(2016) 09 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18247 of 2015

M/s. Akashdeep Printers and Traders APPELLANT

Vs

Oriental Bank of Commerce RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Recovery of Debts Due To Banks And Financial Institutions Act, 1993 — Section 26(3)

Citation : (2017) 173 AIC 485 : (2017) AIR(Raj) 20 : (2017) 1 WLC 417

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. M.A. Khan, Advocate, for the Respondent/Bank; Mr. N.K. Maloo, Senior Advocate with Mr. Vishnu Bohra, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Alok Sharma, J. - Under challenge in this petition purporting to be both under Article 226 and 227 of the Constitution of India is the order dated 18-2-2015 passed by the Debt Recovery Appellate Tribunal Delhi (hereinafter the DRAT'') in an appeal against the dismissal by the Debt Recovery Tribunal, Jaipur (hereinafter ''the DRT'') of an application under Section 26(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter ''the Act of 1993'') filed by the respondent Bank. Also under challenge is the consequential order dated 30-3-2015 passed by the DRT Jaipur amending the recovery certificate dated 12-8-2004 in OA No.3/2002 entitling the respondent Bank for recovery of Rs.25,84,248/- against the defendants petitioners in OA No.3/2004 jointly and severally along with interest at the rate of 10% p.a. from the date of the filing of the OA under Section 19 of the Act of 1993 till the realization of the amounts, as also the cost of litigation. Aside of the aforesaid challenge as reflected in the caption of the writ petition, in the prayer clause, a challenge has also been laid to the recovery certificate dated 12-8-2004 issued by the DRT in OA No.3/2004 and the affirming order dated 5-4-2011 passed by the DRAT in Appeal No.103/2008. A further consequential direction sought is that OA

No.3/2002 filed by the respondent bank against the petitioner firm its proprietor and guarantors be dismissed with costs.

2. However, in the course of argument, Mr. N.K. Maloo, Senior Advocate has confined his arguments only to the order dated 18-2-2015 passed by the DRAT and the consequential order dated 30-3-2015 passed by the DRT amending the certificate of recovery dated 12-8-2004 making the petitioner firm, its proprietor and guarantors liable to pay interest on the amount of Rs.25,84,248/- from the date of filing of original application till the date of realization.

3. The relevant facts are that an application under Section 19 of the Act of 1993 was filed by the respondent Bank against the petitioners and respondents No.2 and 3, on or about 24-11-2001 for recovery of the outstanding amount Rs.25,84,248/- along with contracted interest from the date of filing of the application till the date of realization. Reply of complete denial was filed by the petitioners including of the claim of creation of mortgage asserted by the respondent Bank as collateral security for the loan advanced. On consideration of the evidence in the case, the DRT vide order dated 12-8-2004 issued a recovery certificate against the defendants holding them liable to pay the amount of Rs.25,84,248/- claimed by the respondent Bank. Issue No.3 before the DRT related to relief to which the respondent Bank was entitled to. Thereon the DRT inter alia held that:-

"From the above discussion applicant Bank is entitled to recover an amount of Rs.25,84,248/- from the defendants Nos.1 to 4 jointly and severally with interest and cost. Applicant bank is also entitled to realize aforesaid amount with interest and cost from the sale of hypothecated goods and mortgaged property of the defendants.

As regard rate of interest from the date of filing this original application till realization in my view considering the discretion of this Tribunal and the law enunciated by the Hon''ble Supreme Court in AIR 2001 page 3095, Central bank of India v. Ravindra Kumar, interest at the rate of 10% per annum will be sufficient on the amount of Rs.25,84,248/- from the date of filing this original application till realization."

4. However the final order passed by the DRT inter alia recorded that the applicant bank was entitled to a recovery certificate for an amount of Rs.25,84,248/- against defendants No.1 to 4, who would be jointly and severally liable to repay the amount of Rs.25,84,248/- with interest at the rate of 10% p.a. as also costs. (Important to note is the fact that the period for which interest was chargeable on the amount of Rs.25,84,248/- as detailed in the relief clause was not indicated.)

5. Aggrieved of the order dated 12-8-2004, the petitioner firm filed an appeal before the DRAT, which while dismissing it vide order dated 5-4-2011 directed the respondent Bank to file a statement of account as per the judgment of the Apex Court in the case of Central Bank v. Ravindra Kumar (supra) before the

Recovery Officer, DRT Jaipur within a period of thirty days following which the defendants were to deposit the entire amount with the Bank in terms thereof.

6. The petitioners however aggrieved of the order dated 5-4-2011 passed by the DRAT filed a review application on the purported ground that the DRAT had not allowed them to raise of any objection with regard to the statement of account to be submitted by the respondent Bank pursuant to its appellate order dated 5-4-2011. The said review petition was however dismissed on 25-2-2014. The petitioners aggrieved of the dismissal of their appeal on 5-4-2011 and the review petition on 25-2-2014, approached this court by filing writ petition SBCWP No.6305/2014.

7. In the meantime in the course of execution of the recovery certificate dated 12-8-2004 as affirmed by the DRAT on 5-4-2011, the respondent Bank moved an application under Section 26(2) of the Act of 1993 before the DRT Jaipur seeking correction of a clerical mistake in the recovery order dated 12-8-2004, inasmuch as even while interest @ 10% p.a. on the amount due Rs.25,84,248/- and cost of litigation was allowed by the DRT from the date of filing of the OA till the date of realization, in the relief clause, the period for which the interest was to be calculated had not been set out in the final order. In this view of the matter the writ petition No.6305/2014 on coming up before this court on 29-5-2014 was withdrawn by the petitioners with liberty to file afresh.

8. Vide order dated 24-6-2014 the DRT dismissed the Bank''s application under Section 26(2) of the Act of 1993 on the ground that the amendment sought in the recovery certificate dated 12-8-2004 tantamounted to seeking its modification, which could not be done by the DRT under Section 26(2) of the Act of 1993. Aggrieved, the respondent Bank approached the DRAT, which vide its order dated 18-2-2015 allowed the Bank''s appeal and directed the DRT to make good the clerical mistake in the recovery certificate dated 12-8-2004 i.e. to allow the calculation of the interest @ 10% p.a. on the amount due Rs.25,84,248/- from the date of filing the original application till realization. Following the aforesaid order passed by the DRAT, the DRT vide order dated 30-3-2015 amended the certificate of recovery dated 12-8-2004 against the petitioner firm, its proprietors and guarantors as reflected in OA No.3/2002 and directed that the respondent bank would be entitled to recover Rs.25,84,248/- from defendants No.1 to 4 jointly and severally with interest @ 10% p.a. commencing the date of filing of the original application till the date of realization. Hence this petition.

9. Mr. N.K. Maloo Senior Advocate appearing with Mr. Vishnu Bohra on behalf of the petitioners submitted that the DRAT in resorting to Section 26(2) of the Act of 1993 and allowing the amendment to the recovery certificate dated 12-8-2004 passed by the DRT acted on a misapprehension of law and wholly without jurisdiction. Mr. Maloo submitted that the power to correct arithmetical and clerical mistakes conferred on the DRT and by extension on the DRAT under Section 26(2) of the Act of 1993 does not extend to supplying omissions made by the DRT in the first instance while issuing a certificate of recovery. It was

submitted that in its certificate of recovery dated 12-8-2004 the DRT had not detailed the period during which the interest at the rate of 10% p.a. was to be paid on the principal amount found recoverable by the respondent Bank from the petitioners and others and this could not be construed as a clerical error rectifiable under Section 26(2) of the Act of 1993. Reliance was place on the judgment of the Apex Court in the case of Bijay Kumar Saraogi v. State of Jharkhand [(2005)7 SCC 748] to contend that the power of the court to rectify arithmetical and clerical mistake cannot be invoked for conferring substantive relief by way of modification of a judgment which has attained finality. Reliance was also placed on the judgment in the case of Master Construction Co. (P) Ltd. v. State of Orissa [AIR 1966 SC 1047] to contend that where a power is conferred on a statutory authority/court for correction of arithmetical and clerical mistake, such power cannot be exercised for glossing over even accidental slips or omissions by the court and granting relief earlier excluded. Mr. Maloo submitted that unlike Section 152 CPC which is set out in broad terms, Section 26(2) of the Act of 1993 is narrower, inasmuch as while Section 152 CPC allows amendment of a judgment, decree or order on the ground of clerical and arithmetical mistakes arising from accidental slips or omission by the court concerned, contra-distinguished thereto, Section 26(2) of the Act of 1993 is silent on supplying omissions and rectifying accidental slips. The Presiding Officer of the DRT or the DRAT under the Act of 1993 are thus not empowered to rectify accidental slips or fill in omissions, submitted Mr. Maloo. It was submitted that the certificate of recovery dated 12-8-2004 issued by the DRT Jaipur in failing to set out the period during which interest at the rate of 10% p.a. on the amount due Rs.25,84,248/- was leviable, thus even if resulting from an accidental slip could not be corrected by resort of Section 26(2) of the Act of 1993. The DRT was right in so holding and the DRAT wrong. Hence the DRAT''s order doing so should be set aside, submitted Mr. Maloo.

No other argument was advanced before this court.

10. Per contra, Mr. M.A. Khan appearing for the respondent Bank supported the impugned order passed by DRAT on 18-2-2015. He submitted that the Tribunal''s certificate of recovery even while recording leviability of interest @ 10% p.a. from the date of filing of OA till the date of realization on the principal amount of Rs.25,84,248/- while ascertaining relief to be granted failed to record the period of levy of interest in the final order even though levy of interest on the principal amount found due was granted. That was clearly a clerical mistake. The rectification of this error where the decreetal order was not in consonance with the judgment has been rightly amended by the DRAT vide its order dated 18-2-2015 after the DRT on an erroneous interpretation of Section 26(2) of the Act of 1993 failed to do so leading to a failure of justice.

11. Heard. Considered.

12. I am of the considered view that Mr. N.K. Maloo''s argument set out to challenge the order dated 18-2-2015 passed by the DRAT and the consequential

amendment on 30-3-2015 of the recovery certificate dated 12-8-2004 by the DRT Jaipur is wholly untenable. Easily decipherable from the judgment dated 12-8-2004 itself, passed by the DRT Jaipur is that while deciding issue No.3 in favour of the respondent Bank it was inter alia held that "As regard rate of interest from the date of filing this original application till realization in my view considering the discretion of this Tribunal and the law enunciated by the Hon''ble Supreme Court in AIR 2001 SC 3095, Central Bank of India v. Ravindra Kumar, interest at the rate of 10% per annum will sufficient on the amount of Rs.25,84,248/- from the date of filing this original application till realization."

13. However in the final order dated 12-8-2004 and recovery certificate based thereon, the DRT Jaipur recorded that the bank was entitled to recover the due amount of Rs.25,84,248/- from defendants No.1 to 4, jointly and severally with interest at the rate of 10% p.a. as also the cost of the petition. This was an evident clerical mistake as even while interest on the amount due found was allowed, the period when the interest was to commence running and its terminal point was not set out. A wholistic reading of the judgment dated 12-8-2004 makes it evident that it was not the intent of the DRT Jaipur to exclude the payment of interest on the principal amount Rs.25,84,248/- due against the firm, its proprietor and guarantors. Contrarily interest @ 10% p.a. on the principal amount from the date of filing of OA till realization was provided for. A clerical mistake crept it. This was rectifiable under Section 26(2) of the Act of 1993. The DRT Jaipur had failed to exercise its jurisdiction under Section 26(2) of the Act of 1993 to rectify the clerical mistake. That failure has been corrected by the DRAT in appeal under its order dated 18-2-2015.

14. On the issue of what constituted a clerical error it would be well to refer to the judgment of the Apex Court in the case of J.K. Synthetics Limited v. K.P. Agrawal [(2007)2 SCC 433] wherein in para 8 referring to the judgment in the case of Tulsipur Sugar Co. Ltd. v. State of U.P. [(1969) 2 SCC 100] and dealing with a provision para materia with Section 26(2) of the Act of 1993, it was held thus:

"A careful reading of Section 6(6) and the two decisions shows that the two decisions considered two different situations. In Tulsipur sugar Co., this Court found that the reference to the Labour Court consisted of two parts. The award answered only the first part and had omitted to answer the second (consequential) part. While modifying the award on an application under Section 6(6) the Labour Court neither upset nor altered any of the findings recorded in its original award, but only answered the second part of the reference, which has earlier been omitted. Therefore, this court held that such correction was permissible. On the one hand in UP SRTC v. Imtiaz Hussain [(2006) 1 SCC 380], the Labour Court in its award had specifically refused back wages to the employee on the ground that his name was not in the list of permanent employees. But on an application under section 6(6), it reexamined the issue and held that though his name was not in the list of permanent employees, he was entitled to payment of Salary and allowances from the date of termination till the date of reinstatement with continuity of service. In Tulsipur Sugar co. (supra), there was a correction of an omission which fell within Section 6(6). In Imtiaz Hussain (supra) there was a review of the original order which of course, was impermissible. We may now summarise the scope of Section 6(6) of the Act thus:

(a) If there is an arithmetical or clerical or typographical error in the order, it can be corrected.

(b) Where the court had said something which it did not intend to say or omitted something which it intended to say, by reason of any accidental slip/omission on the part of the court, such inadvertent mistake can be corrected.

(c) the power cannot be exercised where the matter involves rehearing on merits, or reconsideration of question of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions."

15. Further in the case of Vipinchandra Vadilal Bavishi v. State of Gujarat [(2016) 4 SCC 531] the Apex Court held that a clerical mistake is a mistake of typing error occurring due to accidental slip or missions or error due to careless mistake or omission.

16. I am of the considered view that, in the facts of the case as also the law obtaining referred to above, the order dated 18-2-2015 passed by the DRAT cannot be held to have been in excess of its jurisdiction, arbitrary or perverse. Contrarily the DRAT has taken a correct view of power conferred under Section 26(2) of the Act of 1993 and rightly held that the aforesaid power ought to have been exercised by the DRT Jaipur in the first instance and it had failed to do so its order dated 26-2-2014 dismissing Bank''s application under Section 26(2) of the Act of 1993. The Tribunal had erred. This order was thus liable to be quashed and set aside and the Bank''s application under Section 26(2) of the Act of 1993 allowed. Resultantly, the DRT''s certificate of recovery issued on 12-8-2004 was to be amended to reflect recoverability of the due amount Rs.25,84,248/- with interest @ 10% p.a. from the date of filing the OA to the date of realization of the amount due. The DRAT''s order does not upset or alter or review any finding in the DRT Jaipur''s judgment of 12-8-2004 or grant substantive relief earlier denied or excluded either deliberately, accidentally or even by way of omission by the DRT. It is only entails correction of a clerical mistake where the final order and the consequent recovery certificate were not in consonance with the DRT Jaipur''s specific findings on issue No.3 in its judgment dated 12-8-2004 that the Bank, on its principal due amount of Rs.25,84,248/- was entitled to interest @ 10% p.a. from the date of filing the OA to the date of realization of the amounts due. A typing mistake creeping in the final order and certificate of recovery dated 12-8-2004 which is plainly a clerical mistake has been rectified. Consequent to DRAT''s order dated 18-2-2015 passed in appeal, the recovery certificate has

been rightly amended by the DRT Jaipur on 30-3-2015, following which notice for recovery of the due amount has now been issued to the petitioner firm, its proprietor and guarantor on 19-11-2015. In the facts of the case, I find nothing vitiating the impugned order passed by the DRAT on 18-2-2015, in compliance the consequential order dated 30-3-2015 by the DRT Jaipur and the resultant amended recovery notice on 19-11-2015 for recovery of Rs.25,84,248/along with interest 10% p.a. from the date of filing original application till realization.

17. In the circumstances, I find no force in the petition. The petition appears to have been filed in the facts recorded above not so much for vindication of the petitioners'' legal rights, but to obstruct the recovery of public money from the petitioner firm, its proprietor and guarantors on baseless grounds despite the issue agitated being covered by the judgments of the Apex Court as adverted to herein above.

18. The writ petition is, therefore, dismissed with costs of Rs.50,000/-. Rs.25,000/- be paid to the Rajasthan State Legal Services Authority Jaipur. Remainder Rs.25,000/- be paid to Rajasthan High Court Bar Association Jaipur within a period of three months from today.

19. A copy of the order be sent to the Rajasthan High Court Bar Association Jaipur and the Rajasthan State Legal Services Authority, Jaipur.