(2021) 09 DRT CK 0002

In the Debts Recovery Tribunal

Case No : Original Application No. 366 Of 2017

Panjab National Bank APPELLANT

Vs

Ahmed Abbas Ghulam And Ors. RESPONDENT

Date of Decision : 30-09-2021

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(20)Code Of Civil Procedure, 1976 — Section 34
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 16

Citation : (2021) 09 DRT CK 0002

Hon'ble Judges : Laxman Madnani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present Original Application has been filed by the Applicant Bank under Section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, l 993 now amended as The Recovery of Debts and Bankruptcy Act, 1993, against the defendants for recovery of Rs.12,10,278.00 (Rupees Twelve Lakhs Ten Thousand Two Hundred Seventy Eight Only) together with further interest @ 12.90% per annum with monthly rests+ 2% penal interest from the date of filing of this Original Application till realization along with cost and other relief as stated.

2. The brief facts of the case as stated in the application of Applicant Bank is that defendant No. l is the proprietor of A & T project approached the Applicant bank requesting financial assistance and the Applicant bank considering the request so made and the securities offered, sanctioned Cash Credit of Rs.12,00,000/- on 25.11.2015. Defendants No. 2 and 3 stood as guarantors. Defendant No. l as borrower and Defendants No. 2 and 3 as guarantors accepted the terms and conditions of the aforesaid sanction unconditionally.

In consideration of securing the above facilities, defendants signed and executed following documents:

a) Hypothecation of Goods and Book debts dated 01.12.2015.

b) Agreement of Guarantee dated 01.12.2015.

c) Registered Mortgage deed dated 26.11.2015.

3. In order to avail the said credit facility, the Defendants hypothecated the goods and book debts as well as created mortgaged their property. Details of the same was more particularly mentioned in Schedules I & II of the Original Application.

4. That the defendants availed the Credit facility but they failed to repay the dues of the Bank as per agreed terms, they failed to adhere to the financial discipline of the applicant bank and the account of defendants became irregular and sticky. The applicant bank requested the defendants from time to time to regularize the said account but defendants have failed and neglected to regularize the same. Ultimately, the account of the defendants have been classified as N.P.A. on 31.03.2017. The Applicant bank issued a letter/notice dated 18.04.2017 calling upon the defendants to repay the entire recoverable dues.

5. All these acts and conduct on the part of the defendants were contrary to the terms and conditions of the documents signed and executed by them. Accordingly the Applicant Bank has moved this Original Application to recover public money.

6. Soon after the registration of the case the defendants were summoned through registered post with A/D on 05.07.2017. As per record, notices sent to the defendants were duly served upon them. Applicant bank had also filed purshish at Exh. A/ 5 enclosing therewith copy of Postal Department's statement showing registration of article, track report. None appeared on behalf of defendants despite service summons through paper publication. Thus, the case was proceeded exparte against the defendants due to their non appearance vide order dated 26.12.2017.

I have heard the learned counsel for the applicant and have also gone through the case file properly. I have also gone through law applicable to facts and circumstances of the present case.

7. From perusal of the records, it is evident that defendants were provided with fair opportunity to contest the claim of the bank. As the defendants opted not to contest the case, so only point of consideration before this Tribunal is whether the applicant Bank is legally entitled to the amount as claimed in Original Application on the basis of documents and pleadings submitted by it before the Tribunal.

8. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh.A/6, sworn by Mr. Atul Shah, Branch Manager of the Applicant Bank.

9. The Learned counsel for the Applicant Bank has submitted that the Bank has

duly proved all the documents on file as required under "The Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendants are willful defaulters, as they availed the aforesaid credit facility to their benefits but failed to maintain the financial discipline of the bank. In view of the said facts, the Original Application may be allowed for the reliefs claimed.

10. I have gone through the loan documents; averments made in the Original Application and also considered the submissions made by learned counsel for the Applicant Bank. The evidence produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned on 25.11.2015 and the last payment was received by the applicant bank on 12.05.2017. Present O. A. has been filed by the applicant bank on 24.06.2017 and hence it is well within limitation period prescribed.

11. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank for an amount of Rs.12,10,278.00 (Rupees Twelve Lakhs Ten Thousand Two Hundred Seventy Eight Only).

12. As per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 which is analogous to Section 34 of Civil Procedure of Code 1908, on filing of the suit/ claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same depending upon the circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & Others. Taking stock of all the circumstances and keeping in view the facts of the case, I am of the opinion that justice will be served if the interest at the rate of 11% is awarded.

13. The claim for penal interest of 2% is hereby declined.

14. In view of the above, the Original Application is allowed.

ORDER

1) I hereby allow this 0.A. of the Applicant Bank and direct the defendants to pay jointly and severally to the applicant bank within 60 days from today, a sum of Rs.12,10,278.00 (Rupees Twelve Lakhs Ten Thousand Two Hundred Seventy Eight Only) together with further interest @ 11% per annum simple and cost & expenses from the date of filing of this O.A. till the date of realisation.

2) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from the hypothecated assets and mortgaged property of the Defendants as described in Schedule I & II annexed to the Original Application.

3) If there is any shortfall, the same shall be recovered from the sale of other personal movable and immovable properties of the defendants.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-I, Ahmedabad.

5) The registry of this Tribunal is hereby directed to issue the free copy of the order and be sent to the both parties in compliance of Rule 16 of the Debt Recovery Tribunal Procedure Rule 1993.

6) File be consigned to records.

Pronounced in Open Court on this 30th day of September, 2021 at Ahmedabad.

