(2020) 10 DRT CK 0011

In the Debts Recovery Tribunal

Case No : Original Application No. 301 Of 2017

Indian Bank APPELLANT

Vs

R. Boopathi And Anr. RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2(c), 16

Citation : (2020) 10 DRT CK 0011

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

Bench : Single Bench

Advocate : M/s Chandra Raj

Final Decision : Allowed

Judgement

1. This Original Application has been filed by applicant bank against defendants for recovery of a sum of Rs.33,25,682.23p (Rupees Thirty Three Lakhs Twenty Five Thousand Six Hundred Eighty Two and Paise Twenty Three Only) viz, a sum of Rs.10,63,679.20 together with interest at the rate of 12.45% per annum, Rs.5,95,889.06 along with 12.95% interest per annum, Rs.2,28,308.98 along with 14.50% interest per annum, Rs.7,70,610.39 along with 12.70% with interest per annum, Rs.2,98,714.22 along with 14.50% interest per annum and Rs.3,68,480.38 along with 14.50% towards Agricultural Term Loan repayable together with contractual interest with half yearly rests from the date of filing of this O.A. till the date of realization and for costs of the application.

2. Summons to defendants 1 & 2 returned unserved. Applicant Bank issued fresh notice and effected Paper Publication. Despite which defendants neither chose to enter appearance nor filed written statement. Hence defendants 1 & 2 were called absent and set ex-parte on 26.02.2018. Applicant bank filed its Proof Affidavit along with 57 documents, which were marked as Ex.A-1 to A-57. 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) Applicant Bank submits that 1st and 2nd defendants are wife and husband and stood as guarantors for the borrowings of each other with applicant bank. First defendant was title holder of the property morefully described in Schedule 'A' item (i) which was obtained through Release Deed dated 09.08.2006 vide Doc.No.2818 of 2006 executed by Vaduvammal and R.Boopathi (Ex.A-1). The second defendant vide General Power of Attorney dated 11.02.2008 granted power to 1st defendant to deal with Schedule 'A' item (ii) property (Doc.No.144/2008) (Ex.A-2). Schedule 'A' item (i) property is the ancestral property of 1st defendant and was issued with two pattas bearing No.83, which are marked as Ex.A-3 and Ex.A-4 to the extent of land he possessed. 2nd defendant is the owner of the Schedule 'A' item (ii) property which is her ancestral property and she is in enjoyment of the same through Patta No.234 which is marked as Ex.A-5.

b) First defendant approached applicant bank vide loan application dated 29.09.2009 for sanction of loan of Rs.6.53 Lakhs for the purchase of Tractor. Considering the said request, applicant bank sanctioned a sum of Rs.6.53 Lakhs and issued sanction letter dated 29.09.2009 for purchase of Tractor (Ex.A-6). The 2nd defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed the above said loan, defendants executed following documents in favour of applicant bank as detailed below.

Exhibits

Date

Description of Document

A-7

29.09.2009

Demand Promissory Note from 1st defendant in favour of applicant for Rs.6,53,000/- repayable with interest @ 12.45% with half yearly rests

A-8

29.09.2009

Disposal of Proceeds Letter by 1st defendant in favour of applicant for Rs.6,53,000/-

A-9

29.09.2009

Agreement for Hypothecation-Agricultural Loan executed by 1st defendant in favour of applicant for Rs.6,53,000/-

A-10

29.09.2009

Agreement of Guarantee executed by 2nd defendant in favour of applicant bank for Rs.6,53,000/-

A-11

30.09.2009

Confirming Creation of Equitable Mortgage by 1st defendant in favour of applicant for Exhibits Date Description of Document Rs.6,53,000/-

A-12

29.09.2009

Declaration by 1st defendant in favour of applicant bank

c) On the basis of the disbursement of loan, 1st defendant purchased a Tractor bearing Registration No.TN-19-Z-3873 and a Trailor made by Sheerin Steel Industry bearing Registration No.TN-19-Z-4061 both registered with RTO Madurantakam on 09.10.2009 & 22.10.2009 with hypothecation endorsement made in the Registration Certificate in favour of applicant bank, Madurantakam Branch (Ex.A-13 & 14).

d) First defendant was already an existing customer of Applicant Bank and availed financial assistance on earlier occasion also and created equitable mortgage with applicant bank over the schedule property by deposit of title deeds, viz., Agreements relating to Deposit of Title Deeds dated 13.09.2006 vide Doc.No.3484 of 2006, SRO-Madurantakam in favour of applicant bank which were already available with applicant bank. Thereafter 1st defendant availed the Tractor Loan and again executed the Agreements relating to Deposit of Title Deeds dated 30.09.2009 vide Doc.No.4249 of 2009, with SRO-Madurantam.

e) First defendant approached applicant bank again with another loan application dated 23.11.2009 for sanction of Agriculture Medium Term Loan of Rs.3.00 Lakhs for the purchase of a Pipeline for agricultural activities. Considering the said request, applicant bank sanctioned the loan to the tune of Rs.3.00 Lakhs and issued sanction letter dated 23.11.2009 (Ex.A-15), and the loan amount was disbursed to 1st defendant Agri IMR Loan account. The 2nd defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed the aforesaid loan, 1st & 2nd defendants executed following documents in favour of applicant bank as detailed below.

A-16

23.11.2009

Demand Promissory Note executed by 1st defendant in favour of applicant for Rs.3,00,000/- promising to repay with interest @ 12.95% with half yearly rest

A-17

23.11.2009

Disposal of Proceeds Letter by 1st defendant in favour of applicant for Rs.3,00,000/-

A-18

23.11.2009

Agreement for Hypothecation-Agricultural Loans executed by 1st defendant in favour of applicant bank for Rs.3,00,000/- repayable 14 half yearly instalments of Rs.22,000/- with interest payable in May and November

A-19

23.11.2009

Agreement of Guarantee executed by 2nd defendant in favour of applicant bank for Rs.3,00,000/-

A-20

24.11.2009

Letter confirming extension of Equitable Mortgage executed by 1st defendant in favour of applicant bank

A-21

23.11.2009

Declaration by the borrower on details of relatives etc., from 1st defendant in favour of applicant bank

f) Second defendant approached applicant bank through loan application dated 03.11.2010 for the sanction of KCC Loan of Rs.1.70 Lakhs. Considering the said request, applicant bank sanctioned the loan and issued sanction letter dated 03.11.2010 (Ex.A-22) and the loan amount was disbursed to 2nd defendant under Agri KCC BPLR Loan account. 1st defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed the aforesaid loan, defendants executed following documents in favour of applicant bank accepting the terms and conditions of sanction.

A-23

03.11.2010

Demand Promissory Note by 2nd defendant in favour of applicant for Rs.1,70,000/- repayable with interest @ 14.50% with half yearly rest

A-24

03.11.2010

Disposal of Proceeds Letter by 2nd defendant in favour of applicant for Rs.1,70,000/-

A-25

03.11.2010

Agreement for Hypothecation-Agricultural Loans executed by 2nd defendant in favour of applicant for Rs.1,70,000/-

A-26

03.11.2010

Agreement of Guarantee by 1st defendant in favour of applicant

A-27

03.11.2010

Confirming extension of Equitable Mortgage from 1st defendant in favour of applicant

A-28

03.11.2010

Declaration by Borrower on details of relatives etc., from 1st defendant in favour of applicant

g) First defendant approached applicant bank through loan application dated 15.11.2010 for sanction of IB KCC Loan of Rs.1.10 Lakhs for short term credit requirements for cultivation of crops. Considering the said request, applicant bank sanctioned loan to a tune of Rs.1.10 Lakhs and issued sanction letter dated 15.11.2010 (Ex.A-29) and loan amount was disbursed to 1st defendant under KCC BPLR Loan account. 2nd defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed aforesaid loan, defendants executed following documents in favour of applicant bank accepting the terms and conditions of sanction.

A-30

15.11.2010

Demand Promissory Note by 1st defendant in favour of applicant for Rs.1,10,000/- repayable with interest @ 12.70% with half yearly rests

A-31

15.11.2010

Disposal of Proceeds Letter from 1st defendant in favour of applicant for Rs.1,10,000/-

A-32

15.11.2010

Agreement for Hypothecation-Agricultural Loans by 1st defendant in favour of applicant

A-33

15.11.2010

Agreement of Guarantee executed by 2nd defendant in favour of applicant bank

A-34

15.11.2010

Confirming extension of Equitable Mortgage by 1st defendant in favour of applicant

h) First defendant approached applicant bank through loan application dated 26.04.2011 for sanction of Agriculture Medium Term Loan of Rs.3.50 Lakhs for Agricultural land development. Considering the said request, applicant bank sanctioned the loan and issued sanction letter dated 26.04.2011 (Ex.A-35) and the loan amount was disbursed to 1st defendant towards Agri MTL account. The 2nd defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed the aforesaid loan, first defendant executed following documents in favour of applicant bank accepting the terms and conditions of sanction.

A-36

26.04.2011

Demand Promissory Note executed by 1st defendant in favour of applicant bank for Rs.3,50,000/- repayable with interest @ 14.50% with half yearly rests

A-37

26.04.2011

Disposal of proceeds letter by 1st defendant in favour of applicant for Rs.3,50,000/-

A-38

26.04.2011

Agreement for Hypothecation-Agricultural Loans by 1st defendant in favour of applicant for Rs.3,50,000/-

A-39

26.04.2011

Agreement of Guarantee executed by 2nd defendant

i) First defendant approached applicant bank again with loan application dated 26.04.2011 for sanction of IB KCC Loan of Rs.1.50 Lakhs for agricultural activities. Considering the said request, applicant bank sanctioned the loan and issued sanction letter dated 26.04.2011, and the loan amount was disbursed to 1st defendant Agri KCC BPLR account. The 2nd defendant stood as guarantor for the said loan and executed Guarantee Agreement. Having availed the aforesaid loan, defendants executed following documents to applicant bank as detailed below.

A-40

26.04.2011

Demand Promissory Note by 1st defendant in favour of applicant for Rs.1,50,000/- repayable with interest @ 14.50% with half yearly rest

A-41

26.04.2011

Disposal of Proceeds Letter by 1st defendant in favour of applicant for Rs.1,50,000/-

A-42

26.04.2011

Agreement for Hypothecation-Agricultural Loans (Direct/Allied Activities) by 1st defendant in favour of applicant for Rs.1,50,000/-

A-43

26.04.2011

Agreement of Guarantee by 2nd defendant

j) First defendant is the borrower and the 2nd defendant is the guarantor for the borrowing of 1st defendant. Second defendant individually also availed Agro Loan for which the 1st defendant stood as a guarantor. Defendants 1 & 2 offered collateral security of Schedule 'A' property to secure the loan. First defendant executed following documents in favour of applicant bank as detailed below.

A-44

13.09.2006

Agreement relating to deposit of title deeds registered as Doc.No.3484/2006 with SRO, Maduranthakkam executed by 1st defendant

A-45

27.11.2006

Agreement relating to deposit of title deeds registered as Doc.No.4811/2006 with SRO, Maduranthakkam executed by 1st defendant

A-46

30.09.2009

Agreement relating to deposit of title deeds registered as Doc.No.4249/2009 with SRO, Maduranthakkam executed by 1st defendant

A-47

29.11.2010

Agreement relating to deposit of title deeds registered as Doc.No.5020/2010 with SRO, Maduranthakkam executed by 1st defendant

A-48

24.04.2011

Agreement relating to deposit of title deeds registered as Doc.No.2188/2011 with SRO, Maduranthakkam executed by 1st defendant

A-49

14.07.2012

Acknowledgement of debt executed by 2nd defendant

A-50

18.02.2014

Acknowledgement of debt executed by 2nd defendant

A-51

04.02.2015

Acknowledgement of debt executed by 1st defendant

A-52

13.02.2017

Statement of Account for Account No.855895656

A-53

13.02.2017

Statement of Account for Account No.863899833

A-54

13.02.2017

Statement of Account for Account No.918530753

A-55

13.02.2017

Statement of Account for Account No.951676191

A-56

13.02.2017

Statement of Account for Account No.951618390

A-57

13.02.2017

Statement of Account for Account No.916355502

4. A perusal of the above documents establish that defendants availed loan facility extended by applicant bank and had defaulted in his repayments resulting in the applicant bank making the above said OA claim.

5. It is the case of applicant bank that this agricultural loan is to be serviced with interest on half yearly basis keeping in view the harvesting season and the cropping pattern. From the pleading in the O.A., it is manifest that due to both external and internal exigencies including lack of rainfall, repayments could not be made, but, however, first defendant had executed revival letter, confirming their liability on 14.07.2012, 18.02.2014 & 04.02.2015, thus keeping the claim of the applicant bank alive.

6. Notwithstanding the continuous default of at least servicing the interest, applicant bank did not apply the Prudential Norms as laid down by the Reserve Bank of India from time to time in declaring the account as a NPA and consequently had kept the account alive. It is argued on behalf of the applicant bank that owing to the intervention of the Governmental agencies from time to time in declaring certain areas as drought hit or flood hit or of any other natural crisis resulting in loss of crop and consequently income to the farmers, the act of declaring the account as NPA had to be postponed from time to time and ultimately was declared as NPA respectively on 31.12.2014; 23.11.2012; 31.12.2014; 31.12.2014; 24.09.2014 and 25.09.2012.

7. Not going into the merits of the case, this Tribunal based on execution of documents and availing of loan funds by the borrower and creation of mortgage over immovable property, the loan transaction has been proved and admittedly as it is for agricultural purposes, the interest is chargeable predominantly either half yearly or yearly rests, definitely not compoundable on month to month basis as that of a commercial loan.

8. Applicant Bank has taken shelter under mortgage claim but however did not

satisfy levy of penal interest. Admittedly the advance is an agricultural advance recoverable in half-yearly instalments as per contractual terms and conditions. Applicant bank did not plead anywhere about the repayments or what made it not initiate recovery action from the time of default, whereas loans were continuously extended from 2009 to 2011 and had declared as NPA in 2012 and 2014 on different dates contrary to RBI guidelines, while levying penal interest on loans in the name of default of borrower.

9. As applicant bank had established its O.A. claim which was never disputed by defendants, it would be imperative for this Tribunal to award the Recovery Certificate as the Tribunal had possessed jurisdiction and that the claim of applicant bank is within limitation as the O.A. claim is based on mortgage. For the above reasons, O.A. of applicant bank is allowed.

10. In the result:-

(a) Applicant bank is entitled for a Recovery Certificate as against the defendants for a sum of Rs.33,25,682.23p (Rupees Thirty Three Lakhs Twenty Five Thousand Six Hundred Eighty Two and Paise Twenty Three Only) viz,

i) A sum of Rs.10,63,679.20 in respect of Agricultural Tractor Loan repayable together with further interest thereon at the rate of 8% per annum (simple) ;

ii) A sum of Rs.5,95,889.06 in respect of Agri IMR Loan repayable together with further interest thereon at the rate of 8% per annum (simple) ;

iii) A sum of Rs.2,28,308.98 in respect of Agri KCC BPLR Loan repayable together with further interest thereon at the rate of 8% per annum (simple) ;

iv) A sum of Rs.7,70,610.39 in respect of KCC BPLR Loan with interest thereon at the rate of 8% per annum (simple) ;

v) A sum of Rs.2,98,714.22 in respect of Agri MTL repayable together with further interest thereon at the rate of 8% per annum (simple)

vi) A sum of Rs.3,68,480.38 in respect of Agri KCC BPLR repayable together with further interest thereon at the rate of 8% per annum (simple)

on the amount as determined above and remained unpaid from the date of this application till the date of realization with costs.

(b) It is ordered that in case of default to pay the amount adjudged by the said defendants, applicant bank is entitled to sell the hypotheca morefully described in Schedule B and all or that part of the mortgaged property morefully described in Schedule A as is sufficient to answer the claim of the Recovery Certificate and appropriate the sale proceeds towards the amount due.

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

(d) Schedules mentioned in the OA shall form part of the Recovery Certificate.

11. 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.

12. 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 in terms of Rule 16 read with Rule 2(c) of DRT (Procedure) Rules, 1993.

(Dictated to Steno (KN), transcribed by her, corrected, signed and pronounced by me in the Virtual Court, through Video Conference on this the 12th day of October, 2020)

