
(2007) 05 AHC CK 0166
In the Allahabad High Court
Case No : R.A. No. 596 of 2005

Canara Bank

APPELLANT

Vs

Sanjay Trading Co.and others

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Citation : (2007) 05 AHC CK 0166

Hon'ble Judges : R.S.Tripathi, J

Final Decision : Disposed Of

Judgement

R.S. Tripathi, Chairperson.

1. This is an appeal filed against an order dated 5th September, 2005 passed by Presiding Officer, D.R.T., Lucknow in T.A. No. 755 of 2002, Canara Bank v. Sajay Trading Company, allowing the application moved by the respondents and disposing of T.A. No. 755 of 2002.

2. According to the appellant the respondent firm was engaged in business of manufacturing, selling and export etc. of carpets and for that business through respondent No. 2, the appellantbank was approached in the year 1981 for the grant of financial facilities. The appellantbank sanctioned and disbursed credit facilities to the respondent No. 1 and for that respondent Nos. 3 and 4 and one Late Bishan Swaroop gave the security of their properties by way of equitable mortgage. The respondents, according to the appellant failed to maintain financial discipline in accordance with terms of above loan, hence, a suit was filed for recovery in the year 1989 before Civil Judge, Aligarh as Suit No. 959 of 1989. The respondents and Late Bishan Swaroop contested the above suit filing their written statement and the suit was ultimately transferred to D.R.T., Lucknow, where it was numbered as T.A. No. 755 of 2002. The appellant has contended that the respondents had approached the appellant bank in the year 2000 for compromise under O.T.S. Scheme and this settlement was accepted on 29th May, 2000 as respondents agreed to pay Rs. 15.28 lacs in full and final satisfaction of the demanded amount. The appellantbank pleaded that the respondents

deposited only Rs. 6.25 lacs from 19th November, 2001 to 29th January, 2003 whereas the balance of Rs. 9.03 lacs remained unpaid. The bank claimed that the respondents could not honour the compromise, which was ultimately cancelled. On 24th November, 2004, the D.R.T., Lucknow illegally and acting without jurisdiction extended facility of O.T.S. to the respondents after consideration of an application of respondents. The bank pleaded that in T.A. No. 755 of 2002 the defendant No. 2 had moved an application on 23rd March, 2005 wherein giving the details of N.P.A. account payable as per R.B.I. Guidelines they claimed that the amount due comes to be Rs. 4,81,011.80 whereas the defendant No. 1 had deposited Rs. 6,25,000, hence, as per the guidelines of R.B.I, the defendant No. 1 was entitled for refund of Rs. 1,43,919.20 Another application, according to the bank was moved by the respondent No. 4 on 18th August, 2005 before D.R.T., Lucknow praying therein that the respondents were entitled to the benefit of O.T.S. 3rd scheme issued by R.B. I. for payment of Rs. 4,81,011.80 only and claimed refund of Rs. 1,44,000 paid by them. The bank opposed above applications asserting that the compromise settlement was for Rs. 15.28 lacs not under any R.B.I, scheme and the respondents failed to honour that compromise depositing only Rs. 6.25 lacs, therefore, the application moved by the respondents were liable to be rejected. According to the appellant, D.R.T., Lucknow on 5th September, 2005 without going into the merits of the case illegally, arbitrarily rejected the application of the bank allowing the applications of the respondents for settlement to the extent of prayer for O.T.S. 3rd scheme. The case of the bank was that the compromise was for Rs. 15.28 lacs and it was not under any R.B.I, guidelines but by mutual settlement, therefore, the learned D.R.T., Lucknow has committed error going beyond it's jurisdiction accepting the application moved on behalf of the respondents imposing O.T.S. on bank without its consent. Hence, this appeal has been filed.

3. In reply the respondents have contested this appeal contending that the so called compromise of Rs. 15.28 lacs Annexure I does not bear the signature of any of the respondents and this compromise was never finally accepted by them. Before D.R.T., Lucknow they denied to have paid an amount of Rs. 6.25 lacs in accordance with terms of compromise dated 29th May, 2000. According to the respondents the bank never filed any application before D.R.T. to point out any breach of terms of the said compromise. They contended that the guidelines of R.B.I, received for O.T.S. 3rd Scheme were applicable to their case and the bank was entitled only for a sum of Rs. 4.81 lacs although they had deposited an amount of Rs. 6.25 lacs which was in excess of the amount required to be deposited under O.T.S. 3rd scheme. They have challenged the so called compromise on the ground that it was not signed by any of the respondents. The respondents contended that the guidelines of the R.B.I, are mandatory in nature and the bank was liable to accept the same, therefore, they were entitled to refund of Rs. 1,43,919.20. They pleaded that the bank failed to consider the fact that the amount due became N.P.A. on 16th September, 1985, therefore, the calculation of the amount due comes to be a total liability of Rs. 4.81 lacs only.

They challenged the contention of the bank for issuance of recovery certificate on the basis of so called compromise for payment of Rs. 9.03 lacs. They gave the circumstances under which their consignment of Kendjian for East V of Amstardem Netherlands could not finally succeed, resulting in their failure to get the amount of above consignment. They pleaded their bona fides and pleaded that there was no deliberate default from their side in making payment of the dues. They supported the impugned order passed by D.R.T.

4. Having heard the learned Counsel for the appellant and respondents at length and having also gone through the material available on record. On the record, we have Annexure1 which is said to be compromise relied upon by the appellantbank. Annexure2 filed with the memo of appeal in the instant case is the order dated 24th November, 2004 passed by D.R.T., Lucknow in above Annexure2, there is a statement of the Counsel for the defendant Nos. 2 and 3 i.e. the present respondents stating therein that due to some unavoidable circumstances the payment of residual amount of Rs. 9.03 lacs could not be made by the respondents who were ready to deposit the same within a period of one week. On the basis of this statement D.R.T., Lucknow on that date granted time to the respondents on their request to deposit the amount of Rs. 9.03 lacs by 1st December, 2004. Thereafter, there were two applications moved on behalf of the respondents one was for the disposal of the case in accordance with O.T.S. 3rd scheme issued by R.B.I, and the other for refund of Rs. 1,43,919.20. On the other hand, the bank had moved an application for issue of recovery certificate for a sum of Rs. 9.03 lacs. The impugned order shows that the learned D.R.T. agreed with respondents for the settlement on Rs. 4,81,011.80 under O.T.S. 3rd scheme but refused to agree for refund of Rs. 1,43,919.20, consequently the application moved on behalf of the bank was rejected for issuance of recovery certificate. Learned Counsel for the appellantbank has argued that the respondents admitted their liability to the tune of Rs. 15.28 lacs as per Annexure1, so called compromise dated 29th May, 2000 available on record. But failed to pay the amount of instalments as per the terms of the above compromise. According to the Counsel for the bank, from 19th November, 2001 to 29th January, 2003, out of total amount of Rs. 15.28 lacs, a sum of Rs. 6.25 lacs was paid by the respondents, whereas the balance amount of Rs. 9.03 lacs remained unpaid. His submission is that first instalment of Rs. 5.10 lacs was to be paid within five months, whereas the second instalment was to be paid within nine months and balance was to be paid within thirteen months, whereas, after the deposit of Rs. 5.10 lacs respondents did nothing. The Counsel for the bank had pointed out that through above settlement the bank had waived entire interest of thirteen years and costs amounting to Rs. 80,000 or so, but the respondents did not pay any amount other than Rs. 6.25 lacs. His contention is that learned D.R.T. has committed error in acting on the proposal of respondents under O.T.S. 3rd Scheme issued by R.B.I., restricting the liability of the respondents to the tune of Rs. 4.81 lacs and thus imposing O.T.S. upon the bank without its consent. Against this submission, from the side of the respondents

argument is that the appeal is not maintainable as the earlier order passed by the learned Tribunal for settlement of claim for Rs. 15.28 lacs stood recalled it by passing subsequent order, and D.R.T. has every right to pass such recall order. His further submission is that when the earlier order has to be taken to have been recalled, the present appeal against impugned order cannot be taken to be maintainable. His further point of submission is that the Hon''ble Apex Court has observed that the guidelines of the R.B.I, have statutory force and the bank is bound to give effect to such guidelines, therefore, the appellant cannot go against the settlement based on these guidelines issued by the R.B.I. It has also been argued before this Tribunal from the side of the bank contending that despite so called alleged compromise, dated 29th May, 2000 when no payment was made as per terms of the compromise why the bank kept on sleeping knowing well that the respondents had not deposited any amount as required, under the aforesaid compromise remains unexplained. The other submission from the side off the respondents is that above AnnexureI compromise filed in the present appeal cannot be taken to be a compromise as it is not bilateral, because in absence of signature of any of the respondents or their Counsel on it, the bank cannot claim that the above Annexure1, compromise, ever took place. Attention of this Tribunal has been drawn towards the order sheet of the D.R.T. from the side of the respondents to argue that when the learned D.R.T. found justified claim of respondents with regard to their liability to the extent of Rs. 4.81 lacs only under O.T.S. 3rd scheme, the impugned order is proper and cannot be challenged in this appeal.

5. In support of his above argument learned Counsel for the respondents has tried to lay emphasis on the principles of law decided on public policy enunciated in Code of Civil Procedure. In this connection he has cited *Jadav Chandra Sarkar v. Union Bank of India*, (1990) 12 Administrative Tribunal's Case 457. decided by Central Administrative Tribunal, Calcutta, .*Sarguja Transport Services v. State Transport Appellate Tribunal, Gwalior*. AIR 1987 SC 88. On the point of circular/guidelines of R.B.I, he has cited *Central Bank of India v. Sharad Rice Industries*, (2006) BC 182. (D.R.A.T./D.R.T.) of this Tribunal, *Eastern Paper Mills Machinery Pvt. Ltd. v. State Bank of India*. 2005 (2) Bank CLR 587. of Hon''ble Calcutta High Court to argue that R.B.I. Guidelines are statutory and proposal for compromise, if any, has to be considered by bank, if request is made for payment under any other O.T.S. Scheme. In this Very connection rulings *Chanda Engineers (India) Ltd. v. U.C.O. Bank* 2005 (3) Bank CLR 461. of Hon''ble Calcutta High Court, *Central Bank of India v. Ravindra*, 6 of Hon''ble Apex Court, judgment of this Tribunal in *Bank of Baroda v. Shrcce Mahalaxmi Refinen/*, Appeal No. R36/01, decided on 12th April, 2005 and *Haryana Steel and Alloys Ltd. v. I.F.C.I. Ltd.* AIR 2007 Delhi 65. have also been cited to support above submissions.

6. I have considered above submissions and have gone through the records. The question which arises for consideration are, whether Annexure1 available on record said to be the alleged compromise dated 29th May, 2000 could be taken

to be a compromise, because it has several discrepancies. Firstly, a perusal of this paper shows that it is just, a letter sent by the bank to the respondent firm with request to accept the terms of proposal of compromise. Secondly, it is noteworthy that the mention of "in the Court of D.R.T., Jabalpur" in the middle of this letter, whereas the case was not pending before D.R.T., Jabalpur, remains unexplained. Thirdly, absence of signature of any of the respondents also creates doubt and fourthly, no mention of filing of any such compromise in the ordersheet of D.R.T. is further worth noting. Undoubtedly, there is repeated mention in the form of the statement of the learned Counsel appearing before D.R.T. on behalf of present respondents for his admission of settlement as mentioned in above letter. But in the strict sense the compromise should have been drafted properly at least to show that the present respondents had agreed to such compromise. The learned Presiding Officer, D.R.T., it seems, has not paid any attention towards this aspect of the matter and above letter has been taken to be a compromise. So far as the second point which is to be considered is "whether after issuance of 3rd scheme of O.T.S. by R.B.I. the respondents could resile from the aforesaid alleged earlier compromise despite above discrepancies in Annexure 1, in case the matter was settled by compromise " If the finding comes that it was arrived at, this Tribunal is of the view that clear finding is required on these points by the D.R.T. and thereafter, if at all, the O.T.S. 3rd scheme was to be applied in the instant case, instead of imposing this scheme on the appellant bank without its consent at the instance of present respondents, the Tribunal should have issued specific direction to the appellant bank to consider the same under the said scheme and then it should have passed appropriate order to dispose off the matter finally particularly when it is settled law that the R.B.I, guidelines have statutory force and the bank cannot ignore to settle the matter in the light of such guidelines, if the case falls within its ambit and D.R.T. has to see the applicability of above 3rd scheme after hearing both parties. This Tribunal could have disposed off the matter finally but as the finding on above points are to be given by the Tribunal and the right of the appeal against finding of D.R.T., if any, would be finished in case this Tribunal gives finding for the first time on the points in this appeal it would be just and proper if the matter is sent back to the D.R.T. concerned in the light of above observations. This Tribunal is not expressing any opinion on the merits of the case.

7. With these observations, the appeal stands disposed off. Let the record be sent back to the concerned D.R.T. for deciding the case in the light of observations made above in the body of this judgment.

ORDERS

8. With the observations made above, this appeal stands disposed off. Let the record be sent back to the concerned D.R.T. for deciding the case expeditiously in the light of above observations. Parties to appear there on 22nd May, 2007 for further orders and they shall cooperate in early disposal of the case.