

(2010) 03 CHH CK 0019
In the Chhattisgarh High Court

Central Bank of India

APPELLANT

Vs

Sharad Rice Industries and etc.

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 35
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 18, 8
Penal Code, 1860 (IPC) — Section 193, 195, 196, 228
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19, 19(7), 19(9), 20

Citation : AIR 2010 Chh 69

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Judgement

Dhirendra Mishra, J.—The above writ petitions are being disposed of by this common order as the issue involved in these petitions is same. However, for the purpose of this order, reference is made to the facts of W.P. No. 3029/2006 (Central Bank of India v. M/s. Sharad Rice Industries).

2. The petitioner by the instant petition has prayed for followed substantial relief:

i. That, the Hon"ble Court may kindly be pleased to by writ of certiorari to quash the order dated 19-12-2005 (Annexure P/1) passed by DRAT Allahabad and the order dated 28-9-2001 (Annexure P/2) passed by DRT Jabalpur.

ii. That, the stricture passed by the Tribunal/Appellate Tribunal against the officers of the Bank may kindly be deleted/struck off in the interest of justice.

3. Briefly stated, facts of the case are that the respondent borrower was sanctioned loan of Rs. 6 lac for construction of rice mill and purchase of plant and machineries and Rs. 5 Lac as Cash Credit (Hypothecation) on 12-10-1987.

The respondent-borrower committed defaults in making repayment. The petitioner-bank filed an original application for recovery of balance of loan

account together with interest @ 14.5% p.a. on 14-8-2001 vide Annexure P-4 in the Debt Recovery Tribunal, Jabalpur (for brevity "DRT").

In the said proceedings, the respondent moved an application of Annexure P-5 u/s 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993") read with Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (for short "the Rules of 1993") and prayed for issuance of direction to the petitioner bank to follow and implement the guidelines of the Reserve Bank of India (for short "RBI") for "One Time Settlement Scheme" (for short "OTS scheme") to the account of the respondent or direct the bank to settle the outstanding in the captioned recovery application for Rs. 8,20,000/- and to extend benefit of RBI guidelines.

In its reply (Annexure P-6) the bank expressed its willingness to settle the account at Rs. 50,98,983/- minimum compromise amount as per module approach of Annexure P-7.

4. The DRT directed the respondent-borrower to make payment of Rs. 8,20,000/- towards full and final settlement of dues being balance as on 31-3-1992, as calculated by the bank, since the account was categorized as "Non Performing Asset" (NPA) on 31-3-1992 and therefore, the benefit of RBI guidelines dated 20-7-2000 must be extended to the respondent borrower. While passing the impugned order certain strictures/observations have also been made against the officers of the bank by the DRT.

5. The bank preferred an appeal under Sections 20 and 17 of the Act of 1993 before the Debts Recovery Appellate Tribunal, Allahabad (for short "DRAT"), however, the appeal stands dismissed by the impugned order of Annexure P-1.

6. Mr. Guru, learned Counsel for the petitioner-bank submits that the tribunals below committed error of law and jurisdiction in holding that the RBI OTS scheme is enforceable and the bank can be directed to settle for a lesser amount than what the bank is demanding by way of a compromise. The DRT failed to appreciate that case of the respondent borrower is not covered under the RBI OTS scheme though the stand of the bank was that the account turned NPA on 31-3-1992. It was also pleaded that interests were remitted in both the accounts till 1994 and 1995 respectively. RBI's guidelines for the OTS scheme have not been issued in exercise of statutory powers under Sections 21 and 35 of the Banking Regulation Act and therefore, the said guidelines do not partake character of statutory circular/guidelines/directions and do not have binding effect. It was also argued that the DRT passed the impugned order without following the mandatory provisions of Section 19 of the Act of 1993. The respondent-borrower did not file reply to the original application, however, the original application has been disposed of while deciding the application preferred by the respondent u/s 22 of the Act of 1993, which is not permissible under the law.

Reliance is placed on the judgment in the matter of Nahar Industrial Enterprises

Ltd. v. Hong Kong and Shanghai Banking Corporation AIR 2009 SCW 6262 : AIR 2009 SC (Supp) 2474.

7. On the other hand, Mr. Agarwal, learned Counsel for the respondent would argue that only issue raised in the writ petition is regarding the OTS scheme issued by the RBI. It is settled law that guidelines issued by the RBI regarding the OTS scheme have been held to have statutory force and the same are enforceable by the Courts and the tribunals. Amount under the scheme has to be a NPA amount and the same, in the instant case, has been determined by the bank itself, which is evident from the documents of Annexure R-5 and R-14. From the documents available on record, it is clear that account of the respondent was categorized as NPA on 31-3-1992 and once the account is categorized as NPA, no interest can be debited in the account as per guidelines of the RBI.

8. We have heard learned Counsel for the parties and we have perused the impugned orders.

9. In a recovery proceedings initiated against the respondent by the petitioner-bank u/s 19 of the Act of 1993, the respondent filed an application u/s 22 of the Act of 1993 read with Rule 8 of the Rules of 1993 and stated that his account with the bank was marked as "NPA" on 31-3-1992 and was categorized as "Bad Debt" prior to 31-3-1997. Since the account was marked as "NPA" prior to 31-3-1997, the respondent was entitled to take benefit of the OTS scheme of the RBI. The respondent was invited to settle the outstanding as per the RBI guidelines. Finally, terms of repayment were agreed strictly as per RBI guidelines and the respondent informed that even 25% of the settlement amount was deposited in the shape of FDRs. The account for settlement was further amended at Rs. 8,20,000/- and the bank recommended the above settlement vide its letter dated 28-6-2001 (Annexure R-14).

10. On the basis of rival contentions of the respective parties following issues were framed by the DRT.

1. Whether account of the defendant No. 1 was marked NPA on 31st March 1992? Whether benefit of RBI Scheme can be extended to the defendants ?

2. Whether the dues of the applicant bank can be settled based on the calculations made by the applicant bank itself as per the RBI guidelines ?

3. Whether the RBI guidelines are enforceable by the Courts/tribunals and whether the banks are bound to comply with and follow the guidelines of RBI ?

11. Relying upon the undisputed documents available on record, prepared by the bank itself, and also considering the averments in para 10 of the original application, it has been held that the account was categorized as "NPA" on 31-3-1992 and therefore, benefit of circular of RBI dated 20-7-2000 must be extended to the defendant. It was further held that RBI vide its circular dated 20-7-2000 decided to extend some concession to those borrowers whose

accounts have been categorized as NPA prior to 31-3-1997. The scheme was finally extended till 30-6-2001 with a direction to decide the applications by 30-9-2001. Applying the provisions for settlement under the scheme it was held that since the account was marked as NPA on 31-3-1992 and was classified as "doubtful account" prior to 31-3-1997, the respondent's account can be settled under the OTS scheme, Since the bank has calculated the balance as on 31-3-1992 at Rs. 8,20,000/-, the applicant is bound to settle its dues for the aforesaid amount in the light of the guidelines of the RBI and the respondent was directed to make payment of Rs. 8,20,000/- to the applicant in full and final settlement of the dues of the applicant bank prayed for recovery in the captioned recovery application on the terms provided in the RBI scheme. On payment of the. aforesaid amount, the bank shall discharge the hypothecated stocks.

It has been further held that all the nationalized banks are bound by the guidelines of the RBI and the same are enforceable by the Courts and the tribunals as well. Thus, all the three issues have been decided in favour of the respondent borrower and against the bank.

Finally, the DRT has also observed that despite the fact that case of the defendant is covered under the RBI OTS scheme, the benefits of the OTS scheme was not extended to the borrower, which amounts to harassment by the bank officials, and they have chosen to file present application for recovery of their dues and in the process have spent about Rs. 90,000/- which amounts to waste of public amount, in filing application and other legal and incidental charges.

12. Appeal preferred by the petitioner bank against the order passed by the DRT has been further dismissed by the impugned order and the DRAT has held that the contention of the petitioner bank that RBI guidelines dated 20-7-2000 has no statutory effect as the same has not been issued under Sections 21 & 35 of the Banking Regulation Act, has no force and since the petitioner bank have themselves categorically admitted that the account become "doubtful account" on 31-3-1992, they cannot be permitted to reverse their own stand in categorizing the account as NPA. The prayer of the petitioner bank to expunge the remark/stricture has also been rejected.

13. M/s. Guru, learned Counsel for the petitioner bank, in addition to the grounds taken by the bank before the tribunals below, has also tried to attack the procedure followed by the DRT in disposing of the original application of the bank while considering the application filed u/s 22 of the Act of 1993 read with Rule 8 of the Rules of 1993 on the ground that the same is de hors the scheme of the Act of 1993, though, no such objection was taken by the petitioner bank before the tribunals below.

Referring to Paras 22 to 27 of the judgment in the matter of Nahar Industrial Enterprises Ltd. AIR 2009 SC (Supp) 2474, it was vehemently argued that the statutory framework under the Act of 1993 clearly provides that the DRT is constituted to facilitate recovery of huge amount of public money belonging to

the public sector, banks and financial institutions, which are locked-up in the pending litigations. As per procedure prescribed for the tribunals, on filing of application for recovery of dues by the financial institutions, the respondents are required to file written statement, as envisaged under Sub-section (7) of Section 19 of the Act, 1993 with liberty to set up a cross-objection/counter claim, and the tribunal is to decide both, the original and the counterclaim, by passing a final order under Sub-section (9) of the Section 19 of the Act of 1993. However, in the instant case the respondent, without filing any reply to the original application submitted an application u/s 22 of the Act of 1993 read with Rule 8 of the Rules of 1993 and the DRT, while passing the orders on the said application, also disposed of the original application, which is not permissible under the law. 14. Section 22 of the Act of 1993 provides for procedure and power of the tribunal and the appellate tribunal, which reads as under:

22. Procedure and Powers of the Tribunal and the Appellate Tribunal .- (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places of which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents;
- c. receiving evidence on affidavits;
- d. issuing commissions for the examination of witnesses or documents;
- e. reviewing its decisions;
- f. dismissing an application for default or deciding it ex parte;
- g. setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- h. any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure,

1973 (2 of 1974).

15. Rule 8 of the Rules of 1993 deals with the contents of the application.

16. From a bare reading of Section 22 of the Act of 1993 it is clear that the tribunals below are not bound by the procedure laid down by the CPC and they are only guided by the principles of natural justice subject to provisions of the Act and any Rules. They are at liberty to regulate their own procedure including the places at which they shall have their sittings.

17. In the instant case the respondent objected to the original application filed by the petitioner bank on the grounds taken by him in his application u/s 22 of the Act of 1993. The DRT, on the basis of objection taken by the respondent, framed issues and decided the same on the basis of material available on record and reached to the conclusion that the account of the respondent was declared as NPA account on 31-3-1992, which was categorized as bad debt. Balance as on 31-3-1992 has been calculated by the bank as Rs. 8,20,000/- and therefore the bank is bound to settle its dues for the aforesaid amount in the light of the guidelines of the RBI.

18. In view of specific provisions of the Act of 1993, we are of the opinion that procedure followed by the DRT while deciding the original application preferred by the petitioner bank cannot be faulted.

19. Next question for our consideration is whether the DRT and the DRAT were justified in holding that the RBI guidelines for the OTS scheme are enforceable by the Courts/tribunals and the banks are bound to comply with and follow the guidelines ?

20. The above issue came up for consideration before the Hon"ble Supreme Court in its latest judgment in the matter of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, and the Hon"ble Supreme Court referring to Para 15 of the Constitution Bench judgment in the matter of Central Bank of India Vs. Ravindra and Others, has observed in Para 32 of its judgment thus:

32. If a public sector bank is otherwise bound by any guidelines issued by Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellants had prayed for quashing of a policy decision, taken by the respondent Bank.

21. Observations of the Division Bench of the Hon"ble Supreme Court in para 8 of the judgment in the matter of Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, has held to be per incuriam as the decision was without noticing the decision of the Central Bank of India Vs. Ravindra and Others, and finally it has been observed in para 42 thus:

42. If in terms of the guidelines issued by Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not

be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution of India, the High Courts may or may not issue such a direction but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such onetime settlement.

22. Following the judgment of the Hon'ble Supreme Court in the matter of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, we are of view that the DRT as well as DRAT were entitled to consider the effect of the OTS scheme of the RBI. On the basis of material available on record, the DRT held that the respondent's account was marked as NPA on 31-3-1992 and was classified as "doubtful account" prior to 31-3-1997, therefore, account can be settled under the OTS scheme and the bank was directed to settle the account on payment of Rs. 8,20,000/-, the balance calculated by the bank on 31-3-1992. The finding was confirmed by the DRAT in appeal. Since the above finding of fact is based on the material available on record, no interference is called.

23. However, the DRT was not justified in passing the adverse remarks against the officials of the petitioner bank, who took decision to file recovery application against the respondent borrower and that too without serving any notice to such officers and affording them opportunity of hearing. The petitioner bank under the bona fide belief that revised guidelines issued by the RBI are only in the nature of internal guidelines for the banks and financial institutions and as such, executive instructions and such executive instructions have no statutory force and they do not create any right in favour of the borrowers as held in Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, by the Hon'ble Supreme Court, initiated proceedings for recovery. Therefore, adverse observations/stricture against the officers of the bank in the concluding paragraph of the order of the DRT, which was subsequently confirmed by the DRAT, was absolutely uncalled for and the same is liable to be expunged/deleted.

24. In the result, the petitions are disposed of in the following terms:

- i. Prayer of the petitioner bank for quashing of the order of Annexure P-1 dated 19-12-2005 passed by the DRAT confirming the order dated 28-9-2001 (Annexure P-2) passed by the DRT is rejected.
- ii. Stricture passed by the DRT in its order dated 28-9-2001 (Annexure P-2) against the officers of the bank, which has been subsequently confirmed by the DRAT vide order dated 19-12-2005 (Annexure P-1), is hereby expunged.

25. No order as to costs.