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Jurisdiction of high courts prior to the recovery of debts due to banks and financial institutions act – 1993: A study

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Abstract

Pending cases before the enactment of Recovery of debts due to banks and financial institutions Act, 1993 require to be disposed of in the light of apex court's ruling which specifically lays down that the High Courts have the jurisdiction to deal with such cases. The said jurisdiction ceases with the advent of setting up of tribunals. However, the jurisdiction of Supreme Court under Art 136 is available in dealing with such cases.

Keywords: Recovery of debts, Recommendations of Narasimhan Committee, Setting up of Tribunals, Art 323 A (2) (c) of the Constitution

Introduction

There may be still cases pending relating to recovery of debts due to Banks and other financial institutions prior to the Recovery of Debts due to Banks and Financial Institutions Act 1993 coming into force. Even there may be cases where decrees have been passed and execution petitions pending, praying for condonation of delay in High Courts ^[1]. The question arises in such cases whether the High Courts are competent jurisdictionally to deal with such petitions even after the coming into force of the Act of 1993 ^[2].

Text of the study

Act of 1993 was enacted by the Union Parliament which came into force on 24-6-1993 based on the recommendations of Narasimham Committee Report on the 'Financial System and Progress of Financial Sector Reform' which inter-alia merely endorsed the recommendations of Tiwari Committee for setting up of special Tribunal which could expedite the process of recovery ^[3]. The setting up of a special Tribunal was considered as a very important step by the Union Government as "on 30-9-1990 more than 15 lakhs cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of public sector banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilization and recycling of the funds for the development of the Country" ^[4].

The High Court's possessed the jurisdiction prior to the 1993 Act to appoint court receives to take steps to recover the decretal amount by selling the property mortgaged with the Banks by public auction. Whether such a power could be exercised even after Act 1993 coming into force came up as an important issue seeking a clear-cut answer to the problem? It was assumed that the constitutionally conferred jurisdiction ^[5] on the High Court empowered the High Court to give directions to the receivers to recover by selling the properties mortgaged with the Banks.

The setting up of tribunals was constitutionally sanctioned by virtue of Art 323-A and Art 323B of the Constitution inserted by the Constitution 42nd Amendment Act, 1976, providing for adjudication of disputes relating to various matters. The apex court observed with regard to objects behind setting up of Tribunals in these words:-

".... to reduce the mounting arrears in the High Courts and to secure speedy disposal of service matters, revenue matters and certain other matters of special importance, in the context of socio-economic development and progress" ^[6].

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The apex court also favoured the appointment of Judges and advocates to be appointed to the tribunals in order to ensure “fairness and correctness of the decision and absence of arbitrariness”, and ensure that justice is not only done but also seen to be done ^[7].

Tribunals were considered as substitutes for the High Courts and they should generate the same faith and confidence as that of High Courts ^[8]. The apex court held the Act 1993 as a valid price of legislation ^[9].

Art 323-A (2) (d) and (e) makes the position of Jurisdiction of High Court abundantly clear. A law made by Parliament may provide:-

Art 323-A(2)(d) states thus:-

“exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Art 136 with respect to the disputes referred to in Cl(1).

Art 323A(2) (e) states thus:-

“provide for the transfer of each such administrative Tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunals as would have been within the jurisdiction of such tribunal, if the causes of action on which such suits and proceedings are based had arisen after such establishment”.

Art 323-A (2) (d) and (e) read together clearly makes the position of law quite clear. The Parliament may by law exclude the jurisdiction of the High Courts and also transfer the pending cases including petitions to the tribunal constituted and as such the High Courts jurisdiction is ousted and any exercise of power by High Court would be without jurisdiction and nullity in law. It is interesting to point out that under Art 323-A tribunals can be established only by Parliament while Art 323-B it would be a case of concurrent power which could be exercised both by Union Parliament and State legislatures, as it is evidenced from the words used in Art 323-A such as “Parliament may be law” while in Art 323-B the expression used is ‘the appropriate legislature’. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 is an enactment by Union Parliament and therefore the exclusion of jurisdiction of High Courts and transference of pending cases and proceedings to the Debt Recovery Tribunal is valid ^[10].

Section 31 of Act 1993 provides thus:-

31(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 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 ^[11] on that date to such Tribunal.

The above provision makes it clear that the transfer is automatic because of operation of law and the bank concerned need not file any application and any application made will be treated as an application for forwarding the records to the tribunal ^[12].

The High Court’s dealing with petition after Act 1993 coming into force will be without jurisdiction and a nullity in law. It is immaterial whether the High Court’s deal with any stage of proceeding whether execution or collateral ^[13].

Suggestions and Conclusion

In conclusion it may be stated that the High Courts have no power to deal with any pending proceeding prior to Act 1993 as it would be within the jurisdiction of Debts Recovery Tribunal to deal with such issues and only

Supreme Court under Art 136 ^[14] of the Constitution may exercise power relating to such matters.

References

1. For instance refer to Indian Bank Vs. Manilal Govindji Khona, AIR Sc P. 2015, 1240.
2. Act of hereinafter refers to Recovery of Debts due to Banks and Financial Institutions Act 1993 51% of, 1993.
3. See for details Tanna’s Banking Law & Practice in India 19th Edition. 873.
4. For details see the objects and reasons of the Bill at 6.
5. See for details Art 227 of the Constitution.
6. Sudhakar T. Prasad Vs. Govt. of AP JT (1) SC P. 204. See also K.K. Daltan’s case AIR 1980 SC P. 2056, 2001.
7. Madras Bar Association Vs. union of India reported in Hindu dated 17/11/2010 and quoted by Prof. Narender Kumar, Constitutional Law of India, 2012, 929.
8. See for details S.P. Sampath Kumar Vs. Union of India, AIR SCP. 1987, 386.
9. Union of India Vs. Delhi High Court Bar Association, AIR SC P. 2003, 1479.
10. This view finds support from the apex court ruling in Indian Bank’s case, AIR Sc P. 2015, 1240.
11. Ibid Para 13.
See also State Bank of Bikaner & Jaipur Vs. Ballabh Das & Co., AIR Sc P. 1999, 3408.
12. See 31 (2) a of Act, 1993.
13. Kiran Singh Vs. Chaman Paswan AIR SC P. 1954, 340.
14. See Art 323 A (2) (d).