
(2021) 10 DRT CK 0004
In the Debts Recovery Tribunal
Case No : Original Application No. 438 Of 2019

Bank Of India

APPELLANT

Vs

Bhupendra K. Panchal

RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19,
19(20)Code Of Civil Procedure, 1976 — Section 34
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 17
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 16

Citation : (2021) 10 DRT CK 0004

Hon'ble Judges : Laxman Madnani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The hearing was conducted through virtual hearing amid COVID-19 restrictions. The present 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 for recovery of Rs. 21,32, 197 .80 (Rupees Twenty One Lakhs Thirty Two Thousand One Hundred Ninety Seven and Eighty Paise Only) together with further interest @ 9.40 % with monthly rests along with penal interest from 08.05.2019 till the payment or realization of the said dues of the bank.

2. The brief facts of the case as stated in the application of Applicant Bank is that defendant approached the Applicant bank requesting home loan. The Applicant bank considering the request so made and the securities offered, sanctioned Home Loan of Rs. 20.50 Lakhs vide sanction letter dated 26.02.2016. The Defendant agreed to repay the loan in 300 equated monthly installment of Rs. 17,753/- each.

In consideration of securing the above facility, defendant signed and executed following documents:

- a) Loan application dated 25.01.2016.
- b) Sanction letter dated 26.02.2016.
- c) Demand promissory note dated 26.02.2016.
- d) Combined stamped undertaking dated 26.02.2016.
- e) Agreement for Home loan dated 26.02.2016.
- f) Undertaking dated 26.02.2016.
- g) Memorandum of Entry along with declaration/undertaking dated 26.02.2016.
- h) Acknowledgement of debt/securities dated 27.09.2018

3. In order to secure the said Home Loan facility, defendant created mortgage over the said property and deposited the title deeds in favour of the Applicant bank. The detailed description of the same is mentioned in Schedule A of the Original Application.

4. The defendant availed the Home Loan facility but he failed to repay the dues of the Bank as per agreed terms, he failed to adhere to the financial discipline of the applicant bank and the account of defendant became irregular and sticky. The applicant bank requested the defendant from time to time to regularize the said account but defendant had failed and neglected to regularize the same. Ultimately, the account of the defendant has been classified as N.P.A. on 31.10.2018. The Applicant bank issued a letter/notice dated 09.05.2019 calling upon the defendant to repay the entire recoverable dues.

5. All these acts and conduct on the part of the defendant was contrary to the terms and conditions of the documents signed and executed by him. Accordingly the Applicant Bank has moved this Original Application to recover public money.

6. Soon after the registration of the case the defendant was summoned through registered post with A/D on 03.07.2019. As per record, notice sent to the defendant was not served. Thereafter, the Defendant was served through paper publication in 'Divya Bhaskar' on 07.10.2019. Applicant bank had also filed purshish at Exh. A/7 enclosing therewith copy of Postal Department's statement showing registration of article, track report, & proof of paper publication respectively. None appeared on behalf of defendant despite service summons through paper publication. Thus, the case was proceeded exparte against the defendant due to his non appearance vide order dated 10.12.2019.

7. Further, during the pendency of the Original Application, on 27.04.2016 the Applicant bank initiated measures under SARFAESI Act, 2002 and sold the mortgaged property, as mentioned in schedule A of the Original Application. The said mortgaged property was sold for Rs. 20.17 Lakhs. The sale proceeds of Rs.

20.17 Lakhs has been credited to the loan account of Defendant. Accordingly, the Applicant Bank has moved this Original Application to recover the remaining balance amount from the Defendant.

8. I have heard the learned counsel for the applicant and have also gone through the case file properly. I have also gone through law applicable to facts and circumstances of the present case.

9. From perusal of the records, it is evident that defendant was provided with fair opportunity to contest the claim of the bank. As the defendant 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 Original Application on the basis of documents and pleadings submitted by it before the Tribunal.

10. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh.A/9, sworn by Mr. Bhavik D. Vora, Branch Manager of the Applicant Bank.

11. The Learned counsel for the Applicant Bank has submitted that the Bank has duly proved all the documents on file as required under "The Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendant is willful defaulter, as he availed the aforesaid credit facility to his benefits but failed to maintain the financial discipline of the bank. In view of the said facts, the Original Application may be allowed for the reliefs claimed.

12. I have gone through the loan documents; averments made in the Original Application and also considered the submissions made by learned counsel for the Applicant Bank. The documents produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned on 26.02.2016 and the Defendant signed and executed acknowledgment of debts/securities on 27.09.2018. The present O.A. has been filed by the applicant bank on 06.06.2019 and hence it is well within limitation period prescribed.

13. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank for an amount of Rs. 21,32,197.80 (Rupees Twenty One Lakhs Thirty Two Thousand One Hundred Ninety Seven and Eighty Paise Only).

14. As per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 which is analogous to Section 34 of Civil Procedure of Code 1908, on filing of the suit/ claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same depending upon the circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & Others. Taking stock of all the circumstances and keeping in view the facts of the case, I am of the opinion that justice will be served if the interest at the rate of 9% is awarded.

15. The bank has sold the mortgaged immovable property on 27.04.2016 under SARFAESI Act, 2002 and recovered Rs.20.17 Lakhs out of sale, and have credited the said amount to the loan account of the Defendant. Hence, the borrower will be entitled to the benefit of Rs.20.17 Lakhs on reducing balance system, subject to clear stipulation that if sale under SARFAESI Act remain intact. If the sale of the immovable property is set aside by any competent court and/ or if the bank suffers any adverse order qua said sale 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 property afresh, in accordance with law and defendant would not be entitled to the benefit of credit of auction money of said properties. The liability of the defendant is absolute and personal movable and immovable properties of the defendant can also be sold for recovery of amount due.

15. In view of the above, the Original Application is allowed.

ORDER

(i) I hereby allow this O.A. of the Applicant Bank and direct the defendant to pay to the applicant bank within 60 days from today, a sum of Rs. 21,32,197.80 (Rupees Twenty One Lakhs Thirty Two Thousand One Hundred Ninety Seven and Eighty Paise Only) together with further interest @ 9% per annum simple and cost & expenses from the date of filing of this O.A. till the date of realisation. However, if sale under SARFAESI Act remains intact, the borrower will be entitled to the benefit of Rs.20.17 Lakhs/- on reducing balance system.

2) If the Applicant has received any amount from the Defendant during the pendency of the present Original Application, the same shall be adjusted against the amount awarded in favour of the Applicant under this judgment.

3) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from the sale of other personal movable and immovable properties of the defendant. No relief has been granted in respect of mortgaged property, as it is the case of the bank that it has already sold the mortgaged property.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-I, Ahmedabad.

5) The registry of this Tribunal is hereby directed to issue the free copy of the order and be sent to the both parties in compliance of Rule 16 of the Debt Recovery Tribunal Procedure Rule 1993.

6) File be consigned to records.

Pronounced in Open Court on this 4th day of October, 2021 at Ahmedabad.