

## Supreme Court resolves the conflict: Civil court can try cases of borrowers against the bank or financial institution which has applied for recovery of loan against the same borrower

The recent judgement of the 3 (three) judge bench of the Supreme Court of India (“**Supreme Court**”) in the case of *Bank of Rajasthan Limited v. VCK Shares & Stock Broking Services Limited*<sup>1</sup> has resolved the conflict on civil courts entertaining counterclaims of a borrower against banks / financial institutions which are independent pursuing recovery proceedings against the same borrower before the Debt Recovery Tribunal (“**DRT**”) under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“**RDB Act**”).

### Issues

In view of the difference of opinion between several benches of the Supreme Court, the following issues were referred to the 3 (three) judge bench:

1. Whether an independent suit by a borrower against a bank / financial institution which filed for recovery of its loan against the same borrower/plaintiff under the RDB Act is liable to be transferred and tried along with the application under the RDB Act by the DRT.
2. If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?
3. 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?”

### Brief Facts

The Bank of Rajasthan Limited (“**Bank**”) sanctioned a term loan and credit overdraft facility (“**Overdraft**”) to VCK Shares & Stock Broking Services Limited (“**Borrower**”). The Borrower secured the Overdraft by the pledge of shares, stocks, and other securities of its various companies. The Borrower defaulted. Accordingly, the Bank filed proceedings under the RDB Act before the DRT, Kolkata seeking recovery of its dues. While the Borrower appeared before the DRT, Kolkata, it simultaneously also filed a civil suit before the High Court of Calcutta (“**Calcutta HC**”) against the Bank seeking, *inter alia*, a decree for sale of the pledged shares, recovery of sale proceeds and an inquiry into the losses suffered by the Borrower and a decree for money of the same. The Bank sold the pledged shares and adjusted the amounts against the dues. Consequentially, the Borrower filed another civil suit before the Calcutta HC seeking *inter*

<sup>1</sup> 2022 SCC OnLine SC 1557

*alia*, a decree for return of pledged shares and declarations that (a) the sale of shares was void, and (b) no sum was payable by the Borrower to the Bank.

The Bank challenged the maintainability of the suits on the ground that the jurisdiction for such disputes vested only with the DRT, and not the Calcutta HC. The Single Judge of the Calcutta HC allowed the Bank's applications. In appeal, the Division Bench overturned the findings. Aggrieved, the Bank preferred an appeal before the Supreme Court.

## Conflicting views for the consideration of the Supreme Court

When the matter was taken up before the Supreme Court, it was faced with conflicting judgments. In the decision of *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*<sup>2</sup>, the Supreme Court held that as per the legislative scheme of Section 19 of the RDB Act, jurisdiction was conferred upon the DRT to try a counterclaim and set-off and that all such counterclaims and set-offs, including a cross-suit filed independently, should be tried by the DRT. Subsequently, in *Indian Bank v. ABS Marine Products (P) Ltd.*<sup>3</sup>, the Supreme Court additionally held that the borrower had the option to file a separate suit before the Civil Court and the counterclaim before the DRT was not the only remedy. Relying upon *Abhijit Tea (supra)*, the Bench observed that an independent suit can be deemed to be a counterclaim and can be transferred to DRT on satisfaction of two conditions, (a) that the subject matter of the bank's suit and the suit of the defendant against the bank were inextricably connected inasmuch as a decision in one suit would affect the decision in the other, and (b) that both parties agree for the suit being considered as a counter claim in the bank's application before the Tribunal.

However, the subsequent decisions of *State Bank of India vs. Ranjan Chemicals Ltd.*<sup>4</sup> and *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation*<sup>5</sup> made contrary findings.

Accordingly, these issues were referred to a larger bench to bring consistency in these conflicting opinions.

## Findings and Rationale

1. Whether an independent suit by a borrower against a bank / financial institution which filed for recovery of its loan against the same borrower/plaintiff under the RDB Act is liable to be transferred and tried along with the application under the RDB Act by the DRT.
  - a) There is no specific power in the civil court to transfer an independent suit by the borrower, to be tried by the DRT along with the bank's application under the RDB Act.
  - b) A plaint can be returned only under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 ("CPC") for the reasons specified therein. In the absence of such reasons, Section 151 of the CPC cannot be utilised as a residuary power to achieve the transfer, which is really a consequence of return of the plaint when the grounds under Order VII Rule 10 of the CPC are not satisfied. Such power of the civil court to transfer a suit to a DRT cannot be read into Section 151 of the CPC, when the DRT is a creature of a statute, and that statute does not provide for such eventuality.
  - c) The absence of any legislative power cannot give a power by implication to the Civil Court.
  - d) There is a contrast in the powers of the DRT vis-à-vis civil court in this regard. Where a defendant is to invoke the jurisdiction of the DRT by filing a counterclaim, the bank has a right to seek a relegation of that claim to the civil court and the DRT has been empowered to do so, albeit, at the final adjudication stage. This is so in view of the summary nature of remedy provided before the DRT and thus, if certain inquiries beyond the contours of what the DRT does are envisaged, a civil court remedy may be considered as appropriate.
2. If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

<sup>2</sup> *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*, (2000) 7 SCC 357

<sup>3</sup> *Indian Bank v. ABS Marine Products (P) Ltd.*, (2006) 5 SCC 72

<sup>4</sup> *State Bank of India vs. Ranjan Chemicals Ltd.*, (2007) 1 SCC 97

<sup>5</sup> *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation*, (2009) 8 SCC 646

Since there is no such power with the civil court, there is no question of transfer of the suit whether by consent or otherwise.

3. 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?
  - a) No. There is no provision in the RDB Act by which the remedy of a civil suit by a defendant against the bank is ousted.
  - b) It is a matter of choice of that defendant. Such a defendant may file a counterclaim in the bank's proceedings before the DRT or may avail the more strenuous procedure established under the CPC.
  - c) The DRT, being a Tribunal and a creature of the Statute, does not have any inherent power which inheres in civil courts such as Section 151 of the CPC<sup>6</sup>.

In response to the apprehension regarding a defendant launching a suit before the Civil Court in order to delay the proceedings before the DRT, the Supreme Court clarified that in case a defendant exercises such an option to file an independent suit, whatever be the nature of reliefs, the claim petition under the RDB Act would continue to proceed expeditiously in terms of the procedure established therein to come to a conclusion whether a debt is due to a bank and/or financial institution and whether a recovery certificate ought to be issued in that behalf.

### JSA Comment

1. This judgement puts to rest the conflicting views on this point since 2007 and comes as a big relief to borrowers who had preferred their independent civil against lenders which were being dragged within the limitations of the DRT. This judgement also recognizes that the multifarious other claims / disputes that can arise between a lender and borrower, all of which may not fall within the contours of the RDB Act.
2. This judgement is a big hit to all lenders who were avoiding / delaying the civil litigations against by borrowers on the pretext of its own proceedings against that borrower before the DRT.
3. The clarification that an independent suit pending before a civil court cannot be transferred to a DRT is a welcome development in this jurisprudence.

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<sup>6</sup> Transcore v. Union of India, (2008) 1 SCC 125

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