(2020) 06 DRT CK 0002

In the Debts Recovery Tribunal

Case No : Original Application No. 147 Of 2014

Panjab National Bank APPELLANT

Vs

Bhabani Shankar Panda RESPONDENT

Date of Decision : 15-06-2020

Acts Referred:

Recovery of Debts Due to Banks and Financial Institution Act, 1993 — Section 19, 19(22)Code Of Civil Procedure, 1976 — Section 34

Citation : (2020) 06 DRT CK 0002

Hon'ble Judges : P. Ravi Kiran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This is an Original Application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 initiated by the applicant against the defendant praying for issuance of Recovery Certificate to the tune of Rs.11,76,338/-(Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only together with interest, cost and other usual reliefs.

2. The brief facts of the case as made out in the Original Application by the applicant bank is that the Defendant Vide Loan Application Dt. 25.05.2010, approached the Applicant Bank for financial accommodation in shape of Term Loan for purchase of a Mahindra XYLO for his smooth transport business under the CGTSME Scheme.

Further, the Defendant had supplied required documents to the Applicant Bank for sanction/processing of the proposed Loan in his favour and faced an interview cum appraisal for sanction of proposed Loan.

The Applicant Bank considering the Loan Application of the Defendant and after conducting an interview of the Defendant, Vide its Sanction Letter dated 31.05.2010, sanctioned a Term Loan Limit of Rs.7,80,000/-Lacs subject to contribution of 15% Margin Money by the Defendant. The Applicant Bank sanctioned the above mentioned facility on the basis of the stipulated terms and conditions, to which the Defendant accepted all the terms and conditions laid down therein and returned the copy thereof in token of acceptance after due acknowledgement. Further, the loan was granted under the hypothecation of Truck as Security and as an Additional Security the loan will be covered/ guaranteed under the Scheme Credit Guarantee Trust for Medium and Small Enterprises (CGTMSE) which premium to be borne by the borrower yearly basis till full liquidation of the Loan. Moreover, said sanctioned loan to be charged @ 12.55 interest.

The Defendant after accepting the entire terms & conditions of sanction, for availing the sanctioned Loan, executed necessary banking documents on 31.05.2010, such as, Letter of Hypothecation of the Transport Equipment/Vehicle dated 31.05.2010 with the Applicant Bank.

After execution of necessary banking documents by the defendant, the defendant deposited the Margin money with the Applicant Bank and thereafter, applicant Bank has disbursed the sanctioned amount of Rs. 7.80 Lac debiting the same from the loan account of the Defendant. It is further submitted that after purchase of Mahindra XYLO vehicle by the Defendant out of the sanctioned loan amount, the Defendant registered the purchased Vehicle with Regional Transport Officer, Balasore being Vehicle No.OR01Q 4600.

After disburse of sanctioned Loan in favour of the Defendant so also after marked hypothecation in favour of the Applicant Bank during Registration of the Vehicle purchased out of the Loan Amount, the Defendant have also executed the Balance and Security Confirmation Letter on dated 18.07.2012 with the Applicant Bank, wherein the Defendant has categorically confirmed the correctness of balance outstanding in the Loan Account No. "JK 194.

The Defendant utilized the entire sanction amount for the purpose of his business but defaulted in paying the dues of the Applicant Bank, when there was regular flow of income and also failed to observe the terms & conditions of sanction. Further, due to lack of financial discipline and on account of various acts and omission and commission committed by the Defendant and due to non-servicing of interest, non-repayment of installment in time, the Loan Account of the Applicant Bank became irregular and the outstanding therein mounted up forcing the Applicant Bank to categorized it as Non-Performing Asset (NPA) w.e.f. on dated 17.04.2013.

It is further stated that according to banking documents executed between the Applicant Bank and the Defendant so also as per the agreements/ covenants entered in to, the Applicant Bank is entitled to pendentilite interest and future interest till realization of balance due to the Applicant Bank.

In the above circumstances the applicant bank submits that the defendant is liable to pay the outstanding dues of Rs.11,76,338/-(Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only together with pendentilite and future interest @ 12.5% per annum with monthly rests, cost and charges till full realization.

3. Notice was issued to the defendants to show cause as to why the relief prayed for by the applicant bank be not granted. The notice sent to the defendant through Registered post. The notice sent to defendant is neither returned nor acknowledged. Adhering to the principle of natural justice, the notices pertaining to the defendant was published in a widely circulated Odiya newspaper. Despite service through publication, the defendants had neither appeared nor had filed the show cause reply. Consequently, defendant was set ex-parte on 1.9.2014. The Tribunal had no other option but to hear ex-parte against the defendant. I have heard the learned Counsel for the applicant bank and have perused the relevant documents.

4. The defendant had not contested the case of the applicant bank. Thus, the points for determination in this case are -

(i) Whether the claim of the applicant bank is within time?

(ii) Whether the defendant had utilized the loan facilities granted by the bank?

(iii) Whether the defendant is liable to the amount due to the applicant bank or not?

5. The applicant bank by oral and documentary evidence has established its case. The documentary evidence comprises from Annexure/Exhibit-1 to Annexures/Exhibits-11 series, which are available in paper book filed by the applicant bank.

6. From the perusal of the documents referred above and the copy of the statement of account, which is filed as Annexure/Exhibit-10 series, it is established that the defendant had availed the financial facility from the applicant bank and had withdrawn the amount through the account.

7. The oral testimony comprises of an affidavit of Sri A. Malesu Acharya, S/o. V. Krishnamurty Acharya, Senior Manager, Punjab National Bank, Balasore Branch in the district of Balasore. The averments in the application and the facts stated by the witness of the applicant in his affidavit are unrebutted.

8. From the perusal of the Statement of Account which is Annexure/Exhibit-10 series, the total outstanding comes to Rs.11,76,338/-(Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only which the applicant bank is entitled to recover from the defendant.

9. In view of the above discussion and after considering the entire evidence-on-affidavit of the applicant bank and the documents filed by the applicant bank, I have no hesitation to hold that the applicant bank is entitled to recover a sum of Rs.11,76,338/-(Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only from the defendant who is liable for the same. The contentions of the applicant bank is that they shall also be entitled to pendentelite and future

interest @ 12.5% per annum with monthly rests from the date of filing of the Original Application till the date of realization. The interest rate is discretion of Tribunal as per the principles laid down by the Hon'ble Supreme Court in case of Central Bank of India -Versus- Ravindra and other reported in AIR 2001 SC 3095.

10. From the above discussion, it is held that the contractual rate of interest was 12.5% per annum with monthly rests. Certified copy of the statement of account provides that the rate of interest was changed from time to time which are recorded in the statement of account. The rate of interest which was being charged was 12.5% p.a. with monthly rests granting of pendentilite and future interest is the discretion of the Tribunal and the provisions of Section 34 of CPC does not necessarily mean that in case of commercial transaction, the court is bound to award contractual interest.

11. In view of the above discussion and after considering the entire evidence on affidavit of the applicant bank and the original document filed by the applicant bank, I have no hesitation to hold that the applicant bank is entitled to recover a sum of Rs.11,76,338/-(Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only from the defendant, which the bank is entitled to get. Considering the facts and circumstances of the case, it will be just and proper to award simple interest @ 10% per annum from the date of filing of the original application till the date of realization.

O R D E R

The application for the recovery of Rs.11,76,338/- (Rupees Eleven Lakhs Seventy Six Thousand Three Hundred Thirty Eight) only is allowed ex-parte with ex-parte cost against the defendant. The defendant shall pay pendentelitie and future interest @ 10% per annum on the amount due from the date of filing of the original application till full realization of the claim amount. The applicant bank can recover the Bank dues from the defendant after the sale of the hypothecated property which are more-fully described in the original application which shall form a part of this judgment, if the sale proceeds are insufficient to satisfy the Certificate, than from other properties of the defendant which are uncharged.

The defendant is restrained from depleting, transferring, encumbering or in any way dealing with his assets without first paying the claim of the applicant bank.

Let a Recovery Certificate be issued under Section 19 (22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the same be forwarded to the Recovery Cell for further action as per law.

The parties are directed to appear before the Recovery Officer on 21.8.2020 for further action in accordance to law in the event the entire amount is not paid by the said date.

Let a copy of the Judgment be supplied to the parties forthwith as per rules.

Dated :15.6.2020

Judgment signed, dated and Pronounced in open Court.