
(2007) 05 P&H CK 0040
In the Punjab And Haryana At Chandigarh

Kams Leatherware Ltd.

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 29-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Act, 1872 — Section 172, 173, 174, 175, 176

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

Citation : AIR 2007 P&H 175 : (2007) 147 PLR 787 : (2007) 3 RCR(Civil) 848

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 22-11-2005 (Annexure P8) passed by the Debt Recovery Appellate Tribunal, Delhi, requiring the petitioner to deposit an amount of Rs. 5,00 lacs as a pre-condition for entertaining its appeal. It is appropriate to mention that the appeal has been filed by the petitioner company against the order dated 7-6-1999 (Annexure P1) passed by the Debt Recovery Tribunal, Jaipur. It has further been prayed that directions be issued to the Debt Recovery Appellate Tribunal, Delhi to entertain the appeal without insisting on any pre-deposit as per the provisions of Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity "1993 Act").

2. Brief facts of the case, as disclosed in the petition are that the respondent-bank namely Punjab National Bank filed a Civil Suit on 8-9-1995 in the Courts at Kharar for recovery of its dues alleging default on the part of the petitioner to repay the same. The suit was transferred to the Debt Recovery Tribunal, Jaipur. The final order was passed on 7-6-1999 (Annexure P1). The Debt Recovery Tribunal recorded a categorical finding that the Punjab National Bank sanctioned cash credit hypothecation limit (CCHL) of Rs. 33.00 lacs on execution of loan documents and guarantee deeds. It was also found that the Punjab National

Bank was entitled to charge interest at the rate of 16.5% per annum with quarterly rests from 6-9-1990 to 7-9-1995 and penal interest at the rate of 2% per annum with quarterly rests from 1-4-1994 to 7-9-1995. Therefore, revised statement was to be filed after calculating interest for the aforementioned terms. However, the Punjab National Bank was not held entitled to interest from 19-10-1994 on the amount of Rs. 54,78,036/-. At this stage, it is appropriate to notice certain paragraphs of the application filed by the petitioner company with a request to the Punjab National Bank to dispose of the hypothecated stocks or to grant permission to the petitioner company to sell the same. It was conceded in an application filed by the Punjab National Bank on 29-2-1996 that possession of the hypothecated goods was taken by the bank in October 1994. The Tribunal also recorded a finding that the bank was negligent inasmuch as it did not sell the leather goods which were in its custody since October 1994 despite the authority given to it by the petitioner company and the obvious stand of the bank was that the goods in its custody were perishable. On the submission of the revised statement, the bank was held entitled to recover a sum of Rs. 41,82,760/- with costs of the suit being the second charge holder. The bank was further held entitled to recover the aforementioned amount by the sale of hypothecated goods.

3. The petitioner company filed an appeal before the Debt Recovery Appellate Tribunal, Mumbai (Annexure P2). On 22-7-1999, the Debt Recovery Appellate Tribunal passed an order directing the petitioner company to deposit Rs. 10.00 lacs within a period of three months from the date of the order and it also granted stay of execution of the recovery certificate upto the period of three months. It was also clarified that in case the deposit is made then stay was to continue till the disposal of the appeal, otherwise the stay was to stand vacated. On an application filed by the petitioner company for issuance of directions to the bank to recover Rs. 10.00 lacs by selling its goods which were kept in its custody an order dated 20-12-1999 was passed appointing Local Commissioner for preparing the inventory of stock at the first instance. On 17-2-2000 the Appellate Tribunal issued directions for sale/auction of the goods. The Tribunal further directed that on realization of the sale proceeds, the Recovery Officer was to send Rs. 10.00 lacs to the bank and to hold the rest of the balance in deposit by the Debt Recovery Tribunal until the disposal of the appeal (Annexure P3). When the case came up before the Appellate Tribunal after it transferred to New Delhi on 15-2-2001 an order was passed granting permission to move an appropriate application for seeking waiver of pre-condition of deposit before entertaining its appeal (Annexure P4). It is pertinent to mention that the Local Commissioner appointed by the Appellate Tribunal had assessed the value of the hypothecated goods which were lying in the custody of the bank at Rs. 25,000/-. The petitioner company filed an application dated 10-3-2001 with a prayer for waiver of precondition of deposit and for entertainment of its appeal on merit (Annexure P5). The application was contested and reply was filed (Annexure P6). The application was disposed of on 22-11-2005 directing the petitioner company to

deposit an amount of Rs. 5.00 lacs within a period of one month from the date of order as a pre-condition for hearing of the appeal on merit (Annexure P8). The operative part of the order reads as under:

Having regard to the facts and circumstances of the case and in the light of submissions made by the Learned Counsel for the applicant as well as learned Counsel for the respondent bank, I think it is not a case for total waiver of pre-deposit. It is noticed that DRAT Bombay had directed this applicant to make a deposit Rs. 10.00 lakhs and later on, with certain modifications, the amount was deposited. Though my learned predecessor in DRAT Delhi permitted the applicant to make an application u/s 21 of the Act, that would not mean that he intended to waive the pre-deposit.

The fact placed before this Tribunal is that the hypothecated goods are worth only about Rs. 25,000/- as per the valuation report of the Local Commissioner appointed by the Recovery Officer, DRT, Chandigarh and if that be so, it is difficult to appreciate how the applicant can escape from the provision of Section 21 of the Act. Accordingly, I direct the applicant to deposit a sum of Rs. 5.00 lakhs with the respondent-bank within a period of one month from today which would be kept in a separate interest bearing "no lien account". The deposit would, however, be subject to the results in the appeal. On making such a deposit, let the Registry number the appeal and post this matter on 8-2-2006 along with connected Appeal No. 44/2000. In the event of failure on the part of the applicant to deposit the abovesaid amount of Rs. 5.00 lakhs within the stipulated period, the appeal need not be numbered.

4. Mr. H.C. Arora, learned Counsel for the petitioner has submitted that the bank cannot be permitted to continue the recovery suit or original application because it was unable to return the goods to the petitioner-company which were admittedly in its custody since October 1994. In that regard he has placed reliance on the judgment of Hon"ble the Supreme Court in the case of Lallan Prasad Vs. Rahmat Ali and Another, . Accordingly, it is sought to be submitted that once the petitioner has a prima facie good case on merit then the Appellate Tribunal was not justified in requiring the petitioner to deposit Rs. 5.00 lacs as a precondition for hearing the appeal. Mr. Arora has placed reliance in that regard on the judgment of the Kerala High Court in the case of Bright Resorts v. Debt Recovery Appellate Tribunal 2003 (2) ISJ 480 and argued that merits of the appeal to the extent discernible from the nature of the contentions raised, and quality of evidence led by the debtor in support of his contentions and the grounds of appeal are the factors which must be taken into consideration by the Debt Recovery Appellate Tribunal.

5. Mr. H.R. Bansal, learned Counsel for the Punjab National Bank has submitted that once the Debt Recovery Appellate Tribunal at Mumbai vide its order dated 22-7-1999 had directed the petitioner-company to deposit a sum of Rs. 10.00 lacs, which was subsequently modified by permitting the sale of hypothecated goods to satisfy the amount of Rs. 10.00 lacs required as deposit as pre-

condition for hearing of appeal, then no fresh order or any fresh application could be filed as the order dated 22-7-1999 would be deemed to continue to operate. He has emphasized that the bank has also filed the appeal and the decretal amount of Rs. 42.00 lacs in any case has to be recovered from the petitioner.

6. After hearing learned Counsel for the parties and perusing the record with their assistance, we are of the considered view that the right of one appeal is recognized in all jurisdictions because it is well settled that to err is human. Moreover, the respondent-bank is in custody of the leather goods belonging to the petitioner since October 1994 and despite the insistence of the petitioner it did not sell those goods which were admittedly of perishable nature. The value of those goods has now been assessed at Rs. 25.000/-. We do not wish to go into these questions or as to whether by virtue of Sections 172 to 176 of the Contract Act, 1872 the suit filed by the bank would be maintainable or not, but we could conclude that there are arguable points in the appeal and the petitioner may have good case on merit. The Appellate Tribunal while passing the impugned order dated 22-11-2005 (Annexure P8) has ignored this vital consideration. It is well known that once a plaintiff has a prima facie good case, the balance of convenience if lies in his favour and he is likely to suffer an irreparable loss then ordinarily stay in favour of the plaintiff should be granted. Therefore, to that extent, the order of the Appellate Tribunal cannot be sustained.

7. The argument of Mr. Bansal that original order requiring the petitioner to pay Rs. 10.00 lacs passed on 22-7-1999 still operates, has not impressed us because the Appellate Tribunal vide its order dated 15-2-2001 granted permission to the petitioner to move an appropriate application seeking waiver of the pre-condition of deposit u/s 21 of the 1993 Act. Therefore, there is no substance in the aforementioned submissions.

8. For the reasons aforementioned, this petition succeeds. The order dated 22-11-2005 (Annexure P8) requiring the petitioner to deposit a sum of Rs. 5.00 lacs as a precondition u/s 21 of the 1993 Act to that extent is quashed. The Appellate Tribunal, New Delhi, is directed to proceed with the hearing of the appeal without insisting upon the payment of Rs. 5.00 lacs as a precondition as stipulated u/s 21 of the 1993 Act. In the facts and circumstances of the case, we deem it just and appropriate to direct the Appellate Tribunal to conclude the hearing of the appeal preferably within a period of four months from the receipt of certified copy of this order.