

EASSUWARAN AND OTHERS
VS
BANK OF CEYLON

SUPREME COURT
S. N. SILVA, CJ
TILAKAWARDENA, J AND
RAJA FERNANDO, J
SC APPEAL NO. 25/2004
CA (LA) NO. 146/2003
D.C. COLOMBO CASE NO. 917/DR
17TH JANUARY, 2005

Debt Recovery — Debt Recovery (Special Provisions) Act, No. 2 of 1990 — Jurisdiction of the District Court and jurisdiction of the Commercial High Court — High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 — Transaction in respect of which the District Court has jurisdiction — Whether a loan facility may be sued in the District Court or whether only a fixed loan can be sued in the District Court.

Plaintiff respondent (Bank) gave Eassuwaran Brothers Food (Pvt) Ltd. a loan facility of 100 million rupees, on the guarantee provided by the defendant-appellant (petitioners) and sued the defendants thereon for Rs. 114.1 million and interest in the District Court under the Debt Recovery (Special Provisions) Act, No. 2 of 1990.

The defendants applied under section 6(2)C of the Debt Recovery Act for unconditional leave to defend. The District Judge ordered them to deposit Rs. 38 million as a pre-condition for filing answer. The defendants then applied to the Court of Appeal with leave against that order on the basis that the District Court had no jurisdiction over the claim as it was not in relation to a fixed term loan but related to a credit or overdraft facility. The defendants argued that the jurisdiction over that claim was in the Commercial High Court under the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996. The Court of Appeal dismissed the appeal.

HELD :

- (1) The claim was a debt within the meaning of section 21(2) of the Debt Recovery (Special Provisions) Act, No. 2 of 1992 and such debt was excluded from the jurisdiction of the High Court of the Provinces (Commercial High Court) by the First Schedule to the High Court of the Provisions (Special Provisions) Act, No. 10 of 1996.

- (2) In the circumstances, the District Court had jurisdiction over the claim of the plaintiff respondent.

APPEAL from a judgment of the Court of Appeal.

M. A. Sumanthiran with Prasansani Bandaranayake for defendants petitioner (appellants).

M. K. Muthukumar with Kumara Seneviratne for the plaintiff respondent.

Cur.adv.vult.

October 06, 2005

RAJA FERNANDO, J.

The Plaintiff-Respondent-Respondent Bank (hereinafter referred to as the Plaintiff Bank) filed action in the District Court of Colombo under the Debt Recovery (Special Provision) Act No. 2 of 1990 to recover a sum of Rs. 114.1 million from the Defendant-Petitioners-Petitioners (hereinafter referred to as the Defendant-Petitioner).

The Plaintiff-Bank's case was that Eswaran Brothers Food (Pvt.) Ltd. a limited liability company obtained a loan facility of Rs. 100,000,000 (Hundred million) from the Plaintiff-Bank on the guarantees provided by the Defendant-Petitioners and that Eswaran Bros. Food (Pvt.) Ltd., defaulted in the repayment of the loan facilities granted to them and the sum of Rs. 114,111,103.46 as at 02.09.2001 and a further interest at 21.5% on Rs. 97,172,734 from 03.09.2001 plus B.T.T. and defence levy thereon is due to the Plaintiff-Bank.

Upon action being instituted together with an affidavit from an authorized officer of the Plaintiff Bank and the other documents supporting this claim the Court entered decree *nisi* which was served on the Defendant-Petitioners.

The defendant-petitioners filed papers seeking unconditional leave to appear and defend the action under Section 6(2)C of the Debt Recovery (Special Provisions) Act.

The learned Addl. District Judge by his order dated 24.4.2003 ordered the defendant-petitioners to deposit Rs. 38 million (1/3rd of Rs. 114.1 million the amount claimed in the plaint) by way of security within 90 days of the Order to be permitted to file answer.

Being aggrieved by the said order the defendants-petitioners sought leave to appeal from the Court of Appeal on the ground that the learned Addl. District Judge erred in not addressing his mind to the fact that the subject matter of the purported action is a series of commercial transactions coming under the exclusive jurisdiction of the High Court of the Western Province exercising civil jurisdiction (Commercial High Court) under Act No. 10 of 1996 and that action in respect of such commercial transactions cannot be instituted under the Debt Recovery (Special Provision) Act No. 2 of 1990 in the District Court.

The Court of Appeal refused the application for special leave and the defendant petitioners filed special leave to appeal application No. SC Special Leave to Appeal No. 62/2004 in this court and obtained special leave from the court on 25.03.2004 on the following questions.

- (1) Was the Court of Appeal wrong in holding that the District Court had jurisdiction in respect of this matter ?
- (2) Does the definition of "debt" in terms of the Debt Recovery (Special Provisions) Act include the transaction which is the subject matter of this action ?

It is the submission on the Defendant-Petitioners that Debt Recovery (Special Provision) Act is not applicable to claims based on recovery on credit facilities or on overdraft facilities and that Debt Recovery (Special Provision) Act is applicable only to fixed/term loans where the amount due is clearly ascertainable.

The position of the Plaintiff-Bank is that the claim falls well within provisions of the Debt Recovery (Special Provision) Act and therefore the District Court has jurisdiction.

The High Court of the Provisions (Special Provision) Act No. 10 of 1996 in Section 2 states :

"Every High Court established by Article 154P of the Constitution for a Province shall, with effect from such date as the Minister may, by Order published in the Gazette appoint, in respect of such High Court have **exclusive jurisdiction** and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, **all actions, applications and proceedings specified in the First Schedule** to this Act, if the party or parties defendant to such action resides or reside, or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceedings under the Companies Act, No. 17 of 1982 the registered office of the Company is situated, within the Province for which such High Court is established".

According to the above provision High Court shall have **exclusive jurisdiction** in respect of all matters specified in the **First Schedule**.

The First Schedule to this Act reads :

“(1) All actions where the cause of action has arisen out of commercial transactions (including causes of action relating to banking, the export or import of merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document) in which the debt, damage or demand is for a sum exceeding three million rupees or such other amount as may be fixed by the Minister from time to time, by Notification published in the Gazette, **other than actions instituted under the Debt Recovery (Special Provisions) Act No. 2 of 1990.**”

Thus it is clear from the wording of the First Schedule that if the claim in the plaint is one that comes within a “debt” under the Debt Recovery (Special Provision) Act No. 2 of 1990 as amended by Act No. 9 of 1994 the District Court will have jurisdiction.

In Section 21(2) of Act No. 9 of 1994, “debt” is defined as ‘**a sum of money** which is ascertained or capable of being ascertained at the time of the institution of the action, and **which is in default**, whether the same be secured or not, or owed by any person or persons, jointly or severally or as **principal borrower or guarantor or in any other capacity, and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution**, but does not include a sum of money owed under a promise or agreement which is not in writing ;’

The matter to be ascertained in this appeal is : Does the sum claimed in the plaint come within the definition of a debt as stated in the Debt Recovery (Special Provision) Act ?

The Plaintiff Bank is a Lending Institution in terms of Section 30(a) of the Debt Recovery (Special Provision) Act (vide P1 attached to the Plaint).

The Defendant-Petitioners are guarantors for the loan facility granted to Eassuwaran Brothers (Pvt.) Ltd. by the Plaintiff-Bank (vide P4 attached to the plaint).

In paragraphs 79 and 81 of the plaint of the Plaintiff-Bank the sum claimed has been set out and the details of the computation is also specified.

This sum is alleged by the Plaintiff-Bank as having arisen from a transaction in the course of Banking, lending, financial or other allied business activity.

The original loan application, the Guarantee Bond together with the specific requests by the Principal borrower for sub loans under the above loan agreement have been produced together with the Plaint marked P4 to P 72(a).

On the material before Court there was sufficient evidence to show that the transactions which were referred to in the Plaint of the Plaintiff-Bank fell well within the definition of "debt" in terms of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 and that the Defendant-Petitioners are the guarantors of the loan.

In the circumstances it is clear that the District Court had the jurisdiction to hear and determine this matter under the Debt Recovery (Special Provision) Act No. 2 of 1990 as amended by Act No. 9 of 1994.

The appeal of the Defendant-Petitioner-Petitioner is accordingly dismissed with costs.

S. N. SILVA, C. J. — I agree.

TILAKAWARDANE, J. — I agree.

Appeal dismissed.
