

A M/S HIRA LALL AND SONS AND ORS.
v
M/S. LAKSHMI COMMERCIAL BANK

AUGUST 5, 2002

B [S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

C *Constitution of India, 1950—Article 139 A—Transfer Petition—Suit based on letter of credit issued by bank pending before Debt Recovery Tribunal—Regarding same transaction suit, based on insurance claim, pending, before High Court—Plea to transfer the case before Tribunal to High Court—Held, cannot be transferred since suit based on insurance claim and the suit based on letter of credit arise out of different cause of action—Jurisdiction of other Courts stands ousted in view of exclusive jurisdiction given to the Tribunal—Article 139 A not attracted in case of transfer from*
D *Trial Court to High Court—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17, 18 and 31—Code of Civil Procedure, 1908—Section 25—Constitution of India—Article 142.*

E On the request of petitioner-importer, the respondent bank opened letter of credit in respect of payment for certain consignment. When the respondent-bank presented the documents to the petitioner asking it to pay the amount, it did not accept the documents finding them discrepant and invalid for acceptance. In the meantime the ship carrying the consignment sunk in the sea. Respondent Bank was informed about the same. Bank filed a suit for recovery of the amount. After enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the suit got transferred to Debt Recovery
F Tribunal. Suits were filed by the importers against the insurance companies on account of sinking of ship.

G Petitioners filed transfer petition under Article 139A of the Constitution of India praying for transfer of the case before the Tribunal to High Court on the ground that in suits filed by importers against insurance companies pending in High Court and in the suit filed by the Bank pending before the Tribunal, common issues were involved.

H Dismissing the petition, the Court

HELD: 1. The instant case is not a case where transfer of a case from one High Court to another High Court is sought for. Article 139-A of the Constitution is not attracted to cases of this nature. It is also doubtful whether Section 25 of the Code of Civil Procedure would be applicable since the transfer of the proceeding is not from one State to another State. Whether inherent jurisdiction of this Court would be attracted to a proceeding of this nature is also in doubt. However, it is not necessary to go into that aspect. [447-B]

2. A suit based on insurance claim and a claim based on Letter of Credit arise out of different causes of action though it may be true that in the case pending before the High Court against Insurance Company and in the application before the Tribunal certain common issues may arise. The exact nature of the other suits filed by other parties which are stated to be pending in the High Court and the cause for retention on its file is not available on record. Apart from this fact, when exclusive jurisdiction has been given to the Tribunal under the Act in respect of matters that could be dealt with under Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 the jurisdiction in other courts to entertain and decide such matters for recovery of debts due to banks and financial institutions stood ousted as provided under Section 18 of the Act. Further Section 31 of the Act provides for transfer of cases from Civil Courts to the Tribunal. Hence it is not expedient to direct the case pending before the Tribunal to High Court. [447-E, F, G; 448-B-A]

Union of India and Anr. v. Delhi High Court Bar Association and Ors., [2002] 2 SCR 450, referred to.

CIVIL ORIGINAL JURISDICTION : Transfer Petition (Civil) No. 193/ 1997.

(Under Article 139-A of the Constitution.)

P. Chidambaram, Bhargava V. Desai, Sanjeev Kumar Singh and Ms. Vanita Mehta for the Appellant.

Ms. Kamini Jaiswal, Y.P. Narula, Ms. Shomila Bakshi and Ms. Aishwariya Rao for the Respondent.

The Judgment of the Court was delivered by

A RAJENDRA BABU, J. This is a petition filed for transfer of original application No. 846 of 1996 pending before the Debts recovery Tribunal (hereinafter referred to as 'the tribunal') to the High Court of Delhi.

B The allegations in the application before the Tribunal are that the petitioners requested for opening Letters of Credit in favour of M/s Palmex Enterprises of Singapore for a sum of US dollars 205992.51 to cover the payment of consignment of PVC, C & F Bombay; that the respondent issued letter of credit in favour of the said seller for the said sum; that the letter of credit was transmitted to the seller through a negotiating bank authorising him under this Letter of Credit and to claim reimbursement by debiting the account of respondent-bank with their New York office; that the seller is purported to have shipped goods on 30.8.1979 and negotiated documents as required under the Letter of Credit on 31.8.1979 with the negotiating bank; that the negotiating bank made the payment and on receipt of the original documents the issuing bank presented them to the buyer and asked the buyer to pay the amount; that the petitioner did not pay and hence the application before the Tribunal. The petitioner took the stand that it had come to know that the ship carrying the goods had sunk; that this fact was informed to the bank and the documents of goods were received by the respondent as sent by the petitioners; that the bank lodged formal claims with the Insurance Company under copy to the petitioners; that the bank retired the documents despite non-acceptance by the petitioner and informed the petitioner accordingly; that the petitioner informed the respondent of their negligence; that a suit had been filed by the respondent-bank against the petitioners on 9.7.1980; that leave to defend having been refused, a decree was passed; that an appeal was filed against the order refusing to grant leave.

E In the meanwhile, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [hereinafter referred to as the Act] came into force which established a Tribunal thereunder to exercise the jurisdiction, power and authority under the Act in respect of cases filed by the banks and financial institutions. Thus, the aforesaid suit also stood transferred to the Tribunal. It is claimed that there are several cases of similar nature pending before the High Court wherein on account of sinking of the ships importers lodged claims with the Insurance Companies, while Banks filed suits against the various importers under the Letters of Credit since importers disputed documents as discrepant and not in terms thereof. On refusal by the Insurance Companies to pay the claims of the importers, they filed suits for recovery of insurance claim. It is contended that in the suits filed by importers against

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Insurance Companies and in the suits filed by the Banks certain common issues arise. Therefore, it is prayed that this matter should be re-transferred to the High Court. The petitioners' request is strongly resisted by the respondent. A

It is clear that Article 139- A of the Constitution is not attracted to cases of this nature as this is not a case where transfer of a case from one High Court to another High Court is sought for. It is also doubtful whether Section 25 of the Code of Civil Procedure would be applicable since the transfer of the proceeding is not one State to another State. Whether inherent jurisdiction of this Court would be attracted to a proceeding of this nature is also in doubt. However, it may not be necessary to go into that aspect of the matter in the view we propose to take in this case. B C

This is an application based on a Letter of Credit. The settled legal position is that a Letter of Credit constitutes sole contract with the banker and its authorising the bank issuing Letter of Credit has no concern with any question that may arise between that seller and the purchaser of goods in respect of the purchase price; that there should however, be strict compliance both by the customer at whose instance Letter of Credit was issued and by the banker, with his instructions; that in a claim on Letter of Credit defence of fraud or apprehension of irretrievable injustice or non- compliance with instructions could also be raised. All such defences could be urged or agitated before the Tribunal by the petitioner and on a decision by it, an appeal also could be filed. D E

A suit based on insurance claim and a claim based on Letter of Credit arise out of different causes of action though it may be true that in the case pending before the High Court against Insurance Company and in the application before the Tribunal certain common issues may arise. The exact nature of the other suits filed by other parties which are stated to be pending in the High Court and the cause for retention on its file is not available on record. Apart from this fact, we may notice that when exclusive jurisdiction has been given to the Tribunal under the Act in respect of matters that could be dealt with under Section 17 of the Act, the jurisdiction in other courts to entertain and decide such matters for recovery of debts due to banks and financial institutions stood ousted as provided under Section 18 of the Act. Further Section 31 of the Act provide for transfer of cases from civil courts to the Tribunal. Our view in this regard is consistent with what has been enunciated in *Union of India and Anr. v. Delhi High Court Bar Association* F G H

A *and Ors.*, [2002] 2 SCR 450, wherein this Court, after examining the entire scheme of the Act, upheld the constitutional validity of the same.

In this background, we do not think that it is expedient for the ends of justice to direct transfer of this case to the High Court.

B In the result, this petition is dismissed.

K.K.T.

Petition dismissed.