
(2003) 11 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 3793 of 2003

Narayan Avachitrao Deshmukh	Vs	APPELLANT
State Bank of India and Another		RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A, 35B
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(25)

Citation : (2004) 1 ALLMR 888 : (2004) 2 BC 525 : (2005) 127 CompCas 704 :
(2004) 1 MhLj 356

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : S.S. Voditel, for the Appellant; C.S. Samudra, for the Respondent

Final Decision : Allowed

Judgement

S.B. Deshmukh, J.—Rule. Heard forthwith by consent of the parties.

2. The challenge made in this writ petition is to the power, authority and quantification of the costs imposed by the Debt Recovery Appellate Tribunal, Mumbai. The facts, in brief, relevant for resolution of the controversy are that the respondent No. 1 Bank had filed Special CS No. 472 of 1996 in the Court of Civil Judge, Senior Division, Nagpur for recovery of Rs. 25,34,543.57 against the respondent No. 2 and the present petitioner. The respondent No. 2 was defendant No. 1 in the said civil suit. The present petitioner was defendant No. 2 in the suit. Petitioner, after service of summons and entering into appearance, had filed Written Statement somewhere on 19-11-1996. In the Written Statement, present petitioner has stated that the respondent No. 1 was carrying on business in the name and style of M/s Karuna Traders and had raised Cash Credit Limit from the respondent No. 1 Bank. He, amongst other pleas, denied the knowledge of terms and conditions of the said Cash Credit Limit granted in favour of the respondent No. 1. After framing of issues, said suit came to be transferred initially to the Debt Recovery Tribunal at Mumbai and was numbered

as OA No. 943 of 99. In view of the establishment of the Tribunal at Nagpur, OA was transferred to Debt Recovery Tribunal, Nagpur (for short, the "Tribunal") and renumbered as OA No. 211 of 2001.

3. The present petitioner as well as respondent No. 2 were served with summons. The petitioner appeared and filed MA No. 288 of 2002 for direction to the respondent No. 1 Bank to produce certain documents. The said application was rejected on merits with exemplary costs of Rs. 5000/- payable to the respondent No. 1 Bank. The petitioner, at the stage of filing of the counter-affidavit filed an application for amendment of the Written Statement. The petitioner was required to file said application for amendment regarding plea of fraud since the forum was changed and matter was to be decided on affidavit. The respondent No. 1 Bank filed reply to the application opposing amendment on the ground that the Written Statement was filed on 19-11-1996 and the plea which is sought to be amended, is belated. The learned Tribunal, after hearing both the parties, dismissed the said application being IA No. 749 of 2002 by its order dated 11-3-2003 with exemplary costs of Rs. 10,000/- payable to the respondent No. 1 Bank and on failure of the petitioner to pay the costs, it was directed that the Interim Recovery Certificate shall be issued against the petitioner. Interlocutory Application No. 120/03 was filed by the petitioner seeking review of the order dated 11-3-2003. This application is also rejected by the Tribunal with exemplary costs of Rs. 10,000/- payable to vide order dated 10-4-2003, the respondent No. 1 Bank. Similar order for issuance of Interim Recovery Certificate was passed in case the petitioner failed to pay the amount of costs. At the same time, the application being MA No. 121/03 filed by the petitioner seeking permission to file documents in support of the Written Statement was rejected by the learned Tribunal vide its order dated 10-4-2003.

4. The petitioner being aggrieved by the aforesaid orders, filed Misc. Appeals No. 165 of 2002 and 166 of 2003 before the Debt Recovery Appellate Tribunal, Mumbai. The Appellate Tribunal allowed the appeals of the petitioner vide common order dated 29-8-2003 subject to payment of costs of Rs. 25,000/- payable to the respondent No. 1 Bank. It is against this order of imposition of costs that the petitioner has filed the present writ petition. According to the petitioner, the approach of the Appellate Tribunal is unreasonable and improper. Moreover, according to the petitioner, the Tribunal does not have a power to impose costs.

5. The learned counsel for respondent no. 1 Bank resorted to the provisions contained u/s 19(25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "Act") which read as under :--

"(25). The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

6. I have read the entire Section 19 of the Act. The Debt Recovery Tribunal under

the Act is fully empowered to make appropriate interim orders including all such direction and orders as may be passed u/s 19(6) of the Act. Section 19(6) is not exhaustive in its nature. In fact, from the history of legislation in this behalf, it is clear that the Parliament has constituted a separate Tribunal by providing necessary powers and teeth under Sections 17, 18 and 19 to pass and get their orders implemented, whether final orders or interim orders, by ousting jurisdiction of all the Courts u/s 18. In other words, the Tribunal is constituted under this Act, in substitution of the Civil Court, but without the trappings of the Civil Court. Hence, it can pass any kind of order, final or interim order to fulfil the object of the Act without any procedural ramifications, but at the same time, being guided by the principles of natural justice.

This Act was passed with main objective of expeditious adjudication of claims of banks and financial institutions and speedy recovery of their dues. The Act was passed in the year 1993. Constitutional validity of the Act and its provisions were challenged in different High Courts which were withdrawn to the Supreme Court of India for final decision in the matter. The Apex Court, after dealing with the challenges, upheld the Constitutional validity of the Act. However, the Central Government found it necessary to amend the Act suitably to correct the lacunae. Consequently, the Act was amended in the year 2000 as Act No. 1. Since Section 19 is the backbone of the Act, it was fortified with some other provisions like counter-claims, set-off, attachment of property, appointing receiver and commissioner and distribution of sale proceeds to secured creditors u/s 529A of the Companies Act, 1956, provisions for inherent powers of the Tribunal etc. to make the Act more effective and purposeful. Thus, the Act has been provided with more teeth to achieve the objective of this special enactment.

The provision laid down u/s 19(25) of the Amendment Act No. 1 of 2000 seems to be there in Rule 18 of the Debt Recovery Tribunal (Procedure) Rules, 1993. This Sub-section (25) of Section 19 of the Act confers inherent powers on the Tribunal and wide powers for proper administration of justice. It gives authority to the tribunal to exercise inherent powers for administering justice. Where there is no express provision in the Act for a remedy, the tribunal can invoke at any stage of the proceedings this power to meet the ends of justice and to prevent abuse of process of law. But where there is a specific provision in the Act to meet a particular situation, this provision is complementary to the other powers mentioned in the other provisions of the Act. The main aim of this provision is that omission of any provision in the Act should not make the tribunal powerless.

7. This Sub-section (25) contained in Section 19, therefore, is in the nature of powers vested with the Civil Courts u/s 151 of the Code of Civil Procedure. However, it is also not the aim and object of the Act to make the Tribunal as Executing Authority to recover debts as claimed by the Bank or Financial Institutions. The Tribunal is enjoined with the duty to decide the debts due to the Bank. Taking into account the entire Scheme and modalities, the Tribunal, while adjudicating the claim of the Banks or the Financial Institutions, has to take into

account the cause shown by the debtor as required under Sub-section (3) of Section 19. Simultaneously, it also cannot be claimed that there is no power vested with the Tribunal to impose cost on the parties to the proceedings. The parties, therefore, cannot question and/or claim the order passed by the Tribunal imposing the cost as without power and/or authority under the provisions of the Debt Recovery Laws. Therefore, in my view, the Tribunal is empowered by Section 19(25) in a suitable case to impose costs on the parties to the proceedings.

8. While considering the applications for adjournment, amendment of pleadings, production of documents etc. the Tribunal shall consider "sufficient cause" or "good cause". The Tribunal shall not stick upto the "sufficient cause" in each case. The balance has to be stricken by the Tribunal while adjudicating the lis between the parties. The concept of "costs" is not in fact contemplated under any of the provisions of the Act or the Rules. However, resorting to the provisions laid down under Sub-section (25) of Section 19 of the Act, in a given case, costs can be imposed by the Tribunal. The Tribunal cannot resort to the provisions contained in Section 35A or 35B of the Code of Civil Procedure. The dictionary meaning of the term "cost" is as under:--

"The amount originally experienced in performing a particular act or operation or for production or construction, as of a building"

(Ref: Black's Law Dictionary - Revised fourth edition).

Similarly, meaning of the term "costs" is given in the said Dictionary, thus -

"A pecuniary allowance, made to the successful party, (and recoverable from the losing party) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit."

The term "costs" in its literal sense is limited to statutory allowances to reimburse for expenses incurred in instituting or defending proceedings. Costs are, therefore, meant to be given to a successful party to mitigate, to a greater or lesser extent, the necessary expenses incurred in the conduct of litigation. Costs are statutory allowance to a party to an action for his expenses incurred in the action. They are in the nature of incidental damages allowed to the successful party to indemnify him against the expenses of ascertaining his rights in Court, when the necessity for doing was caused by the other's breach of legal duty. However, the Tribunal has to strike balance while considering the imposition of costs. The hardship and/or costs incurred by the parties in defending or prosecuting the claim can be taken into consideration while imposing the costs. Nevertheless, the amount of claim made by the Bank or the Financial Institutions against the respondents or parties to the proceedings shall have no bearing while imposing the costs. The conduct of the party before the Tribunal also can be taken into consideration while imposing the costs. However, while quantifying the costs, hardship or the actual/ approximate costs which is required or likely to be required by the parties shall be taken into consideration by the Tribunal.

9. At the time of filing writ petition, operative order of the Appellate Tribunal was annexed to the petition. Full text of the order passed by the Appellate Tribunal is placed on record during the pendency of this petition. While ordering the costs, the Appellate Tribunal has observed, "It is also true that the application for amendment has been made belatedly and therefore has caused inconvenience. However, this inconvenience can be certainly compensated if the appellant is ordered to pay costs to the applicant bank and.....". The learned Appellate Tribunal imposed costs of Rs. 25,000/- while allowing the amendment application and application to annex certain documents in support of the Written Statement. This order or costs has been given in spite of the fact that the learned Appellate Tribunal has found merit in the appeal and thereby set aside the order of the Tribunal. In fact, in this case, it is revealed that the amendment was necessitated on account of the fact that the proceedings which were initially filed in Civil Court and stood transferred to the Tribunal where evidence is led by way of affidavit. Therefore, it cannot be said that the amendment sought to be made by the petitioner was belated and with an intention to protract the litigation. In this view of the matter, in my view, the Appellate Tribunal is not justified in imposing heavy costs of Rs. 25,000/- on the petitioner who, according to the respondent No. 1 Bank, stood guarantee for the respondent No. 2. I am told at the Bar that the costs are levied by the Tribunals in proportion to the claim amount. There is no hard and fast rule that the costs must be levied in terms of the amount of claim on the ground that heavy costs are required to be imposed. In absence of the specific provision and hard and fast rule, the Tribunal should not stick up to its practice to impose the cost in proportion of the claim amount.

10. The petitioner was directed to deposit the amount of Rs. 25,000/- with the Tribunal at Nagpur vide order dated 20-9-2003 which, according to the learned counsel for petitioner, has been deposited by the petitioner in the Tribunal at Nagpur.

11. For the aforesaid reasons, the petition is allowed. The appellate order imposing costs of Rs. 25,000/- on the petitioner is hereby set aside. The Debt Recovery Tribunal, Nagpur is directed to refund amount of Rs. 25,000/- to the petitioner, if deposited by him as per the order of this Court. The Appellate Tribunal had fixed 30-11-2003 as the dead-line for disposal of OA. No 211 of 2001. However, on account of stay of the proceedings and time taken during this proceeding, it would not be possible for the Tribunal at Nagpur to adhere to the time-bound disposal of the application as set by the Appellate Tribunal. The Tribunal is, therefore, at liberty to hear the OA as expeditiously as possible, in accordance with law.

Rule made absolute in the aforesaid terms with no order as to costs.