Before S.J. Vazifdar, CJ & Harinder Singh Sidhu, J.

PUNJAB NATIONAL BANK—*Petitioner*

versus

HDFC BANK LTD. AND ANOTHER—*Respondents*

CR No.7649 of 2014

November 01, 2017

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Ss.2(g) and 31—Code of Civil Procedure, 1908—O.7 Rl.10—Petitioner instituted a recovery suit against the respondents—Petitioner bank filed application under O.7 Rl.10 CPC for transferring suit to DRT—Application dismissed—Revision filed—Ld. Single Judge referred the matter to a Larger Bench—Question framed—Whether amount due to a party who made payment under a forged instrument constitutes debt within meaning of section 2 (g) of the Act—Held, opening words of section are wide enough to include such a liability—"Business activity" cannot be equated with "a valid business transaction"—Further held, Section 31 relates to suits or other proceedings pending before court immediately before the date of establishment of tribunal—Present suit was not pending on the date when tribunal was established—Application for transfer was not maintainable.

Held that, the question is whether the amount due to a party who has made payment under a forged instrument constitutes a debt within the meaning of that word in Section 2(g). We have answered the question in the affirmative.

(Para 5)

Further held that, the question is whether the amount due to a party who has made payment under a forged instrument constitutes a debt within the meaning of that word in Section 2(g). We have answered the question in the affirmative.

(Para 7)

Further held that, the opening words of Section 2(g) are themselves wide enough to include such a liability. Under Section 2(g), a "debt" means any liability which is claimed as due from any person by a bank etc. during the course of any business activity undertaken by the bank etc. under any law for the time being in force, in cash or otherwise, whether payable under a decree or order of any Civil Court

or otherwise and subsisting on, and legally recoverable, on the date of the application. Each of these ingredients is of wide amplitude. The words "any liability" are wide enough to include the claim in the present case.

(Para 8)

Further held that, the error arises on account of equating the words "business activity" with a valid business transaction. The words "business activity" are wider.

(Para 10)

Further held that, even when the bank is defrauded, it is in the course of the business activity undertaken by the bank. To constitute a debt under Section 2(g), it is not necessary that the claim must be on a transaction voluntarily and/or validly undertaken by the bank. Such a view would curtail the wide import of the words "business activities".

(Para 13)

Further held that, Section 31 relates to suits or other proceedings pending before any Court immediately before the date of establishment of the Tribunal under the said Act. The present suit was not pending on the date when the Tribunal was established. It was filed after the Tribunal was established. Section 31 was, therefore, not applicable.

(Para 17)

Anil Kumar Ahluwalia, Advocate,
for the petitioner.

Sunil Narang, Advocate,
for respondent No. 1.

S.J. VAZIFDAR, C.J.

(1) This is a Civil Revision against the order of the learned Civil Judge (Junior Division), Patiala, dated 02.09.2014 dismissing the petitioner's application under Order 7 Rule 10 of the Code of Civil Procedure, 1908 for transfer of the suit to the Debts Recovery Tribunal (DRT).

(2) The learned Single Judge by an order dated 13.01.2016 noted that the issue is whether the amount sought to be recovered by the plaintiff i.e. the petitioner is a debt within the meaning of that term in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short the Act). He observed that the matter is

of utmost commercial importance and required consideration by a larger Bench. The matter was accordingly placed before one of us (S.J. Vazifdar, CJ) on the administrative side for consideration for reference to a larger Bench on the issue. Pursuant to an administrative order, the matter has been placed before our Division Bench.

(3) In its written statement, respondent No. 1 raised a preliminary objection that the Civil Judge (Junior Division) has no jurisdiction to decide the suit.

(4) The petitioner filed the said application to have the suit transferred to the DRT. By the impugned order, the learned Civil Judge (Junior Division), Patiala dismissed the application. The learned Civil Judge (Junior Division) dismissed the application on the ground that the Court had territorial jurisdiction to try the matter. The learned Civil Judge (Junior Division) did not consider the contentions raised before us on behalf of the respondents to the effect that the claim in the suit is not a debt within the meaning of Section 2(g) of the Act possibly because they were not raised before him. It was apparently raised before the learned Single Judge who referred this matter to a Division Bench on this point.

(5) The question as noted in the order of reference is whether the suit filed to recover the amount paid under an allegedly forged demand draft is an action for recovery of a debt within the meaning of that expression in Section 2(g) of the Act. In other words, the question is whether the amount due to a party who has made payment under a forged instrument constitutes a debt within the meaning of that word in Section 2(g). We have answered the question in the affirmative.

(6) Sections 2(g), 3(1), 17(1) and 18 of the Act read as under:-

> 2. Definitions — In this Act, unless the context otherwise requires,—
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> (g) "debt" means [any liability (inclusive of interest) which is claimed as due from any person by a bank] or a financial institution or by a consortium of banks or financial institutions [during the course of any business activity undertaken by the bank] or the financial institution or the consortium [under any law for the time being in force], [in cash or otherwise,] whether secured or unsecured, or assigned, or [whether payable under a decree or order of any civil court or any arbitration award or otherwise] or

under a mortgage and subsisting on, [and legally recoverable on, the date of the application.]

3. Establishment of Tribunal -

(1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

17. Jurisdiction, powers and authority of Tribunals —

(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

18. Bar of jurisdiction -

On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

(7) In our view, the amount claimed by the petitioner clearly falls within the ambit of the word "debt" in Section 2(g).

(8) The opening words of Section 2(g) are themselves wide enough to include such a liability. Under Section 2(g), a "debt" means any liability which is claimed as due from any person by a bank etc. during the course of any business activity undertaken by the bank etc. under any law for the time being in force, in cash or otherwise, whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable, on the date of the application. Each of these ingredients is of wide amplitude. The words "any liability" are wide enough to include the claim in the present case. The words that follow do not exclude the claim in the present case from the definition of the word "debt". The words "under any law for the time being in force" would include the present claim irrespective of whether it is considered to be an action for money had and received or an action in tort.

The words "under any law for the time being in force" do not

restrict the claims to those based only on statute. The word "debt" also includes a claim "in cash or otherwise". There can hardly be any doubt that the present claim is one for cash and in any event falls within the words "or otherwise". The claim is payable as a debt for though it is not payable under a decree or order of any Civil Court, it is payable "otherwise" and claims otherwise than on a decree or order of a Civil Court are also included within the ambit of the word debt. Lastly, if the claim is well founded, it certainly is legally recoverable under the law in force in India. That was rightly not even disputed.

(10) It was, however, contended that money paid under a forged instrument cannot be said to be a liability due "during the course of any business activity undertaken by the bank" and that, therefore, the present claim to recover the money misappropriated on the basis of a forged instrument does not constitute a debt within the meaning of Section 2(g). The expression "during the course of any business activity undertaken by the bank" is also wide enough to cover such claims. The amount was paid by the petitioner to the 1st respondent in the course of its banking activity. Dealing in instruments such as a demand draft is undoubtedly a bank's business activity.

(11) The error in the respondents' contention is on account of limiting the scope of the words "during the course of any business activity undertaken by the bank" to business activities consciously and voluntarily undertaken by the bank. The error arises on account of equating the words "business activity" with a valid business transaction. The words "business activity" are wider.

(12) In ***United Bank of India*** versus ***Debts Recovery Tribunal***[1], the Supreme Court held:-

> "6. The Act and the relevant provisions will have to be construed bearing in mind the objects for which Parliament passed the enactment. The prime object of the enactment appears to be to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto.
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> 15. In the case in hand, there cannot be any dispute that the expression "debt" has to be given the widest amplitude to mean any liability which is alleged as due from any person

[1] (1999) 4 SCC 69

> by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint be looked into and then find out whether notwithstanding the specially-created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such a tribunal is ousted.*"*

(13) In ***M/s J.U. Mansukhani and Co. and another*** versus ***Presiding officer and others***[2], a Division Bench of the Delhi High Court dealt with a case where the bank filed an original application before the Debts Recovery Tribunal. The bank issued drafts at the request of respondents No. 1 and 2 in favour of respondent No. 1 payable at the bank's service branch at New Delhi. Respondents No. 1 and 2 received the amounts by getting the drafts presented through respondents No. 3 and 4 i.e. the HDFC Bank and Canara Bank. The drafts had been fraudulently obtained by respondents No. 1 and 2 in collusion with the officers of the applicant-bank as the respondents had not deposited the amounts before getting the drafts issued. The petitioners before the Delhi High Court i.e. the respondents before the Debts Recovery Tribunal contended that the proceedings before the Tribunal were without jurisdiction as the drafts were received by them from another party in the normal course of their business and were deposited with the HDFC Bank and Canara Bank and that they were bona-fide purchasers; that no document had been produced by the bank to establish that the petitioners had any business activity with them and that the petitioners themselves had never requested the bank to issue the drafts. It was, therefore, contended that the transaction was not a debt within the meaning of Section 2(g). The Division Bench of the Delhi High Court held as under:-

> "10. The use of the expression 'any liability' or 'any person' and other- wise throughout the section shows the legislative intent to provide the word "debt" with widest possible

[2] AIR 2000 Delhi 103

> meaning. Issuance of the bank drafts is clearly the business activity of the bank. The essence of the definition of "Debt" in Section 2(g) of the Act is the existence of any liability founded on the allegation as due from any person; the creditor being a Bank or a financial institution or a consortium of the two; the liability may be in cash or otherwise; it may be secured or unsecured; it may be payable under a decree or order of any civil court or otherwise; the only rider being that the liability must be legally recoverable. The question whether the Tribunal has jurisdiction or not, at this stage, will have to be decided on the basis of the allegations made in the original application. In the said application, as noticed above there are allegations made on the basis of which, in view of what has been held in Union Bank of India's case (AIR 1999 SC 1381) (supra) by the Supreme Court, there is no manner of doubt that the same is triable by the Tribunal and for that reason there is no need to consider the other decisions cited at the bar."

(14) We are in respectful agreement with the judgement of the Delhi High Court. Even when the bank is defrauded, it is in the course of the business activity undertaken by the bank. To constitute a debt under Section 2(g), it is not necessary that the claim must be on a transaction voluntarily and/or validly undertaken by the bank. Such a view would curtail the wide import of the words "business activities". In the course of its business activities, the bank may be defrauded, but the fraud also is perpetrated on the bank in the course of the bank's business activities. The purpose of the Act as held in paragraph 6 of the judgement in *United Bank of India Vs Debts Recovery Tribunal* is to provide for the establishment of Tribunals for the expeditious adjudication and recovery of dues due to banks. Further, as also held by the Supreme Court, the word "debt" is to be given the widest amplitude. The view that we have taken is in consonance with the object of the enactment and the judgement of the Supreme Court.

(15) Mr. Sunil Narang, the learned counsel appearing on behalf of respondent No. 1, relied upon a judgement of a learned Single Judge of the Gujarat High Court **in *Bank of India*** versus ***Vijay Ramniklal Kapadia and others***[3]. In that case, the bank had filed a suit before the

[3] 1997 (3) RCR (Civil) 502

Joint Civil Judge, Surat, who directed the bank to constitute the plaint before the DRT. The bank challenged the same before the Gujarat High Court. The suit was filed to recover the amounts from the respondents on an allegation that respondent No. 1, who was an employee of the bank, had committed a fraud in concert with the other respondents. In paragraph 4, the learned Single Judge set out Section 2(g) and held as under:-

> "4. Section 2(g) of the said Act which defines "debt" is relevant for the purposes of this appeal. It reads as under:
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> On the plain reading of the above definition, it is clear that any liability which is alleged and due from any person by a bank during the course of any business activity undertaken by it in cash or otherwise, whether secured or unsecured, or whether payable under a decree or an order of any civil Court or otherwise, and subsisting on and legally recoverable on the date of the application is "debt". Thus, any liability due from any person by a bank during the course of any business activity undertaken by the bank will constitute a "debt". Therefore, a fraud committed by an employee of the bank cannot or should not be construed a "debt". In the instant case, it is the allegation of the appellant-bank in the plaint that respondent No. 1 being an employee of the appellant-bank has committed fraud with the Bank to the extent of Rs. 13,86,000/- and the suit is filed to recover the said amount. By no stretch of imagination the said misappropriation of the amount of the bank by its employee can be construed as a "debt". The learned trial Judge, in the instant case, unfortunately has referred to and reproduced only a limited part of the definition of the word "debt" and has committed an error in holding that the debt is a liability which is alleged as due from any person by a bank. The later part of the definition of the word "debt" is clear which states that it is the liability due from any person during the course of any business activity undertaken by the bank which can be said to be a "debt", meaning thereby that any transaction between a bank and its customer with respect to the business activity undertaken by the bank, i.e. granting of loan etc. Misappropriation of the amount of the

> bank by its employee and recovery thereof by way of suit can never be construed as a "debt". In view of this, the appeal is required to be allowed."

(16) We are with respect unable to agree with the judgement especially the finding that the business activity undertaken by a bank means any transaction between a bank and its customer with respect to the business activity undertaken by the bank i.e. granting of loan etc. For the reasons we set out earlier, there is no warrant for limiting the ambit of the definition.

(17) In these circumstances, we hold that the claim made by the petitioner in the suit is a debt within the meaning of Section 2(g) of the Act.

(18) Having said that, however, we find it necessary to decide whether the application before the Civil Judge (Junior Division) was at all maintainable. It was not maintainable under Section 31(1) of the Act which reads as under:-

> 31. Transfer of pending cases -
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> (1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:
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> Provided that nothing in this sub- section shall apply to any appeal pending as aforesaid before any court

(19) Section 31 relates to suits or other proceedings pending before any Court immediately before the date of establishment of the Tribunal under the said Act. The present suit was not pending on the date when the Tribunal was established. It was filed after the Tribunal was established. Section 31 was, therefore, not applicable.

(20) Nor was the application for transfer under Order 7 Rule 10 of the CPC maintainable. Order 7 Rule 10 of the CPC reads as under:-

> 10. Return of plaint.—
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> (1) [Subject to the provisions of Rule 10-A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(21) In ***Nahar Industrial Enterprises Limited*** versus ***Hong Kong and Shanghai Banking Corporation***[4], the Supreme Court held that the DRT is not a Court. (See paragraphs 92 and 103)

(22) Having said that, however, the petitioner's apprehension that it is without a remedy is not well founded. The petitioner can always file an application for recovery of its dues under the said Act. The apprehension that the claim may be barred by limitation is also unfounded.

(23) Section 24 of the Act reads as under:-

> 24. Limitation —
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> The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal.

(24) As the DRT is not a Court, the original application to recover amounts under the Act would not be a suit. Section 5 of the Limitation Act, 1963 would, therefore, apply to applications under the Act. Section 5 of the Limitation Act, 1963 reads as under:-

> 5. Extension of prescribed period in certain cases.—
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> Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
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> Explanation — The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

(25) Considering the nature of the matter, it cannot be said that the petitioner had filed the suit before the Civil Judge (Junior Division) negligently. It did so bona-fide. The point is not free from doubt. The order of reference itself established that. The learned Judge thought it fit to refer the matter to a Division Bench. A learned Single Judge of the Gujarat High Court has taken a contrary view. On these facts, we have no doubt that the application for condonation of delay in filing the

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[4] 2009(8) SCC 646

application will be allowed provided it is now filed within a reasonable period.

(26) In the circumstances, we answer the reference as follows:-

(27) The amount claimed by the petitioner/plaintiff is a debt within the meaning of that word in Section 2(g) of the Act.

(28) Accordingly, the finding in the impugned order that the Court has jurisdiction regarding the subject matter of the suit is set aside. However, the application for transfer cannot be entertained either under Section 31 of the Act or under Order 7 Rule 11 of the CPC. The petitioner is at liberty to file an application for recovery of its dues before the Debts Recovery Appellate Tribunal under the Act and to take out an application for condonation of delay therein. We reiterate the observations in this regard.

J.S Mehndiratta