(2012) 12 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1767 of 1997

Mr. Anil Kumar Somani and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:
Contract Act, 1872 — Section 59

Citation : (2013) 3 ALLMR 395 : (2013) 4 MhLj 82

Hon'ble Judges : S.J. Vazifdar, J;R.Y. Ganoo, J

Bench : Division Bench

Advocate : Kamal Bhulchandani with Mr. Prem Kumar Jumani instructed by Kamal and Co, for the Appellant; Abhileen Chaturvedi instructed by Paras Kuhad and Associates for the Respondent No. 4, for the Respondent

Judgement

S.J. Vazifdar, J.—The petitioners have challenged orders dated 26th May, 1997 and 8th October, 1997, passed by the DRT and DRAT respectively. Respondent Nos. 2, 3 and 4 are the DRT and DRAT and the ICICI Bank Limited. The DRT held that respondent No. 4 was entitled to realise a sum of Rs. 12,61,977.14 with costs from the petitioners. Mr. Bhulchandani admitted that there was a typographical error in Exhibit-M to the petition, which is the order of the DRT. The error is in the operative part of the order. He produced a copy of the original order wherein the operative part of the order reads as under:

ORDER

Plaintiff Bank is entitle to recover a sum of Rs. 12,61,977.14 with cost of the suit from defendant No. 2 to 6 Plaintiff Bank is also entitle to get interest @ 161/2 % per annum to be calculated quarterly from 28/1/88, to its realisation. Plaintiff Bank is not entitle to get any decree against defendant No. 1.

2. The petitioners were the directors of a company M/s. Amrit Biscuits Private Limited which was later wound up. They were also the guarantors in respect of the claim. Original respondent No. 4-The Bank of Rajasthan Limited

amalgamated with the ICICI Bank Limited. Pursuant to an amendment, ICICI Bank Limited was brought on record. The reference in this judgment to respondent No. 4 will include the reference to The Bank of Rajasthan Limited.

3. There is no dispute about the fact that respondent No. 4 had advanced certain facilities to the said company and that the petitioners are guarantors in respect thereof. Mr. Bulchandani, however, submitted that the entire debt stood extinguished on account of a payment made to respondent No. 4 as full and final settlement of the principal amount and the payment of certain other amounts due. He relied upon the following correspondence in this regard.

4. (A). By a letter dated 23rd October, 1986, the company made a concrete proposal to respondent No. 4. The company stated that the principal amount outstanding was only Rs. 4,59,000/- whereas the accumulated interest was Rs. 9,29,000/-. In order to reduce the interest it requested respondent No. 4 to consider realisation of only 50% of the accumulated interest i.e. Rs. 4,65,000/-. The company offered to liquidate the liability of Rs. 9,29,000/- in one lump-sum within thirty days of the receipt of the fourth respondent''s confirmation.

(B). Respondent No. 4, by a letter dated 15th November, 1986, inter-alia, stated as under:-

Before we place your proposal to the Board of Directors for consideration, we request you to please immediately deposit the outstanding (principle amount of advance) which is to about Rs. 4.60 lacs. This will facilitate us to move your matter to the Board of Directors for overall consideration.

Your representative met the undersigned at Jaipur on 14.11.1986 to whom also we have explained the whole position and advised that unless the amount (principle advance) outstanding in your said a/c is liquidated immediately, it would not be possible for the Bank to consider your proposal dated 23.10.1986. We, therefore, again impress upon you to deposit immediately the outstanding in principle in your a/c with our VKIA, Jaipur branch under intimation to this office.

(C). By a further letter dated 24th November, 1986, respondent No. 4 informed the company that its Board of Directors had not accepted the proposal and, therefore, called upon the company to deposit the complete dues upto 20th December, 1986 immediately.

(D). The company, by a letter dated 3rd December, 1986, replied to the fourth respondent''s letter dated 15th November, 1986. There was no reference to the letter dated 27th November, 1986 in this letter dated 3rd December, 1986. The company stated that it was grateful to respondent No. 4 for "tentatively accepting" its proposal contained in the said letter dated 23rd October, 1986. It, accordingly, requested the fourth respondent to grant it fifteen days to deposit the outstanding principal amount of Rs. 4,60,000/-. The company had, by this time, obviously not received the fourth respondent''s letter dated 27th November, 1986, which had rejected the offer contained in the company''s letter dated 23rd October, 1986.

(E) The fourth respondent, by a letter dated 10th December, 1986, replied to the company''s letter dated 3rd December, 1986. It denied the contents of that letter and reiterated what was stated in it''s letter dated 15th November, 1986. It also reiterated that it is the absolute discretion of its Board to accept or reject the proposal and that, therefore, the inference drawn in the company''s letter dated 3rd December, 1986, was not correct.

6. This brings us to a letter dated 19th December, 1986, addressed by the company to the Bank upon which Mr. Bulchandani placed considerable reliance in support of his submission that no amount now remained outstanding on the principal amount on account of what is stated in the said letter. It is, therefore, important to reproduce the entire letter.

Dear Sir,

Sub: Our Cash Credit A/c. with your VKIA. Jaipur Branch

Further to our letter dated the 03.12.1986, we are pleased to enclose herewith one draft No. 4542252 for Rs. 4,60,000.00 (Rupees Four lakhs and sixty thousand only) issued in your favour to your V.K.I.A. Branch under endorsement of this letter, in full and final settlement of the outstanding principal amount against the above referred Cash Credit Account as detailed in our letter of 23.10.1986 and confirmed vide your letter of 15.11.1986. Now that we have paid back the balance principal amount due to you, it is sincerely hoped that your Board will be kind enough to consider our representation for reduction of accumulated interest as per proposal outlined in our letter of 23.10.1986 and accord us the permission to pay the accumulated interest for an amount of Rs. 4.65 lakhs.

We confirm having explained in all our correspondence the circumstances under which the unit had to close down and become a sick unit. Furthermore, we would like to put on record that our offer to pay off the entire balance of principal amount of Rs. 4.60 lakhs and 50% of the accumulated interest amounting to Rs. 4.65 lakhs, was a composite one and as directed by you, we confirm having paid the balance principal amount of Rs. 4.60 lakhs, despite our critical financial position, in good faith and in anticipation of your accepting our offer of payment of 50% of the accumulated interest of Rs. 4.65 lakhs.

Accordingly, we look forward to your advice that your Board has been pleased to accept our offer to pay 50% of the accumulated interest amounting to Rs. 4.65 lakhs, in full and final settlement.

6. Respondent No. 4, by a letter dated 26th December, 1986, referred to its earlier letter dated 27th November, 1986, wherein the company was informed that its proposal contained in the letter dated 23 rd October, 1986 had not been accepted by the Board of Directors. Respondent No. 4, therefore, stated that the payment made by the petitioners had been adjusted against the outstanding

dues in the account of the company and called upon the company to pay the balance dues.

7. It is difficult to accept Mr. Bulchandani''s submission that in view of section 59 of the Indian Contract Act, 1872, respondent No. 4 was entitled to adjust the amount only towards the principal amount. The letter dated 19th December, 1986, must be read along with the rest of the correspondence. So read, it is clear that the tender made under cover of the letter dated 19th December, 1986, did not make it mandatory upon respondent No. 4 to accept the same only towards the principal amount. The company was aware of the fact that the Board of Directors of respondent No. 4 had refused the offer of settlement made by it. By the letter dated 15th November, 1986, the fourth respondent called upon the company to pay the principal amount before it placed the company''s proposal for the consideration of its Board of Directors. This was only for the purpose of ascertaining the bona fides of the offer made by the company. The letter does not indicate that the fourth respondent would adjust the same against the principal. That would indeed be unusual for a bank to do. The fourth respondent consistently rejected the settlement offered by the company. It was obviously in order to persuade the fourth respondent''s Board of Directors to consider the offer that the tender of Rs. 4,60,000/- was made under the cover of the letter dated 19th December, 1986. The letter dated 19th December, 1986, merely refers to the payment of the outstanding principal amount. It did not expressly require the fourth respondent to adjust the same only against the principal amount. In other words, the words "in full and final settlement of the outstanding principal amount" referred to the quantum of the principal amount and not the mode or manner of adjustment of the payments made under cover of the letter. It is also pertinent to note that there was no response to the bank''s letter dated 26th December, 1986 though the suit was filed only on 11th February, 2008.

8. We are unable, therefore, to accept Mr. Bulchandani''s submission that the

respondent No. 4 was bound to adjust the said sum of Rs. 4,60,000/- only against the principal.

9. Mr. Bulchandani''s next contention was that respondent No. 4 was not entitled to compound interest.

10. The fourth respondent is entitled to the contractual rate of interest only upto the date of the filing of the suit, but not thereafter. To this extent, the impugned order must be modified.

11. This Writ Petition was admitted by an order dated 16th December, 1997. Pursuant to the said order, the petitioner paid respondent No. 4, a sum of Rs. 9,30,000/-which, according to it, was the interest due on the principal amount on the date of the payment of the principal amount which we presume was 19th December, 1986. Thus, interest from the date of the payment of the amount of Rs. 9,30,000/- would, in any event, stop running.

12. The application for adjournment was made by the advocates of respondent No. 4 on the ground that they had not received instructions and, therefore, desired taking a discharge.

13. As the matter pertains to the year 1997, we did not permit the advocate on behalf of the respondent No. 4 time to take a discharge.

14. This does not appear to be a case where the petitioners at least, who are the guarantors, refused to make payment under any circumstances. They, in fact, paid an amount equivalent to the principal sum on 19th December, 1986 itself and offered to pay 50% of the accumulated interest. They thereafter paid the sum of Rs. 9,30,000/- pursuant to the order of this Court. In view thereof and in view of the fact that we are left with no assistance on behalf of respondent No. 4 regarding the rate of interest after the date of the filing of the suit, the interest of justice would be met by directing payment of simple interest only on the principal sum adjudged at Rs. 4,60,000/-, at the rate of 6% per annum from the date of the filing of the suit i.e. 11th February, 1988 till payment. In the circumstances, the Writ Petition is disposed of by the following order:-

(i) Respondent No. 4 is entitled to recover a sum of Rs. 12,61,977.14 together with simple interest on the sum of Rs. 4,60,000/-at 6% per annum from 11th February, 1988 till payment and/or realisation.

(ii) Credit shall be given for the sum of Rs. 9,30,000/- from the date of payment pursuant to the order of this Court dated 16th December, 1997. Needless to add that interest on the said sum of Rs. 9,30,000/-would cease to run from the date of the payment thereof.

(iii) The recovery certificate or a fresh recovery certificate, as the case may be, shall be issued in accordance with this order, but only after notice to the petitioners.

(iv) No order as to costs.

