(2020) 10 DRT CK 0020

In the Debts Recovery Tribunal

Case No : Original Application No. 52 Of 2019

Bank Of Baroda APPELLANT

Vs

Radhamohan Ramnaresh Sharma And Anr. RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(22), 24Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 17

Citation : (2020) 10 DRT CK 0020

Hon'ble Judges : Vinay Goel, J

Bench : Single Bench

Advocate : Kshama Sheth

Final Decision : Allowed

Judgement

1. The hearing was conducted through virtual mode amid COVID-19 Pandemic restrictions upon request for ex-parte hearing. Ms.Kshama Sheth, Ld. Counsel appeared for Applicant Bank.

Heard the Ld. Counsel for the bank and also gone through records with her assistance. The defendants are ex-parte.

2. Initially, this Original Application was filed by the Dena Bank and due to amalgamation of said bank into Bank of Baroda, on an application for amendment, Dena Bank was allowed to be substituted as Bank of Baroda. In this case, wherever word 'Applicant Bank' appears that will include Dena Bank wherever context so admit.

3. This Original Application has been filed by the Applicant Bank under Section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993, against the defendants no.l & 2 for recovery of Rs.33,38,980/- (Rupees: Thirty Three Lakhs Thirty Eight Thousand Nine Hundred Eighty Only) together with further interest

thereon @9.60% p.a. with monthly rests from the date of filing of the Original Application till the realization of entire dues of the applicant bank along with cost and other relief as stated.

4. The defendants were summoned through registered post with AD Card. As per office report, notices sent to defendants returned un-served. Thereafter, the defendants were served through paper publication in leading newspaper "Sandesh" on 05.10.2019. The Applicant also filed a purshis to this effect at Exh. A/8. Despite service, none appeared on behalf of the defendants to contest the case. Thus, the case was proceeded ex-parte against the defendants due to their non-appearance.

5. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh.A/9, which is sworn by Shri Sundarlal Sharma, Chief Manager of the Applicant Bank. Applicant bank has filed evidence as affidavit and proved on record as Exh.A Wl/1 to AWl/23.

6. To save time and to avoid repetition, I have not narrated facts of the case as bank has already detailed such facts in its written submission which is reproduced as under:

"WRITTEN SUBMISSION

1.The applicant says that on the last date this Hon'ble Tribunal has directed to file written arguments/submission, which is summarized as mentioned below, which may kindly be taken into consideration while passing the Judgment by this Hon'ble Tribunal.

2. That averments, statement, and pleading made in the Original Application, Affidavit in Proof of Claim filed by the Applicant Bank be treated as part and parcel of the present written arguments.

3. That this Hon'ble Tribunal is having territorial as well as pecuniary jurisdiction as the subject matter of the recovery of debt due falls within the jurisdiction of the Tribunal since Term Loan/ Housing Loan Facility was granted at Ahmedabad and relevant documents were executed in the Ahmedabad District of the State Gujarat.

4. That the instant application is within the limitation prescribed under Section 24 of Recovery of Debts and Bankruptcy Act, 1993 Since the Term Loan Facility was sanctioned on 02/03/2015 and Loan documents and security documents were executed on 07/03/2015. The account was classified as NPA on 30/08/2016. Thereaiter, Recall Notice dated 04/01/2019 also given by the Applicant through their Advocate.

5. That the Defendants No.l is an individual Borrower. Defendant No.2 is the Guarantor of Defendant No. 1. The Term Loan Facility was sanctioned by the Applicant Bank to Defendant No.1 by erstwhile Dena Bank which is since merged with effect from 01-04- 2019 with Bank of Baroda vide Government of India

Gazette Notification. Defendant No.1 approached to the Applicant Bank herein to grant the Term Loan Facility/ Housing Loan(Fund Based I Non-Fund Based).

6. That the present Defendant No.1 is individual Borrower/s and Defendant No.2 has stood as Guarantor to the Facility availed by the Defendant No.1. Hence, the Defendant Nos.1 and 2 are jointly and severally liable to Applicant Bank to repay all the Outstanding Dues including Principal, Interest, Expenses, and Costs etc. till all the dues are not fully discharged by the Defendants.

7. That, the Applicant Bank had sanctioned following Term Loan for the purpose of purchase of Flat I House vide Sanction Letter dated 02/03/2015.

Facility

Loan Amt. In Lacs.)

Rate of Interest

Inst /EMI Rs.

Term Loan

25.50

Base Rate-0.50% + T.P=10.25% p.a

240 Equal monthly installment each Rs. 25,032/- commencing from next months from total disbursement Loan amount

Total

25.50

8. That for availing above mention Facility, the Defendants have duly executed/ submitted/ delivered following documents amongst others in favour of the Applicant: -

Sr. No.

Particulars

Date

1

Demand Promissory Note

07/03/2015

2

Dena Niwas Loan Aareement

07/03/2015

3

General Letter of Lien and Set-Off for Borrowing Arrangements from the Borrower/s

07/03/2015

4

Indemnity Bond

07/03/2015

5

Undertaking

05/03/2015

6

Affidavit

05/03/2015

7

Declaration

05/03/2015

8

Power of Attorney

09/03/2015

9

Undertaking for Housing Loan

09/03/2015

10

Declaration

09/03/2015

11

Letter of General Lien & Set-Off from Guarantor

07/03/2015

12

Letter of Guarantee

07/03/2015

A copy of the above documents executed, signed, and given by the defendant is enclosed in the list of documents on OA.

9 I say that, for availing aforesaid Term Loan Facility, Defendant No. 1 has created a mortgage for the property being Flat No. B/402, Amardeep Residency, Behind Pushkar Bungalow, Nana Chiloda, Ahmedabad which is more particularly described in below schedule and said Mortgage Deed has been registered in the office of the Sub-Registrar Naroda under Registration No.3295 dated 09/03/2015. Thereafter, said Mortgage Deed had been amended and registered in the office of the Sub-Registrar Naroda under Registration No. 3395 dated 11/03/2015. A copy of Mortgage Deed is enclosed with a separate list of Documents in Original Application. However, said Flat has been sold out on 21/02/2019 under SARFAESI proceeding for an amount of Rs.14,40,000/- which has been appropriated by the Applicant Bank.

10 Defendants have committed default in observing the terms and conditions of the loan facilities available by them. That the Defendant's account became irregular for quite a long time. The Defendants have also not cared for servicing of interest charged to their account despite several reminders and therefore, the account of the Defendants was classified as Non-Performing Assets on 30/08/2016. Thereafter despite issuance of notice by the applicant Bank dated 04/01/2019 calling upon the defendants to make due repayment of the entire outstanding amount. But the same also did not yield any result.

11 The Applicant submits that the Applicant is a public sector Bank who had extended the Tern Loan to the defendants in good faith, which has not been reciprocated. As a result, thereof, a huge sum of public money is due and repayable by the defendants as set out in the Statement of Claim.

12 As per the statement of account maintained by the Applicant Bank following amounts are due and payable as under:

NATURE OF FACIUTY

AMOUNT

Term Loan Facility A/C No. 084851024108 as on 31.12.2018

Rs. 24,31,049.30

Add: Interest accrued but not debited from 31.05.2016 to 31/12/2018 @ BR = 9.60% p.a. with monthly rests or as BR changed time to time along with Penal Int.

Rs. 8,41,365/-

Add: Other Charaes

Rs. 60566/-

Amount

Rs. 33,38.980/-

Less: Recovery

Rs. Nil

Claim Amount as on 31/12/2018

Rs. 33,38 980/-

Suit Claim Amount as on 31/12/2018

Rs. 33,38,980/-

13 As per the terms and conditions of sanction the Defendants have agreed to and accepted with the Applicant Bank to repay the said Factlity/ies together with interest at the rate determined by the Bank from time to time, the cost, charges, and expenses etc. Therefore, the Applicant Bank is entitled to recover the entire outstanding amount together with running interest thereon @ 9.60% -0.50%+ TP 0.50% =9.60% (current applicable MCLR rate of the bank subjected to change time to time) with all interest and cost, charges, expenses etc plus 2% penal interest p.a. with effect from Date of filling this Original Application till realization.

14 The Applicant submits that the Applicant is a public sector Bank who had extended the Term Loan Facility to the defendants in good faith, which has not been reciprocated. As a result, thereof, a huge sum of public money is due and repayable by the defendants as set out in the Statement of Claim.

15 It is respectfully submitted that this Hon 'ble Court was pleased to issue Summons upon the defendants on 15/02/2019 which were served upon all the defendants by Public Notice. However, Nobody appears to def end the case till date.

16 In view of the above, the applicant humbly prays that this Hon'ble Tribunal may kindly be allowed the instant Original Application as prayed in Para-B of the Original Application in favour of the Applicant and issue a Recovery Certificate against the defaulter Defendants in the interest of justice."

7. From the perusal of the records, it is evident that defendants were provided with fair opportunity to contest the claim of the bank.

8. As the defendants opted not to contest the case, so only point of consideration before this Tribunal is whether the applicant Bank is legally entitled to the amount as claimed in O.A. on the basis of documents and pleadings submitted by it before the Tribunal.

9. I have gone through the loan documents of the Original Application and also considered the submission made by learned counsel for the Applicant Bank. The evidence produced by the Bank remains un- rebutted. There is no reason to disbelieve the same.

10. The bank has produced on record various documents towards Execution of loan documents, which is exhibited as under -

1

Sanction letter dated 02.03.2015

Exh.AWl/1

2

Demand Promissory Note

Exh.AWl/2

3

Dena Niwas Loan Agreement

Exh.AWl/3

4

General Letter of Lien and Set-off for borrowing arrangements from the borrower/s

Exh.AWl/4

5

Letter of General Lien and Set-off from Guarantor

Exh.AWl/12

6

Letter of Guarantee

Exh.AWl/13

7

Mortgage Deed

Exh.AWl/14

8

Amendment in Mortgage Deed

Exh.AWl/15

9

Acknowledgement of debt

Exh.AWl/16

10

Certificate of outstanding amount and accrued interest

Exh.AWl/20

11

Bank's Statement of Account for Term Loan

Exh.AWl/21

12

Certificate of Interest under Banker's Book Evidence Act 1891

Exh.AWl/22

13

Bank's Authority Letter

Exh.AWl/23

11. As per statement of account on the date of filing of O.A. the bank has claimed Rs.33,38,980/- (Rupees: Thirty Three Lakhs Thirty Eight Thousand Nine Hundred Eighty Only) together with further interest thereon @9.60% p.a. with monthly rests from the date of filing of the Original Application till the realization of entire dues, but I feel judicious to grant interest @9.60% p.a. simple for pendentelite and future period for the said facility in view of the socio-economic slowdown due to the outbreak of COVID-19 pandemic, as bank has already auctioned the property under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The claim for penal interest is declined.

12. The bank has proved documents executed by the borrowers/guarantors and have duly proved its case as explained in written arguments.

13. As a result, the Original Application is allowed exparte with cost against defendant no.l & 2. The Bank has proved the loan, execution of loan documents, default and liability of the defendant no.l & 2. The liability of the defendant no.l & 2 will be joint and several and the personal movable and immovable properties of the defendant no.l & 2 can also be sold for recovery of the amount due. No relief has been granted in respect of mortgage properties, as it is the case of the bank that it has already sold the mortgaged properties under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. But as stipulated below, if things turned otherwise, bank will be able to proceed against said properties in accordance with law. The bank may proceed against other personal assets of the defendants. The applicant bank on 24.01.2020 filed following affidavit regarding disclosure of sale under the Securitization & Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 -

"AFFIDAVIT

I, Sundarlal Sharma s/o, Shersinqh Sharma working as Chief Manager of Bank of Barodatli-Dena), Sabarmati Branch, Ahmedabad hereby solemnly affirmed and state as under-

1. That I am presently working as Senior Manager in the Applicant Bank. I am aware of the facts of the case and authorized to sign, verify and affirm this Affidavit and to do all such acts as necessary for filing the Affidavit including signing, verifying and affirming the same.

2. That the Applicant Bank filed aforesaid Original Application bearing No.52 of 2019 on 18/01/2019 for an amount of Rs.33,38,980/- against the defendants jointly and severally.

3. That, during the pendency of original Application, the Applicant Bank sold out Immovable property of Defendant No.1 which was mortgaged to the Applicant by way of public auction held on 21/02/2019 at the highest bid of Rs.14,40,00/- That, on receipt of entire sale proceeds of Rs. 14,40,000/- the applicant bank also issued the sale certificate in favour of the auction purchaser and that said sale proceeds have been appropriated towards outstanding in the loan account of defendants. Thus, the applicant bank has recovered the amount of Rs.14,40,000/.

3. That no S.A. has been filed before this Hon'ble Tribunal or in any other Court for challenging the SARFAESI action."

The bank has sold the mortgaged immovable property under SARFAESI Act and recovered Rs.14,40,000/- out of sale, so the defendants will be entitled to credit of amount of auction monies of Rs.14,40,000/-. The bank has disclosed that no Securitisation Application under Section 17 of the SARFAESI Act is pending against the actions of the bank. Hence, the borrowers will be entitled to the benefit of Rs.14,40,000/- on reducing balance system, subject to clear stipulation that if sale under SARFAESI Act remain intact. If auction of the immovable property is set aside by any competent court and/or if the bank suffers any adverse order qua said auction under any proceedings filed under Section 17 of the SARFAESI Act or otherwise in that event, bank would be entitled to sell the said mortgaged immovable properties afresh, in accordance with law and defendants would not be entitled to the benefit of credit of auction money of said properties. The liability of the defendants is/will be joint & several and the personal movable and immovable properties of the defendants can also be sold for recovery of amount due.

14. It is, therefore ordered:-

(i) That the Original Application No.52 of 2019 initiated by the Applicant Bank for issuance of Recovery Certificate to the tune of Rs.33,38,980 /- (Rupees: Thirty Three Lakhs Thirty Eight Thousand Nine Hundred Eighty Only) together with interest and costs hereby succeeds and is allowed against the defendant no. I & 2.

(ii) The defendants are directed to pay the dues within a period of two months from the date of judgment, failing which the Applicant Bank will be entitled to proceed against the personal movables and immovable properties of the defendant no. l & 2. The Applicant Bank is further entitled to pendenteiite and future interest on the amount due @9.60% per annum simple for the said credit facilities from date of filing of Original Application till the full recovery is made from the defendant no.1 & 2.

(iii) However, if sale under SARFAESI Act remains intact, the borrowers will be entitled to the benefit of Rs.I4,40,000/- on reducing balance system and if sale of the properties or any property are/is set aside by any competent court, in accordance with law, in that event, borrowers will not be entitled to the amount of auction qua so quashed auction and bank would be entitled to proceed against the said mortgaged immovable property afresh in accordance with law to recover its dues.

(iv) Let a Recovery Certificate be issued with memo of cost immediately u/s 19(22) of "The Recovery of Debts and Bankruptcy Act, 1993 together with the details of the properties, if any, by fixing 11.12.2020 before Learned R.O., DRT -1, Ahmedabad.

(v) The defendant no.1 & 2 are hereby restrained by means of injunction from depleting, transferring, encumbering, alienating or in any way dealing with their properties/assets without first paying the claim of the Applicant Bank.

Given under my hand and the seal of this Tribunal on this date: 09.10.2020.

Dictated on 09.10.2020.

Corrected and signed by me on 09.10.2020.