
(2008) 04 MP CK 0003
In the Madhya Pradesh High Court

Paresh Spinners Ltd.

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 2(c), 34

Citation : (2008) ILR (MP) 2571 : (2009) 2 MPHT 518

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.—Petitioner is aggrieved by the assignment of its loan, debts and charges and other collateral securities by respondent No. 1 in favour of respondent No. 3, as advised by the respondent No. 1 to petitioner vide communication dated 15-4-2006, Annexure P-I. In the present petition, petitioner is claiming following relief from this Court:

1. The Hon'ble Court may please to issue an appropriate writ quashing the deed of assignment dated 23-3-06 executed between respondent No. 1-Bank and respondent No. 3 for the assignment of outstanding balance of the petitioner company as per Annexure P-I.
2. The Hon'ble Court may please to issue an appropriate writ directing the respondent No. 1-Bank to honour its offer of settlement made to the petitioner Company vide letter dated 29-12-05 under Reserve Bank guidelines and also directing the respondent No. 1-Bank to accept the improved offer made by the petitioner Company vide letter dated 18-4-06.
3. The Hon'ble Court may please to issue an appropriate writ directing the respondent No. 3 not to intervene in the affairs of the petitioner Company nor to take any coercive measures for recovery of the dues under deed of assignment

but to direct the respondent No. 3 to accept the offer of OTS under RBI guidelines as made by petitioner Company and to discharge them.

4. The Hon'ble Court may please to pass an appropriate writ directing the respondent No. 2 to ensure due compliance of its guidelines issued for one time settlement of the dues of SME as per Annexure P-2 being applicable to non-discretionary on all the eligible borrowers.

5. Any other order, writ or direction as may be deemed fit in the circumstances of the case, may please be issued.

2. Petitioner is a Registered Company. It set up an industrial unit by obtaining various loans/fund or non-fund based facilities as detailed in Annexure P-1 from the State Bank of India-respondent No. 1. The facilities were secured by pledge/mortgage/hypothecation of assets, including guarantees executed in favour of the respondent No. 1-Bank. The outstanding loan amount together with underlying securities was assigned by the respondent No. 1 to respondent No. 3. This, according to petitioner is impermissible in terms of the Reserve Bank of India guidelines dated September 3, 2005. Petitioner expressed its readiness and willingness vide Annexure P-4 to deposit the minimum amount under the OTS by proposing 25% down payment within one month and remaining amount in 12 monthly instalments. Later on, vide Annexure P-5, petitioner proposed to settle the outstanding dues of Rs. 1,40,09,542/- by making payment in three months. According to petitioner, respondent No. 1 without affording opportunity of hearing, illegally assigned the NPA with securities to respondent No. 3 which is neither a Reconstruction nor a Securitisation Company as defined in Section 2 (v) and (za) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act" for short). That being the legal position, the respondent No. 1 could not assign outstanding loans and charges over the assets of petitioner Company in favour of respondent No. 3.

3. The next contention of learned Counsel for petitioner was that the guidelines issued by the Reserve Bank of India on September 3rd, 2005 are binding on respondent No. 1 and as such respondent No. 1 was bound to accept the one time settlement offered by the petitioner. Lastly, it was submitted that outstanding dues of the petitioner Company being actionable claim, assignment thereof is only permissible upon execution of an instrument in writing as per Section 130 of the Transfer of Property Act, to acquire unsecured rights and remedies of transferor. In view of this, according to learned Counsel for the petitioner, respondent No. 3 could not acquire secured rights and remedies of respondent No. 1 by virtue of assignment.

4. Per contra, learned Counsel appearing for the respondent No. 3 and respondent No. 1 supported the action and raised preliminary objection that whatever was argued by learned Counsel for petitioner is not set out in the petition and there are no pleadings to that effect. Learned Counsel for

respondent No. 3 raised further objection with regard to the maintainability of writ petition against respondent No. 3 (a Private Bank), which is not a State or Instrumentally of State within the meaning of Article 12 of the Constitution of India. Further, it was submitted that assuming that the submissions made at the Bar on behalf of petitioner can be examined without pleadings, still petitioner has no case on merit. According to them, what were assigned to the respondent No. 3 are the various debts owed to respondent No. 3 are the various debts owed to respondent No. 1 together with security papers, which is permissible under the law as per guidelines of RBI dated July 13, 2005, which has a binding and statutory force so far as respondent Nos. 1 and 3 are concerned. In other words respondent No. 3 has stepped into the shoes of respondent No. 1.

5. It was further contended that petitioner merely made an offer to settle the outstanding dues and neither the respondent No. 1 nor respondent No. 3 is bound to accept the offer and therefore in absence of a statutory right, no writ of mandamus could be issued by the Court against a private incorporate body to enforce matters relating to contract. Lastly they submitted, equity is not in favour of the petitioner inasmuch as, although it is in the business of spinning cotton yarn, in fact it had been spinning yarns (pun intended) to respondent Nos. 1 and 3 and in this context they pointed out various order-sheets recorded in the present case to show how respondent Nos. 1 and 3 including the Court was taken for a ride to avoid payment. It was also contended that respondent No. 3 being a Bank, can in fact proceed against petitioner under the provisions of Act and in this view of the matter reference to provisions of Transfer of Property Act regarding settling of debts between secured and unsecured creditors is wholly alien.

6. Shri Munshi, learned Counsel for petitioner made reference to various decisions without pointing out any specific paragraph, and in support of what proposition of law. These decisions are:

Vallukunnel v. Reserve Bank of India AIR 1962 SC 1837.

Canara Bank Vs. P.R.N. Upadhyaya and Others, .

Allahabad Bank v. Canara Bank and Anr. AIR 2000 SC 1536.

Muhammed Usman Vs. Registrar of Co-operative Societies, .

Lastly, reliance was also placed on a decision of the Supreme Court in the matter at Zenith Steel Tubes & Industries Ltd. and Anr. v. Sicom Limited reported in JT 2007 (13) sc 102, in support of his contention that pure legal questions could be argued even if there is no pleading to that effect in the writ petition.

7. On the other hand, learned Counsel for the respondent No. 3 who led the arguments has placed reliance on the following decisions:

Vinay Rai Vs. IFCI Ltd. and Others, .

Federal Bank Ltd. Vs. Sagar Thomas and Others, .

8. Before dealing with rival submissions and case law cited, it would be pertinent to state that although a ground has been raised that petitioner Company is a sick industrial unit under the provisions of the SICA Act, no submission was made when learned Counsel for the petitioner argued the matter before the Court, hence this Court is not dealing with the said ground which was not argued.

9. Now to various decisions cited by the learned Counsel for petitioner, as quoted above. Even after a careful reading of the cases cited, it is not clear at all how these cases advance the case of petitioner. In *Vallukunnel* (supra), the Constitutional Bench of Five Judges was considering the constitutional validity of Section 38 (1), (3)(b)(iii) of the Banking Companies Act, 1949 on the ground it were void being in breach of Articles 14 and 19 of the Constitution and ultra vires being in conflict with Article 301. By a majority of 3 Judges, speaking through Hidayatullah, J. (as His Lordship then was) Supreme Court upheld the validity of the impugned legislation on each count. Section 38(1), (3)(b)(iii) of the Banking Companies Act, 1949 vested exclusive power in the Reserve Bank of India to judge whether the affairs of a Banking Company are not being so conducted as to be prejudicial to the interests of the depositors. Majority held that the said provision was not arbitrary, unreasonable or ultra vires of Article 14, Article 19 and Article 301 of the Constitution of India.

10. Next decision is *Canara Bank* (supra). It is also not applicable to the facts of the case in hand. It was a case of term loan advanced by the Bank to the respondent for construction of a Strong Room in the premises which was ultimately let out to the Bank. Landlord executed a Demand Promissory Note undertaking to pay interest at the rate of 5% above the RBI rate of interest with minimum rate of interest @ 14% p.a. compounded quarterly. Subsequently, a complaint was filed before Banking Ombudsman assailing the action of Bank in charging higher rate of interest. Banking Ombudsman allowed the complaint and directed the Bank to recast loan amounts in the light of RBI's circulars and not to charge interest at the quarterly rests. It is against the directions of the Banking Ombudsman matter was taken to the Supreme Court which set aside the directions of the Banking Ombudsman. It is beyond comprehension how the said decision is useful while deciding the present writ petition.

11. *Allahabad Bank's case* (supra), says the Debt Recovery Tribunal has the exclusive jurisdiction to decide an application for recovery of debt from the Financial Institution and the Company Court under Sections 442, 446 and 537 of the Companies Act cannot stay the proceedings initiated and pending before the Tribunal constituted under RDB Act, 1993. That is also the case not here.

12. Now coming to the decision of Kerala High Court in *Muhammed Usman* (supra), after a careful reading, we fail to see how the said decision would come to the rescue of the petitioner in present factual scenario.

13. The last citation, i.e., *Zenith Steel Tubes* (supra), it was cited to buttress the argument that a legal point could be raised even without pleading. A reading of

the said decision clearly goes to show that some Interlocutory Application was filed in the Supreme Court to place on record additional grounds as set out in the application. Despite objection from the other side, Supreme Court allowed the application and allowed the appellant therein to raise the plea of limitation. Learned Counsel for the respondent Nos. 1 and 3 were right in submitting that first there has to be foundation which could be elaborated. In absence of any basic pleading, arguments should be ignored as even otherwise they have no merit and substance.

14. In the present case, it is nobody's case that respondent No. 3 is not a Banking Company within the meaning of Clause (c) of Section 2 of the Act. In this view of the matter, all contentions, though not pleaded, fall flat on this ground. There is no prohibition that one Bank could not assign its debts together with underlying securities to another Bank. The respondent No. 3, therefore, stepped into the shoes of respondent No. 1 by virtue of assignment and as such is competent to take action against the petitioner under the provisions of the Act.

15. This aspect of the matter has been exhaustively dealt with by the Division Bench of Delhi Court in the case of Vinay Rai Vs. IFCI Ltd. and Others, . Learned Counsel for respondent No. 3 also brought to notice of the copy of SLP [(Civil) No. 3352/2007] preferred against the said decision, which was also dismissed on 2-3-2007 in view of the earlier judgment of the Supreme Court in Transcore Vs. Union of India (UOI) and Another, . So far as the scope and extent of power of judicial review in such type of cases is concerned, it has been succinctly brought out in Haryana Steel & Alloys (supra), and, therefore, it does not call for any repetition. Suffice it to say that in a contractual matter like assignment of NPA, pursuant to the RBI's guidelines it is not open for the borrower to challenge assignment debts with underlying securities and no writ of mandamus could be issued for enforcement of pure contractual right. No prior notice is required before assignment of NPA nor does the petitioner have any right to enforce OTS. Decision of the Delhi High Court is answer to each and every contention raised by learned Counsel for the petitioner. No writ proceedings would lie against respondent No. 3, in view of the, in Federal Bank Ltd. v. Sagar Thomas and Ors. (supra). Thus, we do not find any merit in writ petition from any angle.

16. That there is yet another reason which disentitles petitioner to any relief as equity is not in favour of petitioner. At the time of filing of the present writ petition, petitioner had admitted that dues to the tune of Rs. 1,40,09,542 were outstanding as on 31-3-2004. On 12-11-2007, while considering I.A. No. 9640/2007, this Court taking into account the admitted liability, directed petitioner to deposit on or before 28-2-2008 Rs. 1,50,00,000/- with respondent No. 3 failing which the interim protection given to the petitioner was liable to be withdrawn. It was also made clear that the aforesaid deposit would not affect rights of the parties. From reading of this interim order, it seems that it was a consent order, still, petitioner preferred an Intra Court Appeal (W.A. No. 117/2008) against the said interim order. Said W.A. was partially allowed in the

sense that instead of Rs. 1,50,00,000/- petitioner was directed to deposit a sum of Rs. 1,40,00,000/- within three weeks then the interim protection would continue. Instead of complying with the interim orders of this Court, petitioner filed a civil suit. When an objection was taken to the maintainability of the suit in view of Section 34 of the Act and Sections 17 and 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, learned Trial Judge sustained objections and dismissed the suit vide order dated 4-4-2008, certified copy whereof was produced for the perusal of the Court and it was returned after retaining photo-copy thereof. Thus, it is clear that petitioner Company was not serious at any point of time to settle outstanding dues which led to loan a/c being declared as NPA and assignment of said NPA to respondent No. 3.

17. In the light of above discussion, we find and reiterate that on account of assignment of outstanding loans with underlying securities, respondent No. 3 interest, was secured interest, within the meaning of the Act, and as such there is no merit and substance in the writ petition, which is accordingly dismissed with costs of Rs. 7500/- to be paid by the petitioner to the respondent No. 3 within a month, otherwise costs would be realised as Arrears of Land Revenue by the Competent Authority as per law.