



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 4211 OF 2010
[ARISING OUT OF SLP (CIVIL) NO. 18860 OF 2008]**

H.D.F.C. BANK LIMITED

... APPELLANT

VERSUS

KISHORE K. MEHTA (DEAD) THR. LRS.

... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** The issue in the present appeal, at the instance of HDFC Bank Limited¹, is whether an insolvency notice under Section 9(2) of the Presidency Towns Insolvency Act, 1909² can be issued on the basis of a recovery certificate issued by a Debts Recovery Tribunal³.
- 2.** At the threshold, Section 9(2) of the Insolvency Act is reproduced below for ease of understanding:

9. Acts of insolvency. –

(1) ...

(2) Without prejudice to the provisions of sub-section (1), **a debtor commits an act of insolvency if a creditor, who has obtained a**

¹ Appellant-Bank

² Insolvency Act

³ DRT

decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), **has served on him a notice** (hereafter in this section referred to as the Insolvency notice) as provided in sub-section (3) **and the debtor does not comply with that notice within the period specified therein: ...**

(3) ...

(4) ...

(5) ...

(emphasis ours)

3. In brief, Section 9(2) of the Insolvency Act provides that a debtor commits an “act of insolvency” where a creditor has obtained a “decree or order” against the debtor for payment of money. In the present case however, the Appellant-Bank sought to proceed against Kishore K. Mehta⁴ by relying not on a “decree or order” in the strict statutory sense, but on the strength of a recovery certificate issued by the DRT under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (rechristened as the Recovery of Debts and Bankruptcy Act⁵). We are tasked to decide whether a “decree or order” will include a recovery certificate issued by a DRT under the pre-amended RDB Act.
4. Facts in brief are these. The original respondent was a director of Beautiful Diamonds Ltd., which had availed credit facilities from a consortium of 15 banks, including the Appellant-Bank, for its diamond business. The facilities were secured by mortgage through deposit of title deeds, and the original respondent, along with other directors, executed personal guarantees. Upon default, and after the invocation of personal guarantees failed, the Appellant-Bank approached the Debt

⁴ original respondent

⁵ RDB Act

Recovery Tribunal, Mumbai⁶ by filing an application⁷. By an order dated 26th October, 2004, the DRT, Bombay directed issuance of a recovery certificate for Rs. 14,74,51,929.35 against the original respondent, followed by a recovery certificate dated 30th November, 2004. Based on the recovery certificate, the Insolvency Registrar issued an insolvency notice⁸ under Section 9(2) of the Insolvency Act upon an approach being made by the Appellant-Bank. This notice is the core of this litigation. The original respondent challenged the notice before the High Court of Judicature at Bombay⁹ by taking out a Notice of Motion¹⁰ under Section 9(5)¹¹, contending that a recovery certificate of the DRT could not form the basis of an insolvency notice. A Single Judge, while keeping the notice of motion pending, considered the present issue and later held that no insolvency notice could have been issued on the basis of a recovery certificate¹², and the Division Bench, *vide* the impugned order¹³ upheld the order of the Single Judge. Aggrieved, the Appellant-Bank

⁶ DRT, Bombay

⁷ Original Application No. 146 of 2002

⁸ No. N/224 of 2006

⁹ High Court

¹⁰ No. 40 of 2007

¹¹ (5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely:—

(a) ...;

(b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(ii) the time allowed for the making of such application has not expired;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.

Explanation.

¹² *vide* common order dated 4th September, 2007 in Notice of Motion No.40 Of 2007 in Notice No. N/224 of 2006 and other connected matters

¹³ judgment and order dated 30th June 2007 in Appeal No. 710/2007 by the High Court

preferred the present appeal¹⁴, whereupon leave was granted on 4th May, 2010. *Vide* order dated 11th July, 2008, this Court had stayed the proceedings in Notice of Motion No. 40 of 2007 and such stay was continued *vide* order dated 4th May, 2010.

5. During pendency of the appeal, the original respondent died on 20th May, 2024. Application dated 11th August, 2024 of the Appellant-Bank for substitution of the legal representatives of the original respondent (since deceased) was allowed by the Registrar on 10th February, 2025. Respondents 1.1 to 1.4 were substituted in place of the deceased original respondent. They are his three sons and wife.
6. The Single Judge as well as the Division bench of the High Court relied on the decision of this Court in ***Paramjeet Singh Patheja v. ICDS Ltd.***¹⁵, wherein the issues involved were: whether an arbitration award is a "decree" for the purpose of Section 9, and whether insolvency proceedings under Section 9(2) of the Insolvency Act can be initiated based on an arbitral award. This Court answered both the questions in the negative and held that the words "decree or order" cannot include an arbitral award.
7. The case of the Appellant-Bank is that:
 - (i) In Section 9(2), the legislature has only used the word "decree or order" and not 'decree or order of a Court', whereas in Section 9(1)(e & h), the term "Decree of any Court" is used; therefore, the term is wide

¹⁴ arising out of SLP (Civil) No. 18860/2008

¹⁵ (2006) 13 SCC 322

enough to cover a recovery certificate issued by the DRT, Mumbai. By using two different words in the same section, the legislature intended two different meanings.

(ii) Prior to the 1978 Amendment to the Insolvency Act which introduced Section 9(2) to 9(5), Section 9(1)(e) and (h) referred to a “decree for payment of money” “of any Court.” However, while introducing Section 9(2), Parliament deliberately omitted the phrase “of any Court” and added the words “or order.” This indicates a conscious legislative intent to include not only decrees of civil courts but also orders passed by judicial, quasi-judicial, or statutory authorities.

(iii) Reliance placed by the High Court on ***Paramjeet Singh Patheja*** (supra) is misplaced as it was delivered in the context of arbitration proceedings and not the RDB Act.

(iv) The RDB Act transferred jurisdiction of bank and financial institution claims above Rs.10 lakhs from the civil courts to the DRT, while the civil courts retained jurisdiction for smaller claims. This shows that the DRT effectively steps into the role of the civil court for high value recovery matters. It would be anomalous if a civil court decree for a small amount could support insolvency proceedings, but a DRT judgment or recovery certificate for a much larger bank debt could not. Therefore, since the DRT has all the trappings of a civil court, a recovery certificate issued by it should be treated as equivalent to a civil court decree for relevant legal purposes.

(v) Where two statutes operate in different fields and there is no direct conflict, both must be allowed to operate. The Insolvency Act and the RDB Act occupy different fields: one concerns insolvency status and the collective rights of the creditors, the other concerns bank debt adjudication and recovery.

8. Resting his case on the above points, Mr. Gopal Jain, learned senior counsel for the Appellant-Bank, sought appellate interference and prayed for setting aside of the impugned order of the High Court.
9. Mr. Dhruv Mehta, learned senior counsel for some of Respondents opposed the contentions while praying for dismissal of the appeal.
10. Having perused the reasoning given in ***Paramjeet Singh Patheja*** (supra) as also the reasoning given by the Single Judge and the Division Bench, *inter alia*, following the said decision, we find no reason to disagree with the same.
11. True it is, the question involved in ***Paramjeet Singh Pathreja*** (supra) arose with respect to an arbitral award; nevertheless, its ratio rests on wider principle. This Court noted that: (i) the Insolvency Act must be strictly construed as insolvency has grave civil consequences; (ii) the term "decree or order" must be understood in light of the definition contained in the Code of Civil Procedure, 1908; and (iii) insolvency notice is not a mode of execution/enforcement. Relevant excerpts from the decision are reproduced below:

17. We are of the view that the Presidency Towns Insolvency Act, 1909 is a statute weighed down with the grave consequence of "civil death" for a person sought to be adjudged an insolvent and therefore the Act has to be

construed strictly. The Arbitration Act was in force when the PTIA came into operation. Therefore it can be seen that the lawmakers were conscious of what a "decree", "order" and an "award" are. Also the fundamental difference between "courts" and "arbitrators" was also clear as back as in 1909.

20. Sections 2(2) and 2(14) CPC define what "decree" and "order" mean. For seeing whether a decision or determination is a decree or order, it must necessarily fall in the language of the definition. Section 2(2) CPC defines "decree" to mean...

21. The words "court", "adjudication" and "suit" conclusively show that only a court can pass a decree and that too only in a suit commenced by a plaintiff and after adjudication of a dispute by a judgment pronounced by the court. It is obvious that an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree.

30. The PTIA, 1909 does not define "decree" or "order" for the simple reason that the meaning of these terms has been well settled since the Civil Procedure Code of 1859 and 1882 and had been again defined in the Civil Procedure Code of 1908. The other indicators that an award of arbitrators is not intended to be a "decree" or "order" are:

(i) Sections 2(a) and (b) define "creditor" to include a decree-holder and a "debt" to include a judgment-debt and "debtor" to include a judgment-debtor.

(ii) It is quite clear from Section 33 CPC that a decree, being the formal expression of adjudication by a court, follows only upon pronouncement of judgment by the court. It is equally clear that courts and judges render judgments; arbitrators only make awards.

(iii) Sections 9(e) and (h) put the matter beyond controversy by expressly mentioning "decree of any court for the payment of money". Thus as enacted in 1909, the Insolvency Act dealt only with debtors who had suffered decrees by any court for the payment of money.

33. The words "litigant", "money decree", "judgment-debtor", "decretal amount" and "decree-holder" plainly show that Parliament intended to deal with litigants who do not pay amounts decreed by civil courts. There is no reference at all to arbitrations and awards in the Statement of Objects and Reasons and in sub-sections (2) to (5) of Section 9, which were introduced in 1978 by Parliament.

34. As already noticed, "litigation" has been held to mean "a legal action, including all proceedings therein, initiated in a court of law". Obviously therefore Parliament had in mind debts due to "litigants" i.e. debts due by reason of decrees of courts. It is well settled that courts, unlike arbitrators or Arbitral Tribunals, are the third great organ under the Constitution—legislative, executive and judicial. Courts are institutions set up by the State in the exercise of the judicial power of the State, which will be seen from the cases mentioned hereinbelow: ...

41. Issuance of a notice under the Insolvency Act is fraught with serious consequences: it is intended to bring about a drastic change in the status of the person against whom a notice is issued viz. to declare him an insolvent with all the attendant disabilities. Therefore, firstly, such a notice was intended to be issued only after a regularly constituted court, a component of the judicial organ established for the dispensation of justice, has passed a decree or order for the payment of money. Secondly, a notice under the Insolvency Act is not a mode of enforcing a debt; enforcement is done by taking steps for execution available under CPC for realising monies.

12. Accordingly, this Court reasoned that an arbitral award is not a “decree or order”. It is true that one more reason which weighed with the Court was that when the Insolvency Act was enacted, an arbitration law was already in force and, therefore, the lawmakers, being aware of the meaning of an “award”, consciously chose to exclude it from the Insolvency Act. This is not the situation in the present case, as the concept of a recovery certificate came into existence only after the RDB Act was enacted in 1993. Be that as it may, in view of the wider ratio noted above, this distinction is of no consequence.

13. Mr. Gopal Jain impressed upon us that Section 19(22)A of the RDB Act, which was included *vide* an amendment in the year 2016¹⁶, explicitly provides that a recovery certificate issued by a DRT is deemed to be a decree of the Court for the purpose of initiation of insolvency proceedings under any law. Section 19(22A) is reproduced below:

(22A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 (18 of 2013) or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.

¹⁶ Act 44 of 2016

- 14.** Insertion of sub-section (22A) in Section 19 of the RDB Act, we are inclined to the view, instead of supporting the Appellant-Bank demolishes its case. Section 19(22A), as it now stands, aids in settling the issue. The fact that Parliament found it necessary in 2016 to insert sub-section (22A) in Section 19 of the RDB Act for the express purpose of equating a recovery certificate with a 'decree or order' is clear legislative recognition that such equivalence did not exist earlier. By necessary implication, a recovery certificate issued prior to the 2016 amendment could not form the basis for initiating insolvency proceedings. To hold otherwise would be to supply what the legislature omitted – a clear *casus omissus*. That apart, it is significant that the amendment has not been given retrospective effect. Matters would perhaps have been simpler, had the amendment been made earlier.
- 15.** Additionally, we hold that the issue emerging from the present appeal must be decided on the basis of the law as it stood when the litigation commenced.
- 16.** To support this conclusion, we rely on ***Rameshwar v. Jot Ram***¹⁷, which quoted ***P. Venkateswarlu v. Motor & General Traders***¹⁸: "*it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding*". This Court further went on to observe that it is an emphatic statement that the *right* of a party is determined by the facts as they exist *on the date*

¹⁷ AIR 1976 SC 49

¹⁸ AIR 1975 SC 1409

the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or right crystallised in the initial cause of action.

17. To similar effect is the decision in ***Beg Raj Singh v. State of U.P.***¹⁹.

The relevant passage from such decision reads as follows:

7. ... The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. ...

18. If denying a suitor relief based on accrual of post-natal events because of the Court's delay to decide the *lis* is impermissible, by the same logic, the converse must also hold. A claim which was untenable on the date the suitor entered the portals of the Court cannot become tenable simply because a fortuitous event during the pendency of the trial has made it so. The *lis* must be decided on the basis of rights and liabilities as they

¹⁹ (2003) 1 SCC 726

stood on the date of institution, unless the statute or equity of the case otherwise requires.

19. We, therefore, hold that Section 19(22A) of the RDB Act does not aid the Appellant-Bank.
20. Consequently, the law laid down in **Paramjeet Singh Patheja** (supra) applies with full force. We are, therefore, unable to accept the submission advanced by Mr. Jain.
21. We place on record Mr. Jain's fair submission that **Paramjeet Singh Patheja** (supra) was doubted by this Court in **Sundaram Finance Limited v Ashok D Soniminde, Mumbai**²⁰ but subsequently, vide order dated 23rd April, 2015²¹, a 3-Judge Bench of this Court felt that *"that the judgment delivered in the case of Paramjeet Singh (supra), does not require any reconsideration."*
22. Before parting, we record that Mr. Mehta is also right in pointing out that Section 19(22A), even if it were to apply on its very terms, the Appellant-Bank is not entitled to any relief. The phrase *"recovery certificate issued by ... under ... shall be deemed to be decree or order for ... initiation of ... insolvency proceedings ... under any law for the time being force ..."* has been emphasised by him in support of the proposition that the stage of initiation of proceedings did not fructify because the notice of insolvency itself, issued under Section 9(2) of the Insolvency Act, stood quashed by the High Court.

²⁰ order dated 10th January, 2008 in SLP (Civil) 23495 of 2007

²¹ Civil Appeal No.485 OF 2008

- 23.** We, thus, dismiss the present appeal. The proceedings in notice of motion before the Single Judge, if pending, will stand closed qua the deceased original respondent.
- 24.** Along with the deceased original respondent, his two sons (Respondents 1.2 and 1.3) were also certificate debtors. However, the Appellant-Bank proceeded only against the original respondent (since deceased). Though the *lis* did survive *qua* the deceased original respondent in view of the observation²² made in the decision of this Court in ***Ebrahim Aboobaker v. Tek Chand Dolwani***²³, no order is required to be made now against the Respondents 1.2 and 1.3 in view of dismissal of the appeal. Appellant-Bank, if so advised, can work out its remedies against them, in accordance with law, if not barred by limitation or otherwise.
- 25.** Pending application, if any, stands disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(SATISH CHANDRA SHARMA)

**NEW DELHI;
July 13, 2026.**

²² the principle underlying the insolvency law seems to be that the death of the insolvent during the pendency of the application for insolvency does not cause the proceedings to abate but that they must be continued so that his property could be administered for the benefit of the creditors.

²³ (1953) 1 SCC 621