

**IN THE HIGH COURT AT CALCUTTA**  
**Ordinary Original Civil Jurisdiction**  
**ORIGINAL SIDE**

**BEFORE:**

**The Hon'ble JUSTICE SOUMEN SEN**

**GA No.3611 of 2011**  
**CS No.26 of 2005**

**Royal Bank of Scotland N.V.**  
**Versus**  
**Surajit Sen**

For the Petitioner : Mr. Suman Kumar Dutt, Adv.,  
Mr. Paritosh Sinha, Adv.,  
Ms. Shrayashee (Saha) Das, Adv,  
Ms. Tulika Roy, Adv.

For the Respondent : Mr. Ajoy Chatterjee, Adv.  
Mr. Aryak Dutt, Adv.  
Mr. A.P. Agarwalla, Adv.

Hearing concluded on : 14.11.2018

Judgment on : 20.11.2018

**Soumen Sen, J.:-** This is an application by the defendant for rejection of the plaint on the ground that the jurisdiction of the Court is barred by law.

The plaintiff is incorporated under the appropriate laws of Netherland.

The plaintiff has instituted a suit at an appropriate Court at Belgium and has obtained a money decree against the defendant. The Country of the plaintiff, however, did not have reciprocal treaty with India as a result whereof the plaintiff filed a suit on the basis of the said decree which in fact is an enforcement of the foreign decree in this Court. The plaintiff has alleged that the defendant is having properties within the jurisdiction of this

Court. The suit was instituted in the year 2005. The original plaintiff namely ABN AMRO Limited was a banking company within the meaning of section 5 (1)(c) of The Banking Regulation Act , 1949 (hereinafter referred to as The Regulation Act) and was carrying on its banking business in India on the basis of a license granted by the Reserve Bank of India under Section 22 of the said Regulation Act. The said bank had merged with the Royal Bank of Scotland N.V. in 2007 and thereafter by reason of amendment to the Articles of Association on 26<sup>th</sup> April, 2018, the plaintiff is now known as Natwest Markets N.V. The articles of association of the plaintiff company would show that the said plaintiff does not carry on banking business at all in India. The plaintiff has been excluded from the second schedule to the Reserve Bank of India 1934 by reason of a notification dated 28<sup>th</sup> February, 2017 published in the gazette of India on 6<sup>th</sup> May, 2017.

However, the plaintiff at the time of institution of the suit was a scheduled bank under Section 42 and Section 2(e) of the Reserve Bank of India Act, 1934 until the name of the plaintiff was excluded by the recent notification.

The basis of the application for rejection of the plaint is that on the date of institution of the suit this Court does not have any jurisdiction as it is a debt within the meaning of Section 2(g) of the Recovery of Debts due to Bank and Financial Institution Act 1993 and the appropriate forum would be the Debts Recovery Tribunal.

Mr. Ajoy Krishna Chatterjee, the learned Senior Counsel representing the defendant had submitted that it is well settled that the rights of the parties have to be decided on the date when a proceeding is initiated by the forum created for adjudication of the dispute and any subsequent legislation by which such forum is denuded of its jurisdiction would not cure the initial defect of lack of jurisdiction when such lis is filed before a forum not empowered to decide such dispute at the relevant time and in this context Mr. Chatterjee has relied upon Section 6 of the General Clauses Act 1897 and a decision of the Hon'ble Supreme Court in State of Punjab & Ors. versus Bhajan Kaur & Ors. reported in AIR 2008 SC 2276 (paragraph 16). It is submitted that in whatever manner the said notification may be read either as a repeal or deletion it has to apply prospectively as Section 6 of the General Clauses Act saves a right accrued and/or liability incurred and what it saves is an existing right. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. Mr. Chatterjee has also referred to a Division Bench Judgement of our Court in '**Punjab National Bank vs. Bengal Potteries Ltd. (In Liqn.) & Ors. reported at 2008(4) CHN 727** for the proposition that the Court has no inherent power to transfer this proceeding to the Debt Recovery Tribunal as the suit instituted before this Court is clearly barred by law.

Mr. Suman Dutt, learned counsel representing the plaintiff has submitted that the basis of the rejection of the plaint has now become

infructuous by reason of the subsequent notification and the Court in order to do substantive justice is required to take into consideration the subsequent events and apply the law as it stands now and not the law which was prevailing at the time of institution of the suit. Mr. Dutt has argued that it is elementary that in an application for rejection of plaint the averments made in the plaint are required to be taken as true and correct and no amount of evidence can be looked into in deciding such application. The learned counsel has argued that in the definition of “debt” the legislature has not included any foreign decree and, as such, Section 2(g) may not apply in the instant case in order to oust the jurisdiction of this Court. It is submitted if by the subsequent events the original proceeding has become infructuous, *ex debito justitiae* it would be the duty of the Court to take such action as is necessary in the interest of justice which includes the power to dismiss the suit as infructuous as a corollary to this proposal, there cannot be any reason for the court not to apply the same principle when it appears that by subsequent events the court has now vested with the jurisdiction. It is submitted that it has been recognised by several decisions that where the nature of the relief as originally sought has become obsolete or a new form of relief would be more efficacious on account of development subsequent to the suit or even during the appellate stage it is but fair that the relief is modified, varied or reset in the light of the updated facts. Mr. Dutt has referred to a decision of the Hon’ble Supreme Court in the case of **‘Rajesh D. Darbar and Ors. vs. Narasingrao Krishnaji Kulkarni and Ors.’** reported in

**2003(7) SCC 219** and has drawn the attention of this Court to the observation made therein where the Hon'ble Supreme Court in referring to its earlier decision in **'Pasupuleti Venkateswarlu v. Motor & General Traders'** has observed that where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal can take note of such supervening facts with fundamental impact where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. Mr. Dutt has also referred to **'Shipping Corporation of India Ltd. vs. Machado Brothers and Ors.'** reported in **(2004) 11 SCC 168** and has submitted that if the plaint is maintainable on the basis of the present facts and circumstances, non-existence of such facts when it was instituted gets cured and right to relief has to be judged on the basis of such changed circumstances otherwise it would cause immense prejudice to the plaintiff. Mr. Dutt has strenuously argued that it is only a matter of procedure and it has been recognised and well-established that procedure is the hand maid of justice and not the mistress of the judicial process. Rulings on this point are legion. Mr. Dutt has also referred to a decision of the Hon'ble Supreme Court in **'Mohanlal Chunilal Kothari Deceased and after his death his legal representatives vs. Tribhovan Haribhain Tamboli and Ors and Tamboli Boghalal Chhotalal and Ors.'** reported in **AIR 1963 SC 358** for

the proposition that the Court is bound to apply the law as it found on this day and not when the suit was instituted.

In this conspectus the merits of the application is to be decided.

The question is one of jurisdiction. It emerges from the pleadings that at the time of institution of the suit for enforcement of a foreign decree the plaintiff was a scheduled bank under second schedule of the RBI Act 1934. It continued to function as a scheduled bank until the notification dated 28<sup>th</sup> February, 2017 by which its name was deleted. The definition of “debt” in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 includes a decree. The suit is essentially for enforcement of a foreign decree. The plaintiff could not take advantage of Section 44A of the Code of Civil Procedure because of absence of reciprocal arrangements between two countries. Even otherwise the forum for realization would have been the certificate officer as all that the plaintiff in such circumstances would be required to do is to obtain a certificate of non-satisfaction of decree from the Tribunal under Section 31A of the RBI Act. The plaintiffs have taken recourse to Section 13 of the Code of Civil Procedure for enforcement of the said foreign decree. Almost after six years of the institution of the suit the defendant filed this application for rejection of the plaint. The plaintiff in the mean time could have obtained a decree against the defendant as a defendant did not file any written statement. The defendant could have resisted the execution of the said decree under Section 47 of the Code of Civil Procedure due to lack of inherent jurisdiction of a Civil Court to pass

such a decree in view of the Section 34 of the Debt Recovery Act, 1993. The applicant has contended that the suit as on the date of filing was clearly barred by law in view of Section 34 of the Debt Recovery Act. The contention of the plaintiff is that the suit could not have been filed before a Civil Court for enforcement of the foreign decree in view of Section 34 of the 1993 Act. There cannot be any doubt that at the time of institution of the suit this court did not have the jurisdiction over the subject matter of the dispute and accordingly any decree passed in the said proceeding at the relevant time would have been a nullity. However, as on date it appears that the Debt Recovery Tribunal would have no jurisdiction to try and determine the suit. There cannot be any dispute that conferment of jurisdiction is a legislative Act and it can neither be conferred with the consent of the parties nor by any superior Court and if the court passes orders/decrees having no jurisdiction over the matter it would amount to a nullity as the matter goes to the very root of the matter. Such an issue can be raised at any belated stage of the proceeding including at the time of execution. It is equally settled that when a statute gives right and provides a forum for adjudication of rights remedy has to be sought only under the provision of that Act in the manner specified. It is also equally settled that rights and liabilities of the parties are required to be decided on the date when the cause of action arises. In fact, when a lis commences, all rights and obligations of the parties get crystallised on that date. The Debt Recovery Act has ousted the jurisdiction of the Civil Court in relation to recovery of debts due to banks and financial

institution. The definition of “debt” has been amended to include a payment under a decree. It is equally settled that no party can have a vested right in the procedure. The plaintiff as on date can very well maintain the present suit in this court as the Debt Recovery Tribunal would not have any jurisdiction over the subject matter of the suit anymore by reason of the aforesaid notification. The defendant does not dispute the existence of the notification. In the instant case, the nature of the relief is not altered by any subsequent events but only the forum that were not available to the plaintiff at the time of institution of the suit has now by reason of the notification dated 28<sup>th</sup> February, 2017 restores the jurisdiction of this court to continue with the plaint. Since the subsequent events would resuscitate the suit and makes it maintainable in this court, *ex debito Justitiae*, it is the duty of the court to take note of such subsequent events and keep the suit alive and on record. It is now quite evident that as on date the suit is maintainable in this court. All the three ingredients of the jurisdiction are otherwise present. Moreover the defendant is not prejudiced by continuation of the suit in this Court. The right of the defendant is no way affected if the suit is continued in this court. The defendant has no vested right in the procedure. It is not the case of the defendant that in the event suit proceeds in this court it would affect any right accrued in its favour before deletion.

In fact it is not a case of repeal of a statute but exclusion and/or deletion of a party from the statute. The defendant was not enjoying any



special immunity before deletion which is sought to be taken away after deletion.

In fact the provisions under the RBD Act are more stringent and onerous compared to the present proceeding. No existing right of the defendant is affected by continuation of the proceeding in this court. The right at the highest, if any, was to object to the continuation of the suit in this forum immediately after institution of the suit which is no more available to the defendant in view of the aforesaid notification. The continuation of the suit in this court does not divest the defendant of any right. The forum is only charged.

The phrase "vested right" has been considered by the Apex Court in the case of **Bibi Sayeeda v. State of Bihar, reported at (1996) 9 SCC 516** as:

*"17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563 as:*

*"Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."*

*Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, (International Edn.) at p. 1397 'vested' is defined as:*

*"[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests."*

*"Substantive law", is that part of the law which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides the method of enforcing rights. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj, (2001) 2 SCC 721) In Thirumalai Chemicals Limited v. Union of India, (2011) 6 SCC 739, the Hon'ble Apex Court had the occasion to compare substantive law with procedural law and after taking into consideration the earlier decisions, the Apex Court had stated:-*

*"23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation."*

*"24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act."*

Repeal of an Act divesting vested rights is always disfavoured which however, is not the case here.

On such consideration the application for rejection of plaint is dismissed.

However, there shall be no order as to costs.

**( SOUMEN SEN, J. )**