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In the Delhi High Court

Case No : W.P. (C) 3498/2014, CAV. 482-484/2014

Punjab and Sind Bank — APPELLANT

Vs

Tejwant Singh — RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2014) 6 AD 752

Hon'ble Judges : Vibhu Bakhru, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajiv Dutta, Sr. Advocate and Kittu Bajaj, Advocate for the Appellant; N.K. Kaul, Sr. Advocate, Rajendra Singhvi and Kanwar Preet Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

Cav. 482-484/2014

Learned counsel for the caveators put in appearance. Cav. 482-484/2014 accordingly stand discharged.

W.P. (C) 3498/2014

1. Issue notice. Sh. Rajendra Singhvi, Advocate accepts notice; Shri N.K. Kaul, learned senior counsel appears on his behalf. The Court heard the counsel for parties finally. The petitioner-bank (hereafter "the bank") is aggrieved by an order of the Debts Recovery Appellate Tribunal (hereafter "the DRAT") allowing an appeal preferred by the respondent (hereafter "the judgment debtor").

2. The brief facts are that the bank had initiated proceedings, being Suit No. 2509/1998 before this Court claiming a decree for Rs. 79,61,034/-; the judgment debtors were arrayed as defendants. The suit claimed future interest @ 17.5% in respect of the outstanding in the LAP account and 19% per annum in

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respect of the outstanding in the ODP account with effect from 27.09.1988. The claim in the suit inter alia was as follows:

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(a) that a money decree be passed against defendants Nos. 1 to 6 jointly and severally for a sum of Rs. 79,61,034/- together with further interest @ 17.5% p.a. in respect of the outstanding in LAP account at the rate of 19% p.a. in respect of the outstanding in the ODP account, from 27.09.1988 till payment or realization.

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3. During the pendency of the suit, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force; consequently the proceedings was transferred to the file of the Debts Recovery Tribunal (DRT) and registered as OA 205/1995. The DRT, after considering the materials and documents on the record and submissions of parties, held that the bank had proved its claim and decreed it in full. So far as the interest was concerned, the relevant part of the DRT''s order reads as follows:

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26. It is submitted on behalf of the Bank that the applicant bank is entitled to the issue of recovery certificate against the defendants for the sum of Rs. 79,61,034/- with further interest thereon @ 17.5% p.a. on the LAP account and 19% p.a. on the ODP account with quarterly rests from the date of filing of the suit i.e. 27.9.1988. The statement filed by the Bank claiming the said amount has been filed as Exhibit PW4/2. It is well proved under the provisions of Bankers Books of Evidence Act. The defendants have not produced any evidence whatsoever to contradict the presumption in favour of the entries in the certified statement of account.

27. In view of the law laid down by the Hon''ble High Court of Delhi in the case Punjab Nationa Bank Vs. M/s Rinkoo Plastice Insustries and Others, it is held that the claim of the Bank is liable to be allowed together with interest. However, the Bank has claimed interest @ 17.5 % p.a. on LAP and 19% of ODP account on the claimed amount. Sub-Section 20 of Section 19 empowers the Tribunal to grant interest at such rate as it deems fit having regard to the facts and circumstances of the case. In my opinion the rate of interest claimed by the Bank as per loan agreement is on higher side. In the recent past on account of global conditions the interest in the open market has considerably gone down. Though I do not deem fit it appropriate [sic] to interfere in the pre suit interest, however, in so far as the pendent lite and future interest is concerned having regard to the fact and circumstances of the case I deem fit it [sic] to award interest @ 15.5% p.a. with quarterly compounded rests on the entire amount claimed.

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30. The OA is allowed for recovery of a sum of Rs. 7961034/- together with costs and interest @ 15.5% p.a. with quarterly compounded rests from the date of filing of this suit until actual realization of the entire amount. The liability of the defendants No. 1 to 6 shall be joint and several to repay this amount. They are directed to pay the amount within 90 days.

4. One M/s. Chandra Estate Private Limited preferred an application in November 2011, alleging that it had interest in the property which was mortgaged and was also subject matter of the DRT proceedings. It effectively sought a review of the order dated 13.10.2010. The DRT by the order dated 29.03.2012 held that the said M/s. Chandra Estate Private Limited did not possess any locus standi and consequently dismissed the application. On 26.09.2012, the judgment debtor filed a review petition stating that the Recovery Certificate ought to be amended to Rs. 72,85,833/- (instead of Rs. 79,61,034/-). It was also urged in addition that the bank had claimed simple interest @ 17.5% in respect of LAP and 19% in respect of ODP account whereas the DRT awarded compound interest @ 15.5% with quarterly rests and that this aspect required review/modification. The review petition was partly allowed on 20.02.2013 by the DRT which accepted the claim for modification of amount of Rs. 72,85,833/-. However, it rejected the claim for modification of the rate of interest. It was in these circumstances that the judgment debtor successfully approached the DRAT which proceeded to make the impugned order.

5. It is argued that the bank had claimed 17.5% interest per annum and 19% interest per annum as the rate of interest towards the outstanding amounts at the time of filing of the suits. The decision of the DRT, in directing payment of compound interest with quarterly rests was a conscious one, according to the bank. In this regard, it is urged that paras 26 and 27 of the DRT''s order dated 30.10.2010 clarifies this whole point. Such being the case, there could have been no question of any error and much less, any issue of rectification of a mistake which never occurred in the first place! Learned counsel also urged that the DRAT fell into error in interfering with the order of the DRT because at no stage was it urged/pleaded before the DRT except during the oral submissions that the question of rate of interest was a clerical or arithmetical error.

6. Learned counsel for the respondent/judgment debtor, who appeared on advance notice, urged that the impugned order and the DRAT does not call for any interference. It was argued in this regard that the Court has acted in the larger interests of justice taking into consideration that a claim for compound interest with quarterly rests had never been made before the DRAT in the first instance. Reliance was placed on the decision in Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, , to say that a decision cannot be based on grounds outside of the pleadings of parties and Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, . Learned counsel also relied upon the judgment of this Court reported as Nathu Ram Friends Colony Co-operativehouse Building Society Limited Vs. Sardar Sohan Singh, , to say that the inherent powers of the Court

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with respect to correction of clerical or arithmetical errors in judgments/decrees are always reserved. Such orders made in exercise of discretion are based upon peculiar facts of each case. In this case, since the relief of compound interest with quarterly rests was never claimed, the DRT could not have directed payment of 15.5% compound interest with quarterly rests. Therefore, argued learned senior counsel for the judgment debtors, the DRAT acted in the larger interest of justice in allowing the appeal and directing the correction sought for.

7. As is evident from the above discussion, a very small issue requires adjudication. There is no dispute that the judgment debtors were beneficiaries of two kinds of advances. At the stage when the bank approached this Court with a suit in 1988-which got transferred to DRT in 1995, the decree sought for was Rs. 79,61,034/- with 17.5% interest in respect of one account and 19% per annum in respect of another account. It is also not in dispute that the advances were secured by an equitable mortgage. Based on these, the Tribunal went into the merits and held that the bank''s claim was justified and well-founded. While doing so, the Tribunal took note of the bank''s statement which was proved as Ex. PW-4/2. This Court has the benefit of considering the averments in the suit-registered as OA 205/1995. The suit is replete with reference to the facilities extended to the judgment debtors such as ODP, LAP etc. In respect of each one of them, the terms clearly were that the judgment debtors agreed-or some of them, depending on who was extended the term loan or the facility-to repay the amounts over and above the notified rates in quarterly instalments; the amounts were to be calculated in quarterly rests. This is clear from a clear reading of paras 14(1), 22(1), 26(1), 27(1) and 30(1). Para 32 of the suit reads as follows:

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32. As on the date of filing the suit, i.e. 26.9.1988 the sum of Rs. 39,38,873 is due and payable at the foot of the ODP account of defendant No. 1 inclusive of interest upto 26.9.1988. Defendant No. 1 as the principal debtor and defendant Nos. 2 to 6 as guarantors are jointly and severally liable for the repayment of aggregate amount of Rs. 79,61,034/- with further interest thereon @ 17.5% p.a. on LAP account and 19% p.a. on the ODP account with quarterly rests.

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8. In the above view of the matter and the findings of the DRT which have nowhere been challenged, the bank had established that the conditions upon which amounts were advanced and facilities extended to the judgment debtors from time to time were premised on calculation of interest on compound basis at quarterly rests. This was a factor consciously taken into consideration by the DRT in para 27 of its order dated 13.10.2010. The DRT moulded the relief and did not grant the full extent of the claim so far as the interest was concerned and reduced it somewhat to 15.5% per annum compound interest with quarterly rests.

9. There cannot be any dispute that the party which approaches the Court

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claiming a relief cannot be allowed more than what it pleads. In the present case, the bank had in fact urged and proved that the judgment debtors were liable to pay back the amounts claimed and that the conditions of advance required repayment of compound interest with quarterly rests. No doubt, there was an arithmetical mistake with respect to the total amount. The DRT, in our opinion, acted correctly and within the bounds of law in upholding the claim for refund only to the extent of the amount (substituting the original decretal amount with the sum of Rs. 72,85,833/-) and in dismissing the claim for deletion of reference to compound interest with quarterly rests in the Recovery Certificate. As a result, the DRAT, by the impugned order, fell into error in holding that the judgment debtors were not liable to pay compound interest with quarterly rests at the rate of 15.5% per annum on the principal amount decreed, i.e. Rs. 79,61,034/-.

10. For the above reasons, the petition has to succeed. The impugned order of the DRAT dated 19.03.2014 in Appeal No. 152/2013 is hereby set aside. The order of the DRT dated 20.02.2013 is restored; the Recovery Certificate shall reflect the directions in the said order. The writ petition is allowed in the above terms without any order as to costs.

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