(2020) 09 DRT CK 0007

In the Debts Recovery Tribunal

Case No : Original Application No. 136 Of 2017

Indian Bank APPELLANT

Vs

M/s. Sri Gokulam Traders And Ors. RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Citation : (2020) 09 DRT CK 0007

Hon'ble Judges : Ganapathi K.R.K, J

Bench : Single Bench

Advocate : M/s. S.R. Sumathy, C. Thilagaraj

Final Decision : Allowed

Judgement

1. This application is filed by the applicant bank against defendants for recovery of a total sum of Rs.1,05,38,011/- (Rupees One Crore Five Lakhs Thirty Eight Thousand & Eleven Only) viz., Rs. 90,09,047/- (Loan Account No. 6266888103) & Rs. 14,87,864/- (Loan Account No.629414 2082) towards OCC facility along with expenses Rs.41,100/- together with interest thereon at the rate of 13.95% per annum with monthly rests plus penal interest at the rate of 2% per annum from the date of filing of this application till realization, along with costs of the application.

2. Summons issued to D1 & D2 returned un-served with postal endorsement "Left". Summon issued to D3 returned with postal endorsement "Refused". Applicant bank issued private notice and effected paper publication for D1 to D3. Private notice to D1 & D2 returned un-served with postal endorsement "Left" & Private notice to D3 returned with postal endorsement "Refused". Despite which defendants neither choose to enter appearance nor filed any written statement. Hence D1 to D3 were called absent and set ex-parte on 04.09.2017. Applicant bank filed its Proof Affidavit along with 30 documents, which were marked as Ex. A-1 to A-30. The O.A. was finally heard and stood over till this day for passing ex-parte final order.

3. The facts leading to filing of this O.A. are :-

a) First Defendant, M/s. Sri Gokulam Traders is a Partnership firm, wherein defendants 2 and 3 are its Partners. First defendant approached Applicant Bank on 14.08.2014 seeking financial assistance for their business. Considering the request of 1st defendant, Applicant Bank vide its Sanction Ticket dated 06.11.2014 (Ex.A-1) sanctioned Open Cash Credit (Adhoc) facility to the tune of Rs.75,00,000/- and a sum of Rs.15,00,000/- vide its Sanction Ticket dated 17.12.2014 (Ex.A-2) to 1st defendant aggregating to Rs.90,00,000/- repayable with interest at the rate of 14.55% p.a. with monthly rests plus penal interest in case of default. Second and third defendants stood as guarantors for the aforesaid credit facility availed by first defendant and executed necessary documents in favour of applicant bank. Third defendant offered her immovable property as security for due repayment of credit facilities availed by first defendant.

b) Having availed the aforesaid loan, defendants executed following documents in favour of applicant bank in respect of Cash Credit facility of Rs.75 lakhs:

(i) Joint & Several Demand Promissory Note dated 07.11.2014 for Rs.75.00 lakhs (Ex.A-3),

(ii) Undertaking Letter dated 07.11.2014 executed by 3rd defendant (Ex.A-4),

(iii) Partnership Letter dated 07.11.2014 (Ex.A-5),

(iv) Agreement of Hypothecation dated 07.11.2014 (Ex.A-6),

(v) Letter from Borrower/s for Disclosure of Information dated 07.11.2014 (Ex.A-7),

(vi) Letter of Pegging dated 07.11.2014 (Ex.A-8),

(vii) Declaration by the Borrower dated 07.11.2014 (Ex.A-9),

(ix) Agreement of Guarantee dated 07.11.2014 (Ex.A-10),

(x) Letter from the Party to Bank for confirmation of Equitable Mortgage dated 08.11.2014 (Ex.A-11);

(xi) Consent Letter from the Guarantor for Disclosure of Information dated 07.11.2014 (Ex.A-12)

c) Third defendant offered the schedule properties as collateral security for the credit facility availed by 1st defendant and accordingly created Equitable Mortgage in favour of applicant bank on 07.11.2014. 3rd defendant also executed Registered Memorandum of Deposit of Title Deeds (MODTDs) in favour of applicant bank in respect of Schedule Property on 11.11.2014 bearing Doc.No.15469/2014 (Ex.A-13). Further, 3rd defendant also executed Supplemental Registered MODTD on 09.03.2015 in respect of the schedule property offered as security in favour of applicant bank vide Doc. Nos.

3325/2015 (Ex.A-14) . 2nd & 3rd defendants stood as Guarantors for the above credit facilities availed by 1st defendant and on 19.12.2014, 3rd defendant extended the Equitable Mortgage created on 07.11.2014. Registered Settlement Deed executed by P.Mathiyalagan in favour of M.Vijayakumari bearing Doc. No.4946/2012 is marked as Ex.A-16.

d) Defendants executed following documents in favour of applicant bank in respect of Cash Credit facility of Rs.15 lakhs availed by first defendant:

i) Single / Joint Demand Promissory Note dated 18.12.2014 for Rs.15.00 lakhs (Ex.A-17).

ii) Disposal Proceeds Letter dated 18.12.2014 (Ex.A-18).

iii) Declaration by the Borrower dated 18.12.2014 (Ex.A-19).

iv) Letter from Party to Bank confirming Extension of Equitable Mortgage dated 19.12.2014 (Ex.A-20).

v) Partnership Letter dated 18.12.2014 (Ex.A-21).

vi) Letter from the Borrower for Disclosure of Information dated 18.12.2014 (Ex.A-22)

vii) Agreement of Guarantee by 2nd defendant dated 18.12.2014 (Ex.A-23).

viii) Agreement of Guarantee by 3rd defendant dated 18.12.2014 (Ex.A-24).

ix) Agreement for Open Cash Credit dated 18.12.2014 (Ex.A-25).

x) Consent Letter from Guarantor dated 18.12.2014 (Ex.A-26).

xi) Letter of Continuity dated 18.12.2014 (Ex.A-27).

xii) Agreement of Hypothecation of Movables dated 18.12.2014 (Ex.A-28).

e) After availing the loan, operations of the said account were not commensurate with the limit. Defendants did not repay the amounts due to the applicant bank inspite of repeated demands and requests. On account of delay in payment / default committed by defendants, applicant bank classified the loan accounts as NPA on 30.03.2016 and issued notices under SARFAESI Act to defendants on 15.07.2016 and 05.08.2016. But defendants failed to respond. As all the efforts of applicant bank for recovery from defendants went in vain, applicant bank approached this Tribunal for recovery of its dues from defendants.

g) Hence, above O.A. has been filed for recovery of a total sum of Rs.1,05,38,011/- (Rupees One Crore Five Lakhs Thirty Eight Thousand & Eleven Only) viz., Rs. 90,09,047/- (Loan Account No. 6266888103) & Rs.14,87,864/- (Loan Account No.629414 2082) towards OCC facility along with expenses Rs.41,100/- together with further interest thereon, as evidenced by Statement of Accounts (Ex.A-29 & Ex.A- 30) filed along with O.A.

4. Points for Consideration

(i) Whether applicant bank is entitled for the claim amount in the application from the defendants?

(ii) Whether applicant bank is entitled to get rate of interest as prayed in the OA during the pendent lite period?

Points:

5. A careful examination of the pleadings in the Proof Affidavit and documents viz. Exhibits A-1 to A-30 evidence that the borrowal of credit facilities and execution of loan and security documents are true, in terms of averments made in Original Application as well as Proof Affidavit filed by applicant bank establishing its claim. Applicant bank filed Statement of Accounts duly certified under Bankers' Book Evidence Act, evidencing amount claimed against defendants. Defendants were set ex-parte on 04.09.2017, but till this day did not take any action to set aside the ex-parte order and did not choose to contest the claim. Further, a careful scrutiny of records makes it clear that present application is filed well within limitation and this Tribunal possess necessary and proper jurisdiction to entertain and adjudicate the claim. No oral or documentary evidence on the side of defendants are produced or filed to dispute the claim of applicant bank. Defendants neither confronted nor rebutted the documents produced and relied upon by applicant bank. Hence, it can be concluded that applicant bank has proved its claim against defendants.

5.1 During verification and examination of documents, Office has brought to the notice of this Tribunal that document marked as Ex A-15 being Supplemental Memorandum of Deposit of Title deeds, executed by third defendant, related to extending her guarantee to some other borrowers and not defendants 1 and 2 herein. The said Supplemental registered memorandum of deposit of title deeds since marked as Ex A-15 does not pertain to this case but refers to some other facility extended by the bank. Although the schedule of property is the same as was offered for facility granted and utilized by first defendant herein, and guaranteed by third defendant herein and further extended for yet another contemplated loan transaction of Rs.2.5 crores. Memorandum of deposit of title deeds duly registered and extended for this OA loan amount are Exhibits A-13 and A-14 only and Ex A-15 is not considered as relevant document, for the purpose of determination of the rights of parties in this OA claim. In the circumstances, Office is directed to return Ex A-15 under proper acknowledgment to applicant bank or its counsel, as per extant guidelines.

6. In view of what has been discussed above, it is observed that applicant bank has proved its O.A. claim against defendants and applicant is entitled to Recovery Certificate in O.A. in terms of the direction given below. Points (i) & (ii) are answered accordingly.

7. In the result:-

(a) Applicant bank is entitled for a Recovery Certificate as against defendants for a total sum of Rs.1,05,38,011/- (Rupees One Crore Five Lakhs Thirty Eight Thousand & Eleven Only) together with interest thereon together with interest at the rate of 8% p.a. (simple) on the amount as determined above and remained unpaid from the date of filing of this O.A till the date of its realization with costs.

(b) It is further ordered that any amount remitted by defendants or realized by applicant bank during pendency of this OA, shall be given due credit to the respective loan account of defendants.

(c) It is ordered that in case of default by defendants to pay the amount adjudged, applicant bank is entitled to sell the schedule mentioned properties of 3rd defendant to answer the claim of the Recovery Certificate and appropriate the sale proceeds towards amount due.

(d) If sale proceeds are not found sufficient, after defraying expenses of such sale for the payment of all such amounts, defendants 2 & 3 are personally liable for the deficiency of adjudged amount with costs until realization.

(e) Schedule mentioned in the OA shall form part of Recovery Certificate.

8. It is further ordered that 15 days time is granted to the applicant bank to file costs memo from the date of receipt of this order, to enable the Registry to prepare the recovery certificate as directed above. If in case, the cost memo is not filed within the above mentioned time, Recovery Certificate be prepared based on the available records and forwarded to the Recovery Officer for execution in accordance with law.

9. Recovery Certificate be prepared as per the directions given above of this final order and issued accordingly. A copy of the order be communicated to the parties concerned as per the extant guidelines.

(Dictated to Steno(TS), transcribed by him, corrected, signed and pronounced by me in the Virtual Court, through Video Conference on this the 04th day of September, 2020)