(2009) 07 DEL CK 0439

In the Delhi High Court

Case No : Writ Petition (C) 520, 3709 and 8161 of 2009

Naresh Kumar Mittal APPELLANT

Vs

State Bank of India and Others
 Smt. Pushpa Mittal and Another Vs State Bank of India and Another
 Ashoka Mercantile Ltd. Vs Punjab National Bank and Another RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 1, 13(4), 17, 17(1), 17(7)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 13, 13(1), 13(2)

Citation : (2009) 161 DLT 452 : (2010) 8 RCR(Civil) 387

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rajeeve Mehra, Sr, Arvind Sharma and Sumeher Bajaj, in WP C 520/2009, Sanjeev Bhandari and Shikha Pabule, in WP C 3709/2008, Sandeep Aggarwal and K.A. Singh, in WP C 8161/200, for the Appellant; S.L. Gupta and Virender Singh for the Respondent No. 1/SBI, Sanjeev Bhandari, for the Respondent Nos. 2 to 7 in WP (C) 520/2009, S.L. Gupta and Virender Singh, Ads. For the Respondent No. 1/SBI and Rajeeve Mehra Arvind Sharma and Sumeher Bajaj, in WP (C) 3709/2008 and Ajay Bahl in WP (C) 8161/2009, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—These three writ petitions raise a common question with regard to interpretation of Rule 13 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the Security Interest Rules) in the context of the fee applicable for an appeal arising out of an interlocutory application filed in a substantive petition u/s 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as =the Securitisation Act). We shall refer to the facts in WP(C)

520/2009 (Naresh Kumar Mittal v. State Bank of India and Ors.).

2. Aggrieved by the proceedings taken u/s 13(4) of the Securitisation Act, the petitioner in WP(C) 520/2009 filed an application u/s 17(1) of the Securitisation Act. That application was numbered as SA 9/2007. The prescribed fee of Rs 1 lakh was paid on that application. Subsequently, two interlocutory applications numbered as IA No. 202/2007 and IA No. 203/2007 were also filed. The fee paid on both those applications was Rs 250/- each (although, according to the learned Counsel for the petitioner, the fee payable was only Rs 200/- by virtue of Rule 13(2)(1)(e) of the Security Interest Rules). IA No. 202/2007 was allowed. However, IA 203/2007, which was an application for sending disputed documents to the Central Forensic Science Laboratory for testing was dismissed by the Debts Recovery Tribunal on 23.10.2008. Against the said order dated 23.10.2008, a miscellaneous appeal (MA___/2008) was preferred before the Debts Recovery Appellate Tribunal u/s 18 of the Securitisation Act. Alongwith this miscellaneous appeal, the petitioner herein paid a fee of Rs 250/-. The Registry of the Appellate Tribunal raised the objection that the fee for an appeal would be Rs 1 lakh and not Rs 250/-. The question of what would be the appropriate fee came up for consideration before the Debts Recovery Appellate Tribunal and the same was decided by the order dated 09.01.2009, which is impugned herein. By virtue of the said order, the Appellate Tribunal, relying upon its earlier decision in the case of Hargobind Fashions Pvt. Ltd. and Anr. v. State Bank of Patiala (Inward No. 83/2008, decided on 22.04.2008) held that the court fee payable was Rs 1 lakh and not Rs 250/-. Therefore, the petitioner was required to make good the deficient court fee of Rs 99,750/- within three weeks.

3. We have heard the counsel for the parties. The issue that arises for consideration is whether the fee payable on an appeal from an interlocutory application in a substantive petition u/s 17(1) of the Securitisation Act would be the same as that on an appeal from the final order passed in such substantive application or would it be the same as the fee payable in the first instance on an interlocutory application moved in the substantive petition u/s 17(1) of the Securitisation Act. Before we examine the said question, it would be necessary to note that initially Section 17 was construed to be a provision for making an appeal. In fact, the heading of the Section continues to read right to appeal. The expression used in Section 17(1) was ''may prefer an appeal''. This was, however, amended with retrospective effect from 21.06.2002 to read may make an application. We may also note that this amendment was perhaps brought about as a consequence to the Supreme Court decision in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . In paragraphs 59, 62, 76 and 80 of the said decision, it has been clearly indicated by the Supreme Court that Section 17, as it then stood, although it spoke of an appeal was more in the nature of an initial action like a civil suit under the Code of Civil Procedure, 1908. However, the position now is very clear that u/s 17(1), the petitioner makes an application and does not prefer an appeal.

4. Section 17 of the Securitisation Act, while it speaks of the right to make an application against any proceeding u/s 13(4) thereof, does not in terms refer to any interlocutory application. However, Section 17(7) reads as under:

17. Right to Appeal.

(1) xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

It is apparent that the procedure to be adopted for disposing of an application u/s 17(1), unless otherwise provided by the Securitisation Act, is to be the same as that provided under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder. If we now look at the latter Act, we find that Section 22, prescribes the procedure and powers of the Tribunal and the Appellate Tribunal. Those powers are indicated to be the same as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters enumerated therein which include, summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits; issuing commissions for the examination of witnesses or documents; reviewing its decisions; dismissing an application for default or deciding it ex parte; setting aside any order of dismissal of any application for default or any order passed by it ex parte; and any other matter which may be prescribed. It is, therefore, clear that if a party wishes to make an application for discovery and production of documents under the Securitisation Act, by virtue of the provisions of Section 17(7) thereof and Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, such person would be entitled to move an application and the tribunal and the Appellate Tribunal would have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 for disposing of such an application. In other words, the provisions of the two Acts read together clearly indicate that although the substantive application is to be made u/s 17(1), a party can make interlocutory applications u/s 17(7) of the Securitisation Act read with Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5. This takes us to the consideration of the issue at hand and, that is, the question of what would be the appropriate fee for moving an interlocutory application and also the fee for an appeal preferred against an order made in such an interlocutory application. Rule 13 of the Security Interest Rules reads as under:

13. Fees for applications and appeals u/s 17 and 18 of the Act.

(1) Every application under Sub-section (1) of Section 17 or an appeal to the

Appellate Tribunal under Sub-section (1) of Section 18 shall be accompanied by a fee provided in the Sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court, as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

No.

Nature of application

Amount of fee payable

1.

Application to a Debt Recovery Tribunal under sub- section (1) of Section 17 against any of the measures referred to in sub-section (4) of section 13

(a)

Where the applicant is a borrower and the amount of debt due is less than Rs.10 Lakhs

Rs. 500 for every Rs. 1 Lakh or part thereof

(b)

Where the applicant is a borrower and the amount of debt due is Rs.10 lakhs and above

Rs. 5000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 Lakhs subject to a maximum of Rs.1,00,000

(c)

Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs. 10 lakhs

Rs. 125 for every Rupees One lakh or part thereof.

(d)

Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs. 10 lakhs and above

Rs. 1250 + Rs. 125 for every Rs. 1 lakh or part thereof in excess of Rs. 10 Lakhs subject to a maximum of Rs.50,000

(e)

Any other application by any person

Rs. 200

2

Appeal to the appellate Authority against any order passed by the Debt Recovery Tribunal u/s 17

Same fees as provided at Clauses (a) to (e) of serial number 1 of this rule

6. A plain reading of the said rule indicates that insofar as an application u/s 17(1) is concerned, four specific instances have been visualized. These are clear from the entries at S.Nos. 1(a) to (d) of the table following Rule 13(2). S. Nos. 1 (a) and (b) pertain to an application where the applicant is the borrower. The two instances provided u/s Nos. 1 (a) and 1(b) are in respect of the amount of debt being less than Rs 10 lakhs or being Rs 10 lakhs and above, respectively. In either case, an ad valorem fee is prescribed. However, where the debt is more than Rs 10 lakhs, the ad valorem fee is subject to a maximum of Rs 1 lakh. The situations mentioned at S. Nos. 1(c) and 1(d) relate to applicants other than borrowers. A similar fee structure has been provided in respect of debts due being less than Rs 10 lakhs and Rs 10 lakhs and above. The maximum fee payable for this category of cases is Rs 50,000/- as indicated in S. No. 1(d) of the table. S. No. 1 (e) of the table prescribes a fee of Rs 200/- for any other application by any person. This is a residuary provision and it is under this provision that the fee payable for an interlocutory application is prescribed as Rs 200/-.

7. The view taken by the Appellate Tribunal, while interpreting S. No. 2 of the table of fees, is that the fee payable for an appeal from an interlocutory application u/s No. 1 would be the same as is payable for an appeal from a substantive application u/s 17(1). If we were to adopt this reasoning, then it would result in an absurd situation. By way of an example, let us assume that a borrower files an application u/s 17(1) of the Securitisation Act and the amount of debt due is more than Rs 10 lakhs. The fee payable on such an application would be subject to a maximum of Rs 1 lakh. Assuming the debt due to be Rs 5 crores, the fee payable would be the maximum of Rs 1 lakh. Now, if five interlocutory applications are to be moved in the course of the application u/s 17(1) of the Securitisation Act, if the Appellate Tribunals view were to be accepted, the appeals arising from such applications would each have to be subjected to the maximum fee of Rs 1 lakh. Thus, it would lead to an anomalous situation where the appeal from the order passed in a substantive application u/s 17(1) would be subject to a maximum of Rs 1 lakh. But, in addition, the applicant would have paid a further sum of Rs 5 lakhs on account of appeals arising from the orders passed in the interlocutory applications. It is obvious that the interpretation given to the provisions by the Appellate Tribunal would lead to absurd results which could never have been the intention of the legislature.

8. It is also important to note that S. No. 1(e) of the table pertains to any other application by any person and the fee prescribed for it is Rs 200/-. This, as we have already pointed above, is in the nature of a residuary clause and would

cover every application other than those specified at S. Nos. 1 (a), (b), (c) and (d). It is obvious that the appeals could arise from applications which fall u/s No. 1 (e) and it is for this reason that the S. No. 2 of the table specifies the fee of the appeals to be the same fees as provided at Clauses (a) to (e) of S. No. 1 of the said table. In other words, if the appeal arises out of an application which falls u/s No. 1(a), then the same fee as prescribed u/s No. 1(a) would apply to the appeal. Consequently, by the same logic, if an appeal were to arise out of an application falling u/s No. 1(e), it would be the same fee as that prescribed for that application, which is Rs 200/-.

9. We are, therefore, of the view that the interpretation given by the Debts Recovery Appellate Tribunal to the said rule with regard to fees is not correct. Consequently, the impugned orders are set aside. The fee payable on appeals arising from interlocutory applications would be the same as the fee payable for the interlocutory applications.

10. It is pointed out by the learned Counsel for the petitioner in PW(C) 3709/2008 entitled Pushpa Mittal and Anr. v. State Bank of India and Anr. that on 26.05.2008, this Court had directed the petitioner to pay the court fee as applicable in respect of the appeals arising out of substantive applications u/s 17(1) of the Securitisation Act. The court directed that upon payment of such fee, the DRAT may dispose of the matter on merits and leave the question of court fee open. The learned Counsel for the said petitioner pointed out that although the fee had been paid, the Debts Recovery Appellate Tribunal has not yet disposed of the appeal. Now that we have decided that no fee in excess of the fee prescribed for applications u/s No. 1(e) of Rule 13(2) is payable in respect of the appeals arising from such interlocutory applications, the excess amount, if any, deposited by the petitioner in WP(C) 3709/2008, shall be refunded to the petitioner.

These writ petitions are allowed as above and stand disposed of. No order as to costs.

