
(2012) 09 GAU CK 0073
In the Gauhati High Court
Case No : Writ Petition (C) No. 561 of 2012

Mrs. Punam Wangkhem Singh Bhatia APPELLANT
Vs
The Manipur Industrial Development Corporation, Imphal and RESPONDENT
Others

Date of Decision : 10-09-2012

Acts Referred:

Companies Act, 1956 — Section 2(g), 2(h), 4, 9
Constitution of India, 1950 — Article 226

Citation : AIR 2013 Guw 40 : (2013) 2 BC 506

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : W. Darakishore, for the Appellant; R.K. Tomma, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma

1. Heard Mr. W. Darakishore, Learned Counsel for the petitioner as well as Mr. R.K. Tomma, Learned Counsel representing the respondent No. 1. I have also considered the materials on records. By means of this writ petition, the petitioner seeks to assail the order dated 17.02.2004 passed by the Debt Recovery Tribunal (DRT), Guwahati in Original Application (OA) No. 6/2003 and the judgment dated 22.03.2012 passed by the learned Debt Recovery Appellate Tribunal, Kolkata in Appeal No. 27/2007/590-591 by which the impugned order dated 17.02.2004 passed in OA No. 6/2003 has been affirmed.

2. The OA was filed by the respondent No. 1 Corporation in respect of the loan that was sanctioned in favour of the respondent No. 2 who was the defendant No. 1 in the OA. It was held by the Tribunal that the defendant No. 1, i.e. the respondent No. 2 in this proceeding after availing the loan stood defaulter and accordingly the respondent/Corporation as the applicant was entitled to get a certificate to recover the outstanding dues from the defendants. The defendants were held jointly and severally liable. By the said order direction was issued for

issuance of the certificate of recovery of Rs. 1,08,10,060.70 in favour of respondent No. 1 Corporation with interest therein @ 10% P.A. from the date of filing of the application.

3. Being aggrieved, the present petitioner who was the defendant No. 2(B) in the Original Application, approached the DRT by means of an appeal registered and numbered as Appeal No. 27/2007/590-591. The appeal having been dismissed by the judgment and order dated 22.03.2012, he has filed the instant writ petition praying for setting aside and quashing the of the said order along with the order dated 17.02.2004 passed by the learned DRT in OA No. 6/2003.

4. Learned counsel for the petitioner has submitted that the appellate Tribunal committed manifest error of law and fact in rejecting the appeal preferred by the appellant. According to him, the claim made by the respondent Corporation by filing OA No. 6/2003 being clearly barred by limitation u/s 137 of the Limitation Act, the DRT ought not have entertained the said OA and rejected the same on the ground of limitation. He further submits that the respondent Corporation being not a financial institution, it could not have approached the learned DRT in respect of the recovery of the loan in question.

5. Countering the above argument, Mr. Tomma, Learned Counsel for the respondent Corporation, submits that the respondent Corporation is very much a financial institution in terms of the notification dated 18.02.1984 issued by the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division). He also submits that in view of the registered deed of Mortgage (Exht. A/4 and A/8) exhibited by W. Basant Kumar Singh (defendant No. 2) who was the sole proprietor of the defendant No. 1, limitation would be 12 years. Be it stated here that the last transaction was on 27.97.1993 and the date of filing of the application before the DRT was on 16.01.2003. Be it also stated here that the Mortgage Deeds were furnished as collateral security.

6. The fact of the matter is that the defendant No. 1 had taken a term loan which was sanctioned vide letter dated 14.10.1998 for Rs. 15 lakhs. The defendant No. 1, since deceased, availed of the said loan after executing the agreement on 20.10.1998 by letter of hypothecation and mortgage deeds. The defendant No. 3, one Md. Rahimuddin stood as guarantor. Sometime in May, 1989 the defendant No. 1 applied for additional term loan and the Corporation sanctioned additional term of Rs. 4.92 Lakhs by letter dated 03.08.1989.

7. After availing loan, the defendant No. 1, i.e. the respondent No. 2 herein made part payments. The respondent No. 1 Corporation reminded him about the obligation to clear the outstanding dues with accrued interest, but there was failure on the part of the defendant to do so. The outstanding dues after calculation of interest as on 30.09.2002 stood at Rs. 1,08,10,060.70.

8. As indicated above, the defendant No. 2 was the sole proprietor and on his death his legal heirs stepped into his shoes who were impleaded as party defendants. Learned Tribunal on the basis of the evidence on record and upon

hearing of the parties, passed the impugned order way back in 2004 and to be precise on 17.02.2004 directing issuance of recovery of certificate for the amount of Rs. 1,08,10,060.70 in favour of the respondent Corporation with interest therein @ 10% P.A. from the date of filing of the application till payment and the cost of the application from the defendants making them jointly and severally liable. Being aggrieved, the present petitioner who was the defendant No. 2(B) filed the aforementioned appeal before the DRT, Kolkata. The appeal has been dismissed by the impugned judgment dated 23.02.2012. As submitted, other defendants did not preferred any appeal against the order dated 17.02.2004 passed in OA No. 06/2003, but the defendant No. 2 alone filed the appeal and that too, after about 3 years. It is submitted that delay in filing the appeal was condoned by the Learned Counsel Appellate Tribunal.

9. The two grounds on which the writ petition has been filed and for that matter the appeal was filed before the learned Tribunal have been noted above. As regards the plea that the respondent Corporation being not financial institution, it could not have approached the learned DRT, it has been held by the learned Tribunal that in view of the Exht. A/23 notification of the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division) (referred to above), the Corporation is very much within the definition of the financial institution. As has been held, Industrial Development Bank of India Act, 1964 makes it clear that the financial institutions that are notified u/s 9 of the Act, are the financial institutions which come under the provision of Section 2(g) and 2(h) as public financial institutions within the meaning of Section 4 of the Companies Act, 1956. Sub-Section 2(h) of the Recovery of Debts due to Banks & Financial Institutions Act, has recognized IDBI as financial institution for the purpose of recovery of debts. In such as situation, it was held by the DRT that the respondent Corporation is a financial institution and accordingly was entitled to invoke the jurisdiction of the learned DRT.

10. As regards the question of limitation by applying the provision of Section 137 of the Limitation Act, it was found that Exbt. A/4 and Exbt. A/A registered mortgage deeds had been executed by late W. Basant Kumar Singh (defendant No. 2) who was the sole proprietor of the defendant No. 1 and the mortgage created by him in respect of immovable properties in favour of the respondent Corporation was as a collateral security. When there is valid mortgage as collateral security, the limitation is not confined to 3 years, but is 12 years. Calculating on that basis, it was found that OA was filed within the prescribed period of limitation.

11. Above view of the learned DRT has been affirmed by the learned Appellate Tribunal and I see no reason to interfere with the same exercising the power of judicial review under Article 226 of the Constitution of India. Both the Courts below have duly taken note of the arguments advanced by the defendants and the petitioner herein and upon appreciation of the said arguments, both the issues have been answered in the negative. There is absolutely no manner of

doubt that the respondent Corporation conforms to the requirement of being financial institution entitling it to invoke the jurisdiction of the DRT. As regards the period of limitation, in view of the two mortgage deeds executed by the deceased as a collateral security, the limitation as calculated by both the authorities would be 12 years. The last transaction was on 27.07.1993 and the OA was filed before the learned DRT on 16.01.2003. In such a situation, the application was within the time and was not barred by limitation. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed, without being admitted. There shall be no order as to costs.