passing of the Act, i.e., 24.6.93 therefore the civil court had no jurisdiction. The Tribunal was established on 30.11.94. The order passed by the civil court was quashed. In the appeal preferred before the

Division Bench by the two banks (respondents 1 and 2), the Bench agreed with the trial court that the order passed by the Civil Court was without jurisdiction. But at the same time the Division Bench felt that inasmuch as no decree had been passed it was not the stage at which the writ petition could be entertained. Hence the appeal was allowed and the writ petition was dismissed.

It is against the said judgment that these appeals have been preferred by the appellant-defendant contending that the order of the Civil Court dated 20.9.94 was without jurisdiction inasmuch as it was passed subsequent to the passing of the Act on 24.6.93.

Section 2 of the Act is relevant for considering whether the order passed by the civil court dated 20.9.94 subsequent to the passing of the Act on 24.6.93 but before the establishment of the Tribunal on 30.11.94 was within the jurisdiction of the Civil Court. We shall refer to the relevant provisions of the Act.

Section 18 of the Act reads as follows:

“S.18. Bar of jurisdiction—On and from the appointed day, no court or other authority shall have, or be exercise, any jurisdiction, powers or authority (except the Supreme Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in Section 17.”

In View of the words “appointed day” used in the abovesaid Section, it has become necessary to find out what is the definition of “appointed day”. Section 2(c) of the Act defines “appointed day” as follows:

“appointed day”, in relation to a Tribunal or an Appellate Tribunal, means the date on which such Tribunal is established under Sub-section (1) of Section 3 or, as the Case may be, sub-section (1) of section 8”.

It will be noticed that the “appointed day” in the Act in relation to a Tribunal means the day on which the Tribunal is established and not the day on which the Act came into force. In the present case, it is not in dispute that the Tribunal was established on 30.11.94 subsequent to the passing of the order of the Civil Court. It is true that the civil court passed an order on 20.9.94 after the Act had come into force. But for the purpose of Section 18

- A** of the Act what is relevant is not the date of passing of the Act but the date of the establishment of the Tribunal. Therefore 24.6.93 is not relevant but it is the date of establishment of Tribunal namely the 30.11.94 that is relevant. The impugned order in the present case was passed by the civil court on 20.9.94 prior to the establishment of the Tribunal on 30.11.94. Therefore, the learned Single Judge as well as the Division Bench were wrong in thinking
- B** that the order of the Tribunal was without jurisdiction.

- It will also be noticed that Section 31 of Act deals with the transfer of pending cases. Accordings to Section 31(2) (b) the Tribunal may, on receipt of such records, proceeds to deal with such suit or other proceedings, so far
- C** as may be, in the same manner as in the case of an application made under section 19 from the state which was reached before such transfer or from any earlier stage as the Tribunal may deem fit.

- Therefore, now that the suit has been transferred to the Tribunal, it will be for the appellant to seek appropriate reliefs before the Tribunal. If the
- D** appellant wants any modification or vacation of the interim order passed by the civil court on 20.9.94, it can move the Tribunal.

The appeals are disposed of in the light of above observations. There shall be no order as to costs.

B.S.

Appeals disposed of