(2008) 02 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No''s. 16068 and 16069 of 2007 and M.P. No''s. 1 and 2 (for each cases) of 2007

Chand Narain Langar APPELLANT

Vs

Punjab and Sindh Bank and Others RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 21

Citation : (2008) 02 MAD CK 0038

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : J. Srinivasa Mohan, for the Appellant; V. Srinivas, for N.V.S. Associates for R-1, Chitra Sampath, for R-5 and Pushpa Menon, for R-7, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—As both the Writ Petitions have been preferred by the common petitioner against the common respondents and

arise out of the orders passed by the Debts Recovery Appellate Tribunal, Chennai (for short, ''Appellate Tribunal'') in a common proceedings, they

were heard together and disposed of by this common order.

2(i). The petitioner preferred an appeal before the Appellate Tribunal against the decree passed by the Debts Recovery Tribunal (for short,

''Tribunal''), Hyderabad. In the said appeal, he preferred a petition under proviso to Section 21 of the Recovery of Debts due to Banks and

Financial Institutions Act, 1993 (hereinafter referred to as ''the Act'') for waiver of the amount as required to be deposited u/s 21 of the Act. The

Appellate Tribunal, Chennai, vide the impugned order dated 10.4.2007, directed the petitioner to deposit a sum of Rupees One Crore only, with the first respondent-Bank in instalments, i.e. Rs. 25 lakhs on or before 16.4.2007 and the balance Rs. 75 lakhs in three equal instalments at Rs. 25

lakhs each, on 16.5.2007, 16.6.2007 and 16.7.2007. The conditional interim order of stay was passed, subject to the payment of the aforesaid

amounts and on being failure to pay the first instalment on or before 16.4.2007, the Bank was given liberty to proceed against him for realisation of

the amount. W.P. No. 16069 of 2007 had been preferred by the petitioner against the said order dated 10.4.2007.

(ii) Having failed to deposit the amount, the Appellate Tribunal, by the order dated 17.4.2007, vacated the order of interim stay and rejected the

appeal for non-compliance of the conditions, with liberty to the Bank to proceed with the further proceedings for realisation of the amount in

accordance with law. The said order had been challenged by the petitioner in the other Writ Petition, namely W.P. No. 16068 of 2007.

3(i). Learned Counsel for the petitioner placed relevant facts to suggest that the petitioner was justified in claiming complete waiver of the amount

for hearing of the appeal, in view of the undue hardship faced by him. The following facts were highlighted:

According to the petitioner, as the respondents 2 to 5 who availed the credit facility of Rs. 65 lakhs, out of which, a margin money was retained by

the first respondent-Punjab and Sindh Bank; the credit facility was for the project of making the Voter''s Identity Card for the Election Commission

of India (for short, ''ECI'') meant for the people of Girdhi (in the State of Jharkhand) and Samastipur Constituencies (in the State of Bihar), which

were the constituencies of Bihar; the Electronic System Punjab Limited, (for short ''ESPL''), Mohali, now merged with Electronic Corporation of

Punjab Limited, got the order from the ECI and in turn, they placed the order on the principal borrower, namely M/s. S.R. Imaging System, the

second respondent herein, a partnership firm. The Election Cards were delivered to ESPL in Bihar. In general terms of the Bank agreement, the

Bills ought to have been routed through the Bank, but the ESPL did not route the Bills through the Bank, resulting in the non-receipt of proceeds

by the Bank in the said transaction. With such a conduct of the ESPL, the Bank and the principal borrower, according to the petitioner, conspired,

which calls for interference.

(ii) Further case of the petitioner is that the respondents 3 to 5 were introduced to the petitioner by the common friend and after gaining confidence

of the petitioner, had taken the documents relating to the petitioner''s property and deposited the same with the first respondent-Bank.

(iii) The Bank approached the Tribunal at Hyderabad for recovery of the amount/ facility advanced. It was allowed on 21.2.2001 and the

Recovery Certificate was also issued. The said Recovery Certificate was sought to be executed in Delhi against the property of the petitioner.

Consequently, the petitioner submitted that it was at that stage that the petitioner could come to know about the fraud played by the respondents 2

to 4 with the connivance of the first respondent-Bank.

(iv) Having found that the Bank had not acted properly or discharged its duties in keeping a watch on the loan transaction qua the principal

borrower, i.e. Respondents 2 to 5, the petitioner took steps before the Tribunal at Delhi in the Recovery Proceedings and the respondents 3 to 5

appeared. They (respondents 3 to 5) tried to take steps to arrive at a settlement with the Bank and ""One Time Settlement"" (for short, ""OTS"") was

arrived at and accepted by the Bank for a sum of Rs. 90 lakhs.

(v) It was submitted by the learned Counsel for the petitioner that from the proceedings before the Tribunal at Delhi, it will be clear that the claim of

the Bank had been settled and counsel for the Bank also made submission on those lines before the Tribunal at Delhi. The Bank had received a

sum of Rs. 5 lakhs and cheques were also issued for further amounts, which are stated to have been encashed.

(vi) It was submitted on behalf of the petitioner that the moment a settlement is arrived at between the Bank and the borrower(s) and such issue is

settled by the Tribunal, the guarantors stand discharged; the same puts and end to the liability of the guarantors. What happened after the

settlement is not the issue for the guarantors to keep in track who is entitled to get back the document. The OTS once accepted and acted upon,

the earlier agreement stands discarded and cannot be acted upon.

(vii) As an ex-parte order was passed on the basis of the original agreement between the parties, and the matter was subsequently settled in terms

of the OTS before the Tribunal at Delhi, the petitioner filed an application to set aside the ex-parte order passed by the Tribunal at Hyderabad in

2001. It was submitted that the said application in effect should have been treated as an application for discharge of liability. But no substantive

relief having been granted, the petitioner had to move before the Appellate Tribunal at Chennai against the ex-parte order of the Tribunal at

Hyderabad, wherein the aforesaid conditional interim order was initially passed, followed by the dismissal of the appeal for non-compliance of the

interim order, which are under challenge.

4. The Bank has appeared and not disputed the fact that a compromise was going on between the parties. According to the first respondent-Bank,

it received the proposal for compromise only from Mr. Ramakrishna, one of the guarantors to the loan, against its proposal to Rs. 90 lakhs. The

Bank demanded that he should remit atleast Rs. 92.50 lakhs and further communicated that on failure, the Bank may recover the entire amount.

Therefore, the proposal of the fourth respondent-Ramakrishna was subject to the condition. After the first cheque, the second cheque No.

009762, dated 21.6.2003 was issued by Mr. Ramakrishna for Rs. 45 lakhs, but it was dishonoured by the Union Bank of India with a reason

Payments Stopped"" and thereafter, no payment was made either by the borrower(s) or by the guarantors.

5. The seventh respondent is the auction purchaser. Learned Counsel for the seventh respondent submitted that in response to a public notice for

public auction, scheduled to be held on 20.4.2007 in respect of a residential building bearing No. 437, Block ""S"", Greater Kailash-II, New Delhi,

the seventh respondent participated in the said auction-sale and thereafter, the auction was re-scheduled to take place on 30.4.2007 at 12.30 p.m.

in New Delhi and on the said date, i.e. 30.4.2007, the seventh respondent deposited 25% of the bid amount, amounting to Rs. 1,17,31,210/- and

the said amount included the participation in the bid amount of Rs. 90 lakhs and 1% poundage fee. It is stated that the highest bid made by the

seventh respondent was accepted, but in view of the interim order of stay passed by this Court on 2.5.2007 in the present Writ Petitions, nothing

proceeded. Inspite of the fact that there was an order of stay passed by this Court, the Recovery Officer of the Tribunal at Hyderabad, directed

the auction purchaser (the seventh respondent) to deposit the balance amount of Rs. 3,38,40,000/- which the seventh respondent was forced to deposit. Later on, when it was brought to the notice of the Recovery Officer that the demand was so made against the High Court''s order of stay

and that the dispute may continue for longer, the Recovery Officer, vide the order dated 19.11.2007 (as seen from page 1 of the typed set filed by

the seventh respondent), ordered to pay back the amount to the auction purchaser (seventh respondent). Learned Counsel appearing for the

seventh respondent submitted that atleast the amount deposited in view of the order passed by the Recovery Officer i.e. Rs. 3,38,40,000/- should

be refunded immediately in view of the Recovery Officer''s order dated 19.11.2007.

6(i). In the present case, we are not supposed to decide the question whether OTS was arrived at and thereby the petitioner should have been

discharged from the liability. We are also not inclined to decide whether the ex-parte order as was passed by the Tribunal at Hyderabad, and

challenged in the appeal before the Appellate Tribunal at Chennai, was justified or not.

(ii) The only question for determination is whether the amount required to be deposited u/s 21 of the Act should have been waived by the

Appellate Tribunal, at Chennai, in the facts and circumstances brought by the petitioner before the Appellate Tribunal.

7. The petitioner has specifically taken a plea that he is an aged person (senior citizen i.e. more than 60 years old). He is suffering from Cancer and

has no source of income and the land and the building in question which are put on auction, is his residential building where he is residing while

suffering from Cancer. This has been pleaded by the petitioner specifically at paragraph 3 of the affidavit filed in support of the Writ Petitions,

wherein he has stated that he is taking medical treatment for Cancer and undergoing Chemotherapy. Similar plea was taken before the Appellate

Tribunal at Chennai as is evident from the last portion of paragraph 2 of the impugned order dated 10.4.2007, wherein the Appellate Tribunal

noticed that the petitioner is under medical treatment and he is facing severe financial constraints and therefore, he is not in a position to deposit the

amount as required u/s 21 of the Act and prayed for waiver.

8(i). The Appellate Tribunal failed to address on the issue whether in the facts and circumstances, 100% waiver was called for. On the other hand, the Appellate Tribunal proceeded on the merits of the appeal, having noticed the objection of the Bank.

(ii) In our view, it was a fit case for waiver of 100% of the amount as required to be deposited as a pre-condition u/s 21 of the Act, as a case of

undue hardship had been made out by the petitioner.

9. As the Appellate Tribunal at Chennai failed to appreciate the aforesaid question and erred in dismissing the appeal, we are setting aside both the

orders dated 10.4.2007 and 17.4.2007 which are impugned in these Writ Petitions, and restore the appeal with a direction to the Appellate

Tribunal at Chennai to decide the appeal on merits, waiving 100% of the amount as required to be deposited u/s 21 of the Act, with a further

direction to continue the interim order of stay as was passed in the said appeal, without pre-condition. It is expected that the appeal shall be

determined at an early date and the parties will not ask for unnecessary adjournment.

10. So far as the seventh respondent is concerned, the Recovery Officer having passed favourable order in her favour, dated 19.11.2007, the

concerned authority/respondent will pay back the amount to the seventh respondent as and when the seventh respondent approaches such

authority/respondent.

11. Both the Writ Petitions are allowed with the aforesaid observation and directions. There shall be no order as to costs. The Miscellaneous

Petitions are closed.

