(2020) 03 DRT CK 0002

In the Debts Recovery Tribunal

Case No : Original Application No. 160 Of 2019

Canara Bank APPELLANT

Vs

M/s Vaishno Rice Mill And Ors. RESPONDENT

Date of Decision : 20-03-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(22)

Citation : (2020) 03 DRT CK 0002

Hon'ble Judges : Anil Kumar Chaturvedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1- The Applicant bank has made this application u/s 19 of the Recovery of Debts and Bankruptcy Act, 1993 initiated by the applicant against the defendants praying for issuance of Recovery Certificate to the tune of Rs.31,30,339 together with interest, cost and other usual reliefs.

2- The brief facts of the case as made out in the original application by the applicant bank is that the defendant no. 2 is proprietress of defendant no. 1 in the year 2007, approached the applicant ban for financial assistance to meet the requirements of her firm which she runs in the name Maa Vaishno Rice Mill. Her loan proposal was considered by the authorities of the applicant bank and they agreed to sanction cash credit loan for limit of Rs.3 lacs on the terms and conditions which were accepted to her. Again in the year 2007 in the month of August defendant no. 1 through its proprietress approached the applicant bank for enhancement of existing loan limits of Rs.3 lacs upto Rs.5.50 lacs to meet the requirements of the firm. The terms and conditions of the bank for the cash credit loan for limits of Rs.5.50 lacs as stipulated in the sanction letter dated 1.8.2007 was accepted by the borrower and in token of acceptance borrowers have signed over the same. Again in the year 2009 at the request of defendant no. 2 existing loan limits of Rs.5.50 lacs was enhanced up to Rs.8 lacs to meet the requirement of defendant no. 1 for which various loan documents executed by the defendants in favour of the bank i.e. pronote, link letter, letter of renewal, supplemental agreement and enhancement loan limits defendant no. 3 stood as guarantor and executed guarantee agreement.

2.1 Again in the year 2013 defendant no. 1 & 2 approached the applicant bank for further enhancement of their existing loan limits of Rs.8 lacs up to Rs.14 lacs to meet the requirements of her business. Her loan proposal was considered by the applicant bank and they agreed to enhance the limits of the terms and conditions as stipulated in the sanction letter dated 21.1.2013. The defendants executed the various loan documents in favour of the bank, Loan application, Sanction letter, pronote, supplemental agreement, letter of renewal, letter of guarantor.

2.2 Again in the year 2014 defendant no. 1 & 2 approached the applicant bank for further enhancement of their existing loan limits of Rs.14 lacs up to Rs.20 lacs to meet the requirements of her business. Her loan proposal was considered by the applicant bank and they agreed to enhance the limits of the terms and conditions as stipulated in the sanction letter dated 19.5.2014. The defendants executed the various loan documents in favour of the bank, Loan application, Sanction letter, pronote, supplemental agreement, letter of renewal, letter of guarantor.

2.3 Again in the year 2015 defendant no. 1 & 2 approached the applicant bank for further enhancement of their existing loan limits of Rs.20 lacs up to Rs.30 lacs to meet the requirements of her business. Her loan proposal was considered by the applicant bank and they agreed to enhance the limits of the terms and conditions as stipulated in the sanction letter dated 18.2.2015. The defendants executed the various loan documents in favour of the bank, Loan application, Sanction letter, pronote, supplemental agreement, letter of renewal, letter of guarantor.

2.4 In the year 2016 & 2017 defendants renewed the loan documents of their existing loan limits and executed various loan documents in favour of the bank i.e. loan application, sanction letter dated 17.2.2016, letter renewal , letter from guarantor, loan application dated 6.9.2017 sanction letter dated 6.9.2017, letter of renewal and letter form guarantor.

2.5 The defendant no. 2 & 3 have created mortgage over the immovable property i.e. Thana no. 20, khata no. 33, plot no. 569 area of the land 1362 sq. feet, measurement of plot towards North to South 28 ft. 6 inch, Towards East to West 47 ft. 1 inch, situated at Mauza-Mirjapur Nohta, P.S-Fatuha, Sub Registry at Patna City, Sadar Registry at Patna which is bounded as North-Rajesh Kumar, East-Satyadeo Prasad, South-Nawal Singh, West-Road.

2.6 The defendants operated the loan accounts on various dates as shown in the statement of account but did not repay the loan to bank hence there is huge outstanding against them. The defendants have committed breach of contract agreement and of other loan documents which they have executed in favour of the applicant bank. The account is classified as NPA on 30.12.2018.

2.7 The total outstanding as on 28.2.2019 comes to Rs.31,30,339/- alognwith pendentelite and future interest at contractual rate from the date of sanctioning of the loan till the date of full and final payment and for the issuance of recovery certificate against the defendants.

3- Notices were issued to the defendants to show cause as to why the relief prayed for by the applicant bank be not granted. After issuance of the notice, the defendants had neither appeared nor had filed their show cause reply. Consequently, the said defendants were set exparte cm 29.2.2020. The Tribunal had no other option but to hear exparte against the defendants.

4- I have heard the learned counsel for the applicant bank and have perused the relevant documents.

5- The defendants had not contested the case of the applicant bank.

Thus, the point for determination in this case is (i) whether the claim of the applicant bank is within time? (ii) Whether the defendants had utilized the loan facilities granted by the bank? (iii) Whether the defendants are liable to the amount due to the applicant bank or not?

6 The applicant bank by oral and documentary evidence has established its case. The documentary evidence comprises from Annexure/Exhibit-I to Annexure/ Exhibit-4 7, which are available in paper book filed by the applicant bank.

7. From the perusal of the documents referred above and the certified copy of the statement of account, which is filed as Annexure/Exhibit-1 to 47, it is established that the defendants had availed the financial facilities from the applicant bank and had withdrawn the amount through the account.

8 The oral testimony comprises of an affidavit of Shri Manoj Kumar Raman S/o Rajendra Prasad, working as Senior Manager of the Applicant Bank. The averments in the application and the facts stated by the witness of the applicant in his affidavit are unrebutted.

9. From the perusal of the Statement of Account which is Annexure/Exhibit-46, the total outstanding comes to Rs.31,30,339/- which the applicant bank is entitled to recover from the defendants.

10 In view of the above discussion and after considering the entire evidence-on-affidavit of the applicant bank and the documents filed by the applicant bank, I have no hesitation to hold that the applicant bank is entitled to recover jointly and severally a sum of Rs.31,30,339/- from the defendants who are liable for the same. The applicant bank shall also be entitled to pendentelite and future interest on the said amount @10% p.a. simple from 1.3.2019 to till the date of realization.

ORDER

(1) O.A. No. 160 of 2019 filed by the Applicant Bank is allowed and debt is determined with cost against the defendants. It is hereby ordered that applicant bank is entitled to recover jointly and severally from the defendants the total amount to the tune of Rs.31,30,339/- (Rupees thirty one lacs thirty thousand three hundred thirty nine only) with pendentelite and future interest @l 0% p.a. simple from 1.3.2019 till full and final realization of the claim amount.

(2) Amount, if any, paid by the defendants in the loan accounts or amount, if any, recovered by the Applicant Bank after filing of the O.A. the same be taken into account while arriving at the exact amount of dues/debt payable by the defendants. Accordingly, pendentelite and future interest shall be calculated on the reduced amount.

(3) Defendants are debarred from disposing, alienating or dealing with any of the properties belonging to them till the aforesaid decretal debt is recovered from the defendants.

(4) Defendants are given a time of thirty days from the date of the Judgment/ Final Order for repaying of the above mentioned dues, so intimated to them. In case the defendants fails to pay the dues within the above mentioned time, the applicant bank is entitled to recover its dues by sale of secured assets, if any. Applicant bank is also entitled to proceed against personal properties of the defendants (Both movable and immovable) and also proceed against the defendants personally to recover the dues in accordance with law.

(5) Let the Certificate of Recovery be drawn up by Ld. Registrar forthwith in terms of Judgment for issuance of the same against defendant in favour of the applicant bank under Section 19 (22) of the Recovery of Debts and Bankruptcy Act, 1993 and put up the same for issuance of the Certificate.

(6) Ld. Recovery Officer shall realize the amount as per the Recovery Certificate from the defendants in accordance with law.

(7) Ld. Registrar of this Tribunal is directed to deliver recovery certificate in term of the final order/judgment for recovery of the sum against the defendants in favour of the Applicant Bank under Section 19 (22) of the Recovery of Debts due to the Bank and Financial Institutions Act, 1993 now known as Recovery of Debts and Bankruptcy Act, 1993.

Accordingly, the Original Application being O.A. No.160 of 2019 is allowed and stands disposed of.

Copy of the Judgment/Final Order be upload in the Tribunal's website.

File is consigned to the Record Room.

(Dictated to Stenographer, transcribed by him, corrected, signed and pronounced by me in the open Court on this the 20th day of March, 2020)