

(2015) 02 DEL CK 0360

In the Delhi High Court

Case No : Writ Petition (C) 1803/2015, C.M. Nos. 3210 and 3211/2015

Panjwani Packaging Ltd. and Others

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Limitation Act, 1963 — Section 17

Penal Code, 1860 (IPC) — Section 34, 403, 406, 420

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 2(g), 24

Citation : (2015) 02 DEL CK 0360

Hon'ble Judges : R.K. Gauba, J.;S. Ravindra Bhat, J.

Bench : Division Bench

Advocate : Manish Miglani, for the Appellant

Judgement

R.K. Gauba, J.—Through the writ petition at hand challenge is brought to order dated 03.11.2014 passed by Debts Recovery Appellate Tribunal (DRAT) in appeal No. 115/2014 arising out of original application (OA) No. 591/97 decided by the Debts Recovery Tribunal (DRT) on 11.10.2012.

2. The background facts lie in a short compass and may be noted at the outset. The petitioner No. 1 is a company incorporated and registered under the Companies Act having its office in Indore, Madhya Pradesh. The petitioner No. 2 is one of the Directors while petitioner No. 3 is legal heir of one of the co-defendants (defendant No. 7 - since deceased, also a Director) before the DRT. The petitioner-company had opened a current account with respondent-bank (hereinafter referred to as "the bank") on 21.2.1991. It approached the bank for collection of applications for allotment of shares of its public issue scheduled to be opened in April, 1992. The public issue offered for allotment 18 lakh equity shares of Rs. 10/- each. The public issue account was opened by the petitioner-company on 06.04.2012 with the Parliament Street Branch of the bank, which had designated its various branches to collect the applications, such branches including Muskati Market Branch at Ahmedabad (Gujarat).

3. The said Ahmedabad Branch of the bank remitted sums of Rs. 5,68,270/- and Rs. 22,30,499/- on 27.5.1992 and 1.6.1992 vide TT Nos. 83 and 85, crediting the said amounts in the current account of the company on 3.6.1992 and 6.6.1992 respectively. It is undisputed that the petitioner- company withdrew the said amounts from the current account maintained with the Parliament Street Branch. It is also undisputed that the bank gave another credit of the said two amounts in the account of the petitioner- company on 28.7.1992. The repeat credits of the said amounts also resulted in withdrawals being made by the petitioner-company.

4. It is not in dispute that on 19.12.1995, the Parliament Street Branch of the bank received a communication from the Income Tax Authorities requiring it to submit the statement of account of the petitioner-company. It has been the case of the petitioner-bank that it was at this stage that the erroneous double credit of the two amounts in favour of the petitioner- company against the aforementioned two remittances received from Ahmedabad Branch came to be noticed. It is not in dispute that the bank called upon the petitioner-company to refund the said amounts by way of re-deposit but the petitioners refused to comply. It is alleged by the bank that the withdrawals were made by the Directors of the petitioner-company knowing fully well that the money did not belong to them and had been credited for the second time by mistake. Attributing intentional and dishonest misappropriation of the money having been withdrawn by taking advantage of the inadvertent error, the bank lodged a first information report (FIR) No. 504/1996 under Sections 403/420/406/34 IPC with Police Station Parliament Street, New Delhi. The bank also issued notice on 10.4.1997, and another on 22.8.1997, demanding the return of the money along with interest calculated @ 22.75%. The OA was presented against the above backdrop claiming recovery of the sum of Rs. 92,52,764/- along with interest pendent elite and future, until payment, in addition to costs.

5. The OA was contested by the petitioners (and other defendants) terming the claim of the bank as false, frivolous and bogus. The points for determination that arose before the DRT included the issue of limitation and the question as to whether the claim of the bank was "debt", within the meaning of the expression used in Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act). The DRT answered the said two issues, as indeed the others, including that of liability, against the petitioners and by judgment dated 11.10.2012 decreed the claim, thereby issuing recovery certificate in favour of the bank in the sum of Rs. 92,52,764/- with interest and cost @ 18% per annum from 23.12.1997 till 19.4.2012 and from 12.9.2012 until recovery against the petitioners and two others (jointly/severally) directing, inter alia, that the liability of the party impleaded as defendant No. 7 would be borne by legal heirs (defendant Nos. 5 and 6) restricted to the extent of their inheritance .

6. In appeal before DRAT, two issues were raised, one concerning limitation and the other as to the maintainability of the claim under RDDBFI Act before DRT on

the plea that the liability alleged by the bank could not be treated as "debt" within the meaning of the expression used in the said law. The DRAT rejected both the said contentions and, thus dismissed the appeal through the impugned order. The same very contentions are sought to be re-agitated before this Court through the writ petition at hand.

7. Whether or not the bank could have approached DRT for recovery in the above noted conspectus of facts is a question which relates to jurisdiction. It is, therefore, considered first.

8. The RDDBFI Act was enacted to provide for expeditious adjudication and recovery of "debts" due to the banks and financial institutions. The application by the bank for recovery of a "debt" due to it lies before DRT in terms of Sections 19. The expression "debt" for such purposes is defined in Section 2(g) which reads as under:

"debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

9. The word "debt" is ordinarily used to connote a loan of money advanced. But, understood in its wider sense, it means something (as money, goods or services) "owed or due" or something which one person is "under an obligation to pay or render to another" [Shorter Oxford English Dictionary]. The definition of the expression "debt", as given in RDDBFI Act also adopts the wider and more expansive connotation. It defines it to mean "any liability" which is claimed by the applicant bank (or a financial institution, as the case may be) as "due" resulting from "any business activity undertaken by the bank" and subsisting, as indeed "legally recoverable", on the date of the application.

10. The moot question which, thus, arises is as to whether the amount which is wrongly credited by the bank in the account of its customer can be treated as money which the customer can be held liable to pay back. If the answer is to be in affirmative, the money wrongly credited to the customer by the bank would be "liability" owed by the former and "due" to the latter.

11. In the above context, the provision contained in Section 72 of the Contract Act, 1972 is relevant. It reads as under :

"72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.--"A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

12. The legislative object behind Section 72 of Contract Act is to prevent unjust

enrichment. In Mahabir Kishore and others Vs. State of Madhya Pradesh, , the Supreme Court explained the basic postulates for the principle of unjust enrichment thus :

"The principle of unjust enrichment requires: first, that the defendant has been "enriched" by the receipt of a "benefit"; secondly, that this enrichment is "at the expense of the plaintiff" and thirdly; that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient's wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved."

13. It is well settled that any payment made voluntarily or otherwise under a mistake, either in law or fact, can be recovered once the mistake is established. In Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, the Supreme Court held as under :

"27... On a true interpretation of s. 72 of the Indian Contract Act the only two circumstances there indicated as entitling the party to recover the money back are that the monies must have been paid by mistake or under coercion. If mistake either of law or of fact is established, he is entitled to recover the monies and the party receiving the same is bound to repay or return them irrespective of any consideration whether the monies had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. If once that circumstance is established the party is entitled to the relief claimed. If, on the other hand, neither mistake of law nor of fact is established., the party may rely upon the fact of the monies having been paid under coercion in order to entitle him to the relief claimed and it is in that position that it becomes relevant to consider whether the payment has been a voluntary payment or a payment under coercion....."

14. From the above it follows that the money credited by the bank in the account of a customer by mistake, or under coercion, when retained by the customer or wrongfully withdrawn or refused to be returned, when demanded, amounts to unjust enrichment. The fact as to whether the payment was made voluntarily or otherwise is of no consequence so long as the payment was made mistakenly (or pursuant to coercion) and was not due. The mistake may have occurred inadvertently or be the result of act of commission or omission of a third person (including an employee, agent etc.) actuated by intent to deceive or defraud. By virtue of Section 72 of the Contract Act, the customer receiving the money in such facts and circumstances is bound to repay or return it. On account of such obligation to repay or return the money received by mistake, or under coercion, such amount is rendered due from the customer to the bank and thus in the nature of a liability constituting a "debt" which the bank may lawfully claim by way of application to the DRT under the provisions of RDDBFI Act, subject, of course, to all just exceptions including the bar of limitation.

15. It has not been claimed or proved by the petitioners that the credit entries

made on 28.7.1992 of the amounts of Rs. 5,68,270/- and Rs. 22,30,499/- on account of share application money received on their behalf by the Ahmedabad Branch of the bank were rightfully given or that the same represented receipts other than the one for which remittances had been made earlier on 27.5.1992 and 1.6.1992 respectively. Clearly, the second entries were wrongful credits to which the petitioners could have had no claim. The wrongful entries thus represented money that rightfully belonged to the bank. By way of wrongful entries of 28.7.1992, the petitioners received unjust enrichment at the expense of the bank. The receipt of money for the second time on 28.7.1992 by the petitioners was thus money delivered by mistake within the meaning of Section 72 of Contract Act. The said provision of law renders it a liability of the petitioners to repay or return the said amounts to the bank.

16. Thus, the amount claimed by the bank in the OA before the DRT was a liability of the petitioners which could be rightfully claimed by the bank as due from them within the meaning of the expression "debt" as defined in RDDBFI Act for which the bank could maintain an application under Section 19.

17. This brings us to the issue of limitation. The OA was instituted (before the DRT) on 23.12.1997. The bank has claimed that it realized the mistake of dual credit only upon receiving the letter dated 05.12.1995 from the Income Tax Authorities requiring it to share with them the statement of account in respect of the petitioners in the case of some inquiry undertaken by those authorities. It thus claims that the cause of action for issuing the notice to demand of the petitioners return of the money wrongly credited in their account and wrongfully withdrawn by them arose upon discovery of the mistake in December, 1995 and, thus, the claim was filed (on 23.12.1997) within the prescribed period of limitation calculated from the date of said discovery of fact.

18. The petitioners, on the other hand, have been arguing that the credit of the said two amounts on the basis of which the claim of the bank arises was given on 28.7.1992 and, thus, the OA was time-barred. In the petitioners' submission the theory of discovery of the erroneous credit has been falsely set up inasmuch as the material indicates that the bank officials had full knowledge of the error immediately after the said entry of 28.7.1992. In support of this claim, the petitioners place reliance on copy of a document that purports to be a statement given by one Mr. Darshan Bagri (stated to be an employee of the respondent-bank), inter alia, indicating that the credit of the sum of Rs. 28 lakhs given in the account of the petitioner-company had been found by him and brought to the notice of the department head in which regard some internal communication was made. The copy of the said document purporting to be statement of Mr. Darshan Bagri (page 281 of the paper book) with its typed copy (page 282) do not indicate in any manner as to in what context or before which authority or for that matter in the course of which proceedings, it had been prepared. The counsel for the petitioners, on being asked, stated that this was a statement made to the police in the course of investigation in the FIR that had been lodged by the bank

on the same set of facts.

19. Admittedly, the petitioners have not led any evidence to above effect before the DRT nor sought any opportunity for adducing such evidence in the course of appeal before DRAT. Authenticity of the said material is questionable. In the absence of formal proof to such effect, the said material cannot even be looked into. Noticeably the said material was not even referred to before DRT or DRAT at the time of adjudication or decision on appeal.

20. Thus, there was no material before DRT, or DRAT, to show, in any manner, knowledge of the bank respecting erroneous credits given on 28.7.1992 at any stage anterior to the receipt of the communication from the income tax authorities by the bank in the form of letter dated 19.12.1995.

21. By virtue of section 24 of RDDBFI Act, the provisions of Limitation Act, 1963 apply to the applications made to the DRT. The period of limitation prescribed for a claim for recovery of money is three years from the date on which the cause of action in that regard arises. Section 17 of the Limitation Act, 1963, inter alia, provides that the period of limitation for such an application for relief from the consequences of a mistake (or fraud) would not begin to run until the applicant has discovered the mistake (or fraud) or with reasonable diligence would have discovered it.

22. Though the bank also alleges dishonest withdrawal, in absence of proper proof supporting such an allegation, the question of limitation has to be examined only from the perspective of mistake. In the given circumstances, there can be no doubt that the double credit given was erroneous. Whether or not the second credit entries were fraudulent is besides the point. There can be no doubt at least as to the fact that the entries were wrong and therefore mistaken. With no evidence having been brought in to refute the claim of the bank that it discovered the error only in December, 1995, the cause of action in favour of the bank must be held to have arisen only upon receipt of the communication from the income tax authorities and, therefore, the limitation would begin, by virtue of Section 17 of the Limitation Act only from the said date.

23. Thus, the objection on the question of limitation is frivolous and has been rightly rejected by the authorities below.

24. For the foregoing reasons the petition is found devoid of substance. The impugned order of DRAT cannot be faulted. The petition and the applications are accordingly dismissed in limine.