2023/KER/50134

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 11TH DAY OF AUGUST 2023 / 20TH SRAVANA, 1945

WP(C) NO. 24924 OF 2023

PETITIONER/S:

THE FEDERAL BANK LTD REPRESENTED BY ITS ASSISTANT VICE PRESIDENT
AGED 40 YEARS
LCRD THRISSUR DIVISION S T NAGAR T B ROAD
THRISSUR, PIN - 680001

BY ADVS.
MOHAN JACOB GEORGE
P.V.PARVATHY (P-41)
REENA THOMAS
NIGI GEORGE

RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO REVENUE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

2 THE DISTRICT COLLECTOR THRISSUR
COLLECTORATE THRISSUR, PIN - 680003

3 THE TAHSILDAR
THALAPPILLY TALUK OFFICE WADAKKANCHERY THRISSUR DISTRICT, PIN - 680623

OTHER PRESENT:

SRI. B.S.SYAMANTAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J.

W.P.(C) No. 24924 of 2023

Dated this the 11th day of August, 2023

JUDGMENT

The above writ petition is filed with following prayers:

"i. Declare that the pecuniary jurisdiction of DRT under the Recovery of Debts and Bankruptcy Act, 1993 being enhanced to Rs.20 lakhs and above, the bar of jurisdiction under 18 of the said Act do not apply to recovery actions initiated under The Kerala Revenue Recovery Act, 1968, by the Banks and Financial Institutions for recovery of debts due to it where the amounts sought to be recovered are below Rs.20 lakhs;

ii. Issue a writ of Certiorari or such other appropriate writ or order calling for the records leading to Ext-P1 and quash Ext-P1;

iii. Issue a writ of Mandamus or such other appropriate writ or order commanding the 2nd Respondent to issue fresh/modified circular in respect of requisition made by banks and financial institutions for recovery of money under the Kerala Revenue Recovery Act, 1968 taking into account the declarations given under relief No.1 above forthwith or within a time limit prescribed by this Hon'ble Court;

iv. Direct the respondents 2 and 3 to proceed with Ext-P2 requisition made by the petitioner bank and to recover the amounts due under it from the defaulters without any further delay;

v. Dispense with the English translation of Malayalam documents produced in this writ petition.

vi. Grant such other reliefs as are deemed fit and proper;

vii. Grant the cost of this writ petition.” (sic)

2. The petitioner in this case is the “Federal Bank Limited”, a Banking Company within the meaning of the Companies Act, 2013 and functioning as a Banking Company with its registered office at Alwaye and having its branches at various places including a Loan Collection and Recovery Department at Thrissur District in Kerala. The petitioner is represented by its Vice President and Divisional Head of the Loan Collection and Recovery Department, Thrissur. The petitioner is aggrieved by Ext.P1 Circular issued by the District Collector, Thrissur District directing the revenue officials not to initiate revenue recovery proceedings for loans wherein the amounts defaulted is above Rs.10 lakhs. According to the petitioner, the aforesaid circular is issued on a miscomprehension of the law laid down by this Court in Ext.P3 judgment. The short point raised by the petitioner is that, after Exhibit P4 notification issued by the Central Government invoking the powers under sub-section (4) of Section 1 of The Recovery of Debts and Bankruptcy Act, 1993 (for short ‘the Act 1993’), the power of the Debt Recovery Tribunal to entertain an application is only when the amount is more than Rs.20 lakhs and

upto Rs.20 lakhs the bank is entitled to recover the same under Revenue Recovery Act.

3. Heard Adv.Mohan Jacob George for the petitioner bank and the Government Pleader for the respondents.

4. The counsel for the petitioner submitted that Ext.P1 judgment was delivered when there was a stay order from the Rajasthan High Court with respect to the notification issued under Section 1(4) of the Act, 1993. The counsel submitted that now the Rajasthan High Court has already disposed of the above case upholding the validity of the notification by which the Act, 1993 will apply only to debts which are more than Rs.20 lakhs. Therefore, it is submitted that Ext.P1 circular issued by the 2nd respondent is unsustainable. The Government Pleader submitted that, based on Ext.P3 judgment, Ext.P1 circular was issued.

5. This Court considered the contentions of the petitioner and the Government Pleader. Admittedly, Ext.P1 circular was issued based on the directions in Ext.P3 judgment. A perusal of paragraph 5 in Ext.P3 judgment would show that this Court proceeded to pass such an order because of the fact that Ext.P4 notification was stayed by the Rajasthan High Court. As per Ext.P4 notification, issued by the

Government of India in exercise of the powers conferred under sub section (4) of Section 1 to the Act, 1993, it is declared that the act shall not apply where the amount of debts due to any bank or financial institution or to a consortium of banks or financial institutions is less than twenty lakh rupees. It will be better to extract the above notification here:

"MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 6th September, 2018

S.O.4312(E).- Whereas, sub-section (4) of section 1 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993) provides that the provisions of the said Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.

And whereas, the Central Government has considered it necessary to raise the pecuniary limit from ten lakh rupees to twenty lakh rupees for filing application for recovery of debts in the Debt Recovery Tribunals by such banks and financial institutions.

Now therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Central Government hereby specifies that the provisions of the said Act shall not apply where the amount of debt due to any bank

> or financial institution or to a consortium of banks or financial institutions is less than twenty lakh rupees.
>
> [F.No.3/4/2018-DRT]
> SUCHINDRA MISRA, Jt.Secy."

6. It is true that the above notification was published on 06.09.2018 and Ext.P3 judgment was delivered on 28.06.2019. But as I mentioned earlier, the counsel appearing for the petitioners in that case itself raised their argument based on the fact that the above notification was stayed by the Rajasthan High Court. It will be better to extract paragraph No.5 of Ext.P3 judgment.

> "5. He then shows, from Section 1 (4) of the RDB Act, that the provisions of the said Act apply when the debt is more than Rs.10 lakhs or such other figure as the Central Government may notify. He then, points out that there has been an amendment to this provision, as per which, the figure has been enhanced to Rs.20 lakhs, but that the said amendment has been stayed by the High Court of Rajasthan. He then asserts that notwithstanding this, the position in these cases would not be altered, since the amount involved in all them is more than Rs.20 lakhs."

7. Now it is an admitted position that the Division Bench of the Rajasthan High Court considered the matter in detail and upheld Ext.P4 notification as per the judgment dated 01.07.2019 in D.B. Civil Writ Petition No.21860/2018. It will be better to extract the relevant portion of the above judgment.

"28. We have stated at the outset that we are not examining the constitutional validity of Section 1(4) of the Act of 1993 as the vires thereof have not been challenged in the present writ petition. Therefore we have to only find out whether the Central Government could, by issue of notification, specify any amount more than ten lakh rupees as the threshold value of the recovery claims to be filed before the Tribunals. The Parliament in Section 1(4) has, rather than saying in positive terms, used the negative terminology by stipulating that the provisions of the Act shall not apply where the amount of debt due to any Bank of financial institution is less than ten lakh rupees or such other amount being not less than one lakh rupees, as the Central Government may, by notification, specify. Considering the statement of the objects and the reasons and the purpose with which the Tribunals were/are set up, we find that the Central Government has sufficient reasons for enhancing that limit to twenty lakh rupees. Stand of the Central Government before this Court is that as per the data provided by the Tribunals across the country, 9,128 new Original Applications have been filed by the Banks in the segment of ten to twenty lakh rupees within a period of six months with effect from 1.1.2018 up to 30.6.2018, which is about 41% of the total of 22,360 Original Applications filed during this period. But in terms of the value, the Original Applications of ten to twenty lakh rupees account for only about 5% of the total value of the recovery claims in Original Applications filed for the period. Further as per the data provided by various Debts Recovery Tribunals on 30.6.2018, there were 38,376 Original Applications pending in the Tribunals where the suit amount is between ten to twenty lakh rupees. This segment accounts for 38% of the total number of the pending Original Applications, though, in terms of value, this segment accounts for only 4%. Evidently the data obtained from various Tribunals show that despite significant rise in the disposal rate year by year, pendency is increasing in the Tribunals due to filing of

small value cases. The Tribunals were not being able to focus on clearing the higher value cases, which would otherwise have led to a significant recovery of public money.

29. Stand of the respondent Union of India is also that as per the data received from various Public Sector Banks, more than 80% Non Performing Assets (NPAs) cases between ten to twenty lakh rupees are fully secured, so they have recourse to action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') for recovery of such NPAs. Such small value cases also have alternate recourse to one time settlement by Banks under their schemes or referring the case to Lok Adalats. If the minimum pecuniary limit is enhanced, then the Banks can also approach Civil Courts for the recovery of amount involving amount upto twenty lakh rupees. Raising of pecuniary limit would further speed up the recovery process as the Tribunals would be focused in recovering the cases with recovery amount of more than twenty lakh rupees. The Civil Courts would not be burdened of many additional cases as alternate means such as SARFAESI action, one time settlement and Lok Adalats, etc. Raising of pecuniary limit by issuing the notification does not in any way affect the provisions of the Act of 2002. The Act of 1993 is a separate Act under which recovery of dues is initiated by filing of Original Application with the Tribunals by filing the securitisation application under Section 17 of the Act of 2002. There is no pecuniary limit assigned for filing of securitisation application before the Tribunal under the Act of 2002.

30. Above analysis clearly shows that the substantial energy and resources of the large number of Tribunals across the country is being consumed for the segment of the recovery cases having value between ten and twenty lakh

rupees, which although account for 41 % of the total pendency but on the present scale account only 5% of the total value of the recovery claims. The notification issued by the Central Government raising the limit of ten to twenty lakh rupees is therefore intended to achieve the object with which the Tribunals were set up as would be evident from the statement of objects and reasons as also preamble of the Act of 1993. We are conscious of the fact that Section 1(4) of the Act of 1993 has not indicated any outer threshold value of the claim upto which the limit could be raised but we see no reason to enter into that aspect firstly because the validity of Section 1(4) of the Act of 1993 has not been challenged in the present writ petition and secondly we are satisfied with the reasons given by the Central Government that enhancing the threshold limit for filing claims before the Tribunals to twenty lakh rupees, cannot be considered excessive. Even otherwise, the worth often lakh rupees in the year 1993 when the Act was introduced, due to price inflation, was Rs. 49.23 lakh in the year 2017, meaning thereby, the value of one rupee in 1993 stood reduced to approximately twenty paisa in 2017. Even when the constitutional validity of Section 1(4) of the Act of 1993 has not been challenged in the present writ petition, we find that sufficient guidelines are available in the Act of 1993 by way of its preamble, statement of objects and reasons, which provide ample justification for the decision of the Central Government for raising the threshold limit often lakh rupees to twenty lakh rupees.

In view of the above discussion, the present writ petition fails and is hereby dismissed."

8. I am in respectful agreement with the above finding of the Rajasthan High Court. Therefore, in the light of the above judgment of the Rajasthan High Court, the stay of Ext.P4 notification is already

vacated. In such circumstances, Ext.P4 notification will come into play. If that be the case, the Act of 1993 shall not apply where the amount of debt due to the bank or financial institution or to a consortium of banks or financial institutions is less than Rupees twenty lakhs. Consequently, Ext.P1 circular will not stand. Therefore, the prayers in this writ petition are to be allowed.

Therefore, this writ petition is disposed of in the following manner:

i. Ext.P1 circular is set aside.

ii. It is declared that, since the pecuniary jurisdiction of Debt Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993 is enhanced to Rs.20 lakhs and above as per Ext.P4 notification, the bar of jurisdiction under Section 18 of the said Act does not apply to recovery actions initiated under the Kerala Revenue Recovery Act, 1968 by the Banks and Financial Institutions for recovery of debts due to it where the amounts sought to be recovered are below Rupees twenty lakhs.

sd/-

P.V.KUNHIKRISHNAN
JUDGE

das/DM

APPENDIX OF WP(C) 24924/2023

PETITIONER EXHIBITS

Exhibit P-1	TRUE COPY OF THE CIRCULAR NO.DCTSR/1100/2023-G7 04.02.2023 ISSUED BY THE DISTRICT COLLECTOR, THRISSUR DISTRICT
Exhibit P-2	COPY OF THE REQUISITION NO.2023/10233/08 DATED 26.05.2023 MADE BY THE PETITIONER BEFORE THE 3RD RESPONDENT
Exhibit P-3	TRUE COPY OF THE AFORESAID JUDGMENT DATED 28.06.2019 IN W.P.(C) NO.6663/2015 WITH CONNECTED CASE
Exhibit P-4	COPY OF THE NOTIFICATION NO. SO4312(E) ISSUED BY THE MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES) DATED 06.09.2018 ENHANCING THE PECUNIARY JURISDICTIONAL LIMIT TO RS.20 LAKHS AND ABOVE