

A BANK OF RAJASTHAN LTD.

v.

VCK SHARES & STOCK BROKING SERVICES LTD.

(Civil Appeal Nos. 8972-8973 of 2014)

B SEPTEMBER 17, 2014

[RANJAN GOGOI AND S. A. BOBDE, JJ.]

C *Recovery of Debts due to Banks and Financial Institutions Act, 1993: s. 19 – Jurisdiction of civil court to hear and try a counter claim or a set off filed by debtor – In view of difference of opinion between the several benches of Supreme Court on the issue, the following questions of law referred to larger bench – Whether an independent suit filed by a borrower against a Bank or Financial Institution, which*
D *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; If yes, can such transfer be ordered by a court only with the consent of the plaintiff; Is the jurisdiction of a civil court to try a suit filed*
E *by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to proceedings for recovery of debt by a Bank or Financial Institution – Reference to larger bench.*

F **The question which arose for consideration in the instant appeals was whether having regard to the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDB Act), a suit containing a “counter-claim” or claiming a “set-off” filed by a debtor**
G **can be heard and tried before the Debt Recovery Tribunal (DRT) under the RDB Act or must be tried by a Civil Court alone.**

Referring the matter to larger bench, the Court

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HELD: 1. In *Indian Bank vs. ABS Marine Products (P) Ltd.*, a Bench of two Judges of this Court took the view that the jurisdiction of the Civil Courts is not barred in regard to any suit filed by a borrower against a bank for any relief. That jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debt. The Bench also held that though a 'counter-claim' and 'set off' may be made under sub-sections (6) and (11) of Section 19 of the RDB Act, no jurisdiction is conferred on the Tribunal to try independent suits or proceedings initiated by borrowers. Referring to the earlier Judgment in *Abhijit's* case, the Bench observed that an independent suit can be deemed to be a counter-claim and can be transferred to the Tribunal only if the following conditions are satisfied: The subject-matter of the bank's suit, and the suit of the defendant against the bank, is inextricably connected in the sense that the decision in one would affect the decision in the other. Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counter-claim in the bank's application before the Tribunal, so that both can be heard and disposed of by the Tribunal. [Para 8, 9][1208-F-G; 1209-A-C]

2. The two-Judge Bench in *Nahar's case* observed that in *Indian Bank's case*, the Court had come to the conclusion that the respective claims of the parties were not inextricably connected and therefore the transfer of a suit to the Tribunal can only be on the basis of the consent of the parties. It further directed that the Bench in *Ranjan Chemicals* case was bound by the decision in the *Indian Bank Case* being a co-ordinate Bench, and therefore, could not have taken a contrary view by holding that the Court can consider a suit to be a claim of 'set-off' and transferred to the Tribunal for being tried

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A jointly with the application filed by the bank as a cross-suit and that too without the consent of parties. Though having so observed, the Bench apparently did not consider it appropriate to have the matter decided by a larger Bench. It was held that if all suits whether
B inextricably connected with the application filed before the DRT by the Bank are transferred, the same would amount to ousting the jurisdiction of the civil court indirectly and consent of the plaintiff is necessary for transferring the suits. This finding was in consonance
C with the observation of the Court in the *Indian Bank's Case* but was at variance with the Judgment in *Ranjan Chemicals* case. [Paras 8, 9, 11 and 12][1210-B-C; 1210-D-F; 1211-A-C]

D 3. It was contended for the respondent that the matter did not call for reference as there was complete consistency in the views of the Court in *Indian Bank case* and *Nahar case* since both the judgments took the view that the jurisdiction of the civil courts was not ousted and a suit filed before the civil court can be transferred
E to the DRT only with the consent of both parties and *Nahar's case* was the last word on the point and it must be taken to lay down the correct law, and in any case the law which is binding. There is a difference of opinion
F between several Benches of this Court on the issue. This is likely to create a doubt as to the true position in law and, therefore, it is held appropriate to refer the following questions of law to a larger Bench: (a) Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of
G its loan against the plaintiff under the RDB Act, is liable to be transferred and tried long 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
H 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 proceedings for recovery of debt by a Bank or Financial Institution? [Paras 14, 15][1212-E-G; 1213-A-E] A

United Bank of India, Calcutta v. Abhijit Tea Co. Pvt.Ltd. and Ors. (2007) 7 SCC 357; Indian Bank v. ABS Marine Products (P) Ltd. 2006 (5) SCC 72 : 2006 (1) Suppl. SCR 52 ; State Bank of India v. Ranjan Chemicals Ltd. and Anr. 2007 (1) SCC 97 : 2006 (7) Suppl. SCR 145 ; Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation 2009 (8) SCC 646 ; JIT Ram v. State of Haryana (1981) 1 SCC 11; Union of India v. Godfrey Phillips India Ltd. (1985) 4 SCC 369 – referred to. B

3. At this stage, the counsel for the appellant prayed for stay of further proceedings in the two suits pending between the parties before the High Court. The suits are apparently pending since the years 1998 & 1999 and due to various proceedings, which have been taken out by the parties, have virtually remained stationary. There is virtually no progress in the suits and much progress is not likely to take place for a long time. Moreover, the respondent – plaintiff has made a monetary claim, the satisfaction of which can be appropriately ensured by any order which may be passed in the proceedings. There is no reason to direct stay of the suits. The interim relief prayed for the same is rejected. [Para 16] [1213-E-H; 1214-A] C

CASE LAW REFERENCE D

2006 (1) Suppl. SCR 52	referred to	Para 8	E
2000 (3) Suppl. SCR 153	referred to	Para 9	F
2006 (7) Suppl. SCR 145	referred to	Para 10	F
2009 (8) SCC 646	referred to	Para 11	G

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| A | 2006 (5) SCC 72 | referred to | Para 11 |
| | (1981) 1 SCC 11 | referred to | Para 13 |
| | (1985) 4 SCC 369 | referred to | Para 13 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No(s).

- B 8972-8973 of 2014.

From the Judgment and Order dated 19-04-2011 of a Division Bench of the High Court at Calcutta in APO Nos. 488 of 2002 and 489 of 2002.

- C Shyam Divan, Sr. Adv., Ms. Suruchi Suri, Chanchal Kumar Ganguli, Advs. for the Appellant.

Jaideep Gupta, Sr. Adv., Nirmalya Mohan Bhattacharya, Ms. Titash Sen, Abhinav Mukerji, Advs. for the Respondents.

- D The Judgment of the Court was delivered by

S. A. BOBDE, J.

1. Leave granted.

- E 2. In these appeals, the question before us is whether having regard to the Recovery of Debts due to Banks and Financial Institutions Act, 1993 [hereinafter referred to as 'RDB Act'], a suit containing a "counter-claim" or claiming a "set-off" filed by a debtor can be heard and tried before the Debt Recovery Tribunal (hereinafter referred to as 'DRT') under the RDB Act or must be tried by a Civil Court alone.

- F 3. The appellant – Bank filed an application for recovery under Section 19 of the RDB Act before the DRT for a recovery certificate against the respondent for Rs. 8,62,41,973.36/-. Though the respondent entered appearance before the DRT, G it filed Civil Suit No. 77 of 1998 before the Calcutta High Court against the appellant claiming a decree for sale of pledged shares and payment of sale proceeds to the respondent. After the appellant sold pledged shares for a total sum of Rs. 5,77,68,000/-, the respondent filed Civil Suit No. 129 of 1999 H praying inter alia for following reliefs:

i) A declaration that sale of shares of BFL Software Ltd. A
was void;

ii) A decree for return of pledged shares in respect of
overdraft facility account and in default to pay Rs. 48.95
crores; and

iii) A declaration that no sum was payable by the B
respondent to the appellant in respect of Term Loan dated
27.07.1994 and overdraft Account dated 19.09.1995 and
that the appellant is not entitled to a decree for a sum of
Rs. 8,62,41,973.36 from the respondent. C

4. The appellant filed an application in C.S. No. 129 of
1999 for rejecting the suit on the ground that the High Court
did not have jurisdiction since the subject matter was within
the exclusive jurisdiction of the DRT. The Single Judge allowed
that application and directed that the suits be taken off from D
the file of the High Court. The Division Bench stayed operation
of the Order of the Single Judge.

5. Since the DRT held that the appellant's claim for
Rs. 6,04,17,777.36 was satisfied, it directed *inter alia* to return E
the title deeds of the pledged shares. On the counter claim,
the DRT held that the respondent was entitled to recover
Rs. 6,88,187.49 from the appellant within 4 weeks.

6. The appellant's petition under Article 227 of the
Constitution before the High Court of Calcutta challenging the F
DRT order dismissing the appellant's appeal against the DRT
order was dismissed in default. The Division Bench allowed
the appeal filed by the respondent against the order of the
Single Judge taking off the suits from the file of the High Court.
This Judgment of the High Court is questioned in these appeals. G

7. In United Bank of India, Calcutta vs. Abhijit Tea
Co. Pvt. Ltd. and Others¹, a two-Judge Bench of this Court
took the view that as per the legislative scheme of the RDB
Act, jurisdiction was indeed conferred upon the Tribunal to try

A “counter-claim” and “set-off” by Section 19 of the RDB Act and that all such counter-claims and set-offs, including a cross suit filed independently should be tried by a Debt Recovery Tribunal. The Court was considering a case where the borrower-company had filed an application that suit filed by the Bank should remain on the Original Side of the Calcutta High Court. That application was allowed by the Single Judge. Against this order the Bank had preferred the Special Leave Petition. Though the RDB Act had not come into force when the suit was filed by the Bank, the debtor-company had filed the application and resisted the transfer of the suit. This Court took the view that the above pleas raised by the respondent-company are all inextricably connected with the amount claimed by the Bank and therefore directed transfer of the suit.

D 8. In a later decision in Indian Bank vs. ABS Marine Products (P) Ltd.², a Bench of two Judges of this Court took the view that the jurisdiction of the Civil Courts is not barred in regard to any suit filed by a borrower against a bank for any relief. That jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debt. The Bench also held that though a ‘counter-claim’ and ‘set off’ may be made under sub-sections (6) and (11) of Section 19 of the DRB Act, no jurisdiction is conferred on the Tribunal to try independent suits or proceedings initiated by borrowers.

F 9. It held that what is provided and permitted is a cross-action by the respondent in a pending application filed by a bank. It was held that the borrower had the option to file a separate suit before the Civil Court and the counter-claim before the Tribunal was not the only remedy. Referring to the earlier Judgment in Abhijit’s³ case (supra), the Bench observed that an independent suit can be deemed to be a counter-claim and can be transferred to the Tribunal only if the following conditions are satisfied:

²(2006) 5 SCC 72

H ³(2000) 7 SCC 357

(i) The subject-matter of the bank's suit, and the suit of the defendant against the bank, is inextricably connected in the sense that the decision in one would affect the decision in the other. A

(ii) Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counter-claim in the bank's application before the Tribunal, so that both can be heard and disposed of by the Tribunal. B

10. In State Bank of India vs. Ranjan Chemicals Ltd. and Another⁴, a two-Judge Bench considered the matter from the perspective of whether it was just and proper to order a joint trial of two cases i.e. one before the DRT and another before the Civil Court. The two-Judge Bench referred to Abhijit's⁵ case (supra) and observed that though a borrower-company always had an option to sue the bank in a civil court, it does not in any manner affect the power of the Court to order a joint trial of the applications. There was no warrant of curtailing the power of the Court to order a joint trial by introducing a restriction that it can be done only if there was consent by both sides, though a claim in an independent suit could be considered as a claim for set-off and a counter-claim within the meaning of Section 19 of the RDB Act. In such an eventuality the only question was whether in the interest of justice, convenience of parties and avoidance of multiplicity, the suit should be transferred to the DRT to be tried as a cross-suit. Thus the Bench leaving **Ranjan Chemicals Case** held in effect that the consent of the parties for transfer of the suit to the DRT was not necessary, as held in the **Indian Bank Case** (supra). C
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11. In a subsequent decision of this Court by another two-Judge Bench in Nahar Industrial Enterprises Limited vs. G

⁴(2007) 1 SCC 97

⁵(2000) 7 SCC 357

- A ***Hong Kong and Shanghai Banking Corporation***⁶, the issue cropped up again. The Court considered the three authorities referred to above i.e. ***United Bank of India, Calcutta vs. Abhijit Tea Co. Pvt. Ltd. and Others***⁷; ***Indian Bank vs. ABS Marine Products (P) Ltd.***⁸ and ***State Bank of India vs. Ranjan Chemicals Ltd. and Another***⁹. The two-Judge Bench in this case i.e. ***Nahar's case*** (supra) observed that in the ***Indian Bank's case***, the Court had come to the conclusion that the respective claims of the parties were not inextricably connected and therefore the transfer of a suit to the Tribunal can only be on the basis of the consent of the parties. The Bench in ***Indian Bank*** case had held that the claims can be transferred only if the following two conditions exist:
- D (i) Inextricable connection of the subject matter of the two proceedings; and
- (ii) The agreement of both parties that the suit should be transferred to the Tribunal.

12. It further directed that the Bench in ***Ranjan Chemicals***¹⁰ case was bound by the decision in the ***Indian Bank Case***¹¹ being a co-ordinate Bench, and therefore, could not have taken a contrary view by holding that the Court can consider a suit to be a claim of 'set-off' and transferred to the Tribunal for being tried jointly with the application filed by the bank as a cross-suit and that too without the consent of parties.
- F The Bench, vide para 60, held as under:

"We are in agreement with all the above observations of this Court. ***Ranjan Chemicals***¹² was bound by the decision rendered in ***Indian Bank***¹³ being a coordinate Bench. It could not have taken a contrary view."

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⁶ (2009) 8 SCC 646

⁷ (2000) 7 SCC 357

⁸ (2006) 5 SCC 72

⁹ (2007) 1 SCC 97

H ¹⁰ (2007) 1 SCC 97

Though having so observed, the Bench apparently did not consider it appropriate to have the matter decided by a larger Bench. It was held that if all suits whether inextricably connected with the application filed before the DRT by the Bank are transferred, the same would amount to ousting the jurisdiction of the civil court indirectly and consent of the plaintiff is necessary for transferring the suits. This finding is in consonance with the observation of the Court in the *Indian Bank's Case*¹⁴ but is at variance with the Judgment in *Ranjan Chemicals*¹⁵ case. According to the last judgment i.e. *Nahar's case*¹⁶, the Bench deciding *Ranjan Chemicals* case could not have taken a contrary view but was bound by the decision rendered in the *Indian Bank* case. Many other aspects of variance and consonance have been pointed out to us but we have not dealt with them in view of the one aspect alone, which has been highlighted.

13. Mr. Shyam Divan, learned senior counsel appearing for the appellant relied upon the decision of this Court in *Jit Ram v. State of Haryana*¹⁷ and *Union of India v. Godfrey Philips India Ltd.*¹⁸, where in paragraph 12, this Court observed as follows:

“.....We find it difficult to understand how a Bench of two Judges in *Jit Ram* case could possibly overturn or disagree with what was said by another Bench of two Judges in *Motilal Sugar Mills* case¹⁹. If the Bench of two Judges in *Jit Ram* case found themselves unable to agree with the law laid down in *Motilal Sugar Mills* case, they could have referred *Jit Ram* case to a larger Bench,

¹¹(2006) 5 SCC 72

¹²(2007) 1 SCC 97

¹³(2006) 5 SCC 72

¹⁴(2006) 5 SCC 72

¹⁵(2007) 1 SCC 97

¹⁶(2009) 8 SCC 646

¹⁷(1981) 1 SCC 11

¹⁸(1985) 4 SCC 369

¹⁹(1979) 2 SCC 409

A but we do not think it was right on their part to express
their disagreement with the enunciation of the law by a
coordinate Bench of the same Court in *Motilal Sugar*
Mills. We have carefully considered both the decisions
B in *Motilal Sugar Mills case* and *Jit Ram case* and we
are clearly of the view that what has been laid down in
Motilal Sugar Mills case represents the correct law in
regard to the doctrine of promissory estoppel and we
express our disagreement with the observations in *Jit*
C *Ram case* to the extent that they conflict with the statement
of the law in *Motilal Sugar Mills case* and introduce
reservations cutting down the full width and amplitude of
the propositions of law laid down in that case.”

Shri Divan submitted that the Bench deciding *Ranjan*
*Chemical's Case*²⁰ had decided at variance with the Judgment
D in *Indian Bank case*²¹. They were Benches of coordinate
strength and the latter ought to have referred the matter to a
larger Bench instead of taking a contrary view. The learned
senior counsel also pointed out that this, in fact is the exact
observation of the Bench in *Nahar's case*²² which did not also
E consider it appropriate to refer the issues to a larger Bench.

14. Mr. Jaideep Gupta, learned senior counsel appearing
for the respondent submitted that the matter does not call for a
reference as there is complete consistency in the views of the
F Court in *Indian Bank case* (supra) and *Nahar case* (supra)
since both the judgments have taken the view that the
jurisdiction of the civil courts has not been ousted and a suit
filed before the civil court can be transferred to the DRT only
with the consent of both parties. According to the learned
G counsel, *Nahar's case* (supra) is the last word on the point
and it must be taken to lay down the correct law, and in any
case the law which is binding.

²⁰(2007) 1 SCC 97

²¹(2006) 5 SCC 72

²²(2009) 8 SCC 646

15. It is not possible to accede to the submissions made on behalf of the respondent as pointed out above. There is a difference of opinion between several Benches of this Court on the issue. This is likely to create a doubt as to the true position in law, hence we consider it appropriate to refer the following questions of law to a larger Bench:

- (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 DRB 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 proceedings for recovery of debt by a Bank or Financial Institution?

16. At this stage, Shri Diwan, learned senior counsel for the appellant prayed for stay of further proceedings in the two suits being Civil Suit No. 77 of 1998 and Civil Suit No. 129 of 1999, both titled "VCK Shares & Stock Broking Services Ltd. Vs. Bank of Rajasthan" pending before the High Court of Calcutta. The suits are apparently pending since the years 1998 & 1999 and due to various proceedings, which have been taken out by the parties, have virtually remained stationary. We are informed that the suits are at the stage of amendment of the pleadings, which have not been carried out. Suffice it to say that there is virtually no progress in the suits and much progress is not likely to take place for a long time. Moreover, the respondent – plaintiff has made a monetary claim, the satisfaction of which can be appropriately ensured by any order

A which may be passed in the proceedings. We thus see no reason to direct stay of the suits. The interim relief prayed for the same is rejected.

B 17. In view of above, the Registry is directed to place the papers before the Hon'ble Chief Justice of India for taking appropriate action in accordance with law.

Devika Gujral

Matter referred to larger bench.