(2025) 01 DRAT CK 1685

In the Debts Recovery Appellate Tribunal, Mumbai

Case No : Misc. Appeal No. 217 Of 2012

Ramesh K. Bathija — APPELLANT

Vs

Punjab National Bank & Ors — RESPONDENT

Date of Decision : 08-01-2025

Acts Referred:
Recovery Of Debts And Bankruptcy Act, 1993 — Section 2(g)

Citation : (2025) 01 DRAT CK 1685

Hon'ble Judges : Ashok Menon, Chairperson

Bench : Single Bench

Advocate : Bhushan Walimbe, Dharmendra D. Jadhav, Pankaj Vijayan, Charles De'souza, Yash Kataria, M/s Mahomedbhai & Co.

Final Decision : Dismissed

Judgement

Ashok Menon, Chairperson

1. The appellant is aggrieved by the dismissal of his Interlocutory Application (I.A.) No. 828 of 2012 in Original Application (O.A.) No. 1368 of 2000 pending on the files of the Debts Recovery Tribunal-II, Mumbai (DRT). The appellant is the first defendant in the aforesaid O.A. that was initially filed for recovery of ☐ 18,17,83,133/- before the Hon'ble High Court of Bombay as Suit No. 394 of 1998 and later transferred to the DRT and refiled under the provision of the Recovery of Debts Due to Banks and Financial Institutions Act, 2002 ("RDDB Act", for short).

2. I.A. No. 828 of 2012 was filed by the appellant to get the O.A. dismissed by the DRT for want of jurisdiction on the ground that the amount claimed by the first respondent bank is not a "debt" under the provision of the Sec. 2(g) of the RDDB Act. On considering the plea of the appellant, together with another similar application filed by the fourth defendant, the DRT dismissed the applications. The appellant is aggrieved and hence, in appeal.

3. The fact as required for disposal of this appeal can be encapsulated thus:

The defendants Nos. 1 and 3 were account holders with the respondent bank. It is alleged in the O.A. that these defendants had in collusion with the second defendant who is an employee of the bank, fabricated and forged documents and transferred ☐ 76.87 lakhs to the account of the fourth defendant fraudulently. There was an overdraft account in the name of the first defendant which was enhanced from time to time to facilitate such fraudulent acts of transfer. A demand promissory note was also executed by the first defendant. Similarly, the third defendant also obtained an overdraft facility in his account. Defendants Nos. 1 to 3 allegedly devised plans of crediting the OD accounts in the name of defendants Nos. 1 and 3 by fabricating fraudulent documents. The bank came to know about such fraudulent acts of transfer based on fabricated documents at the time of reconciliation.

4. No written statement was filed by the appellant (1st defendant in the O.A.). The fourth defendant alone had filed a written statement raising several contentions.

5. The appellant filed I.A. 828 of 2012 contending that the bank's claim is for damages/loss caused to it and therefore, such an unliquidated claim can only be raised in a suit before a Civil Court and not before a DRT. There is no borrower-creditor relationship between the appellant and the bank. It is also submitted that the second defendant had earlier filed a similar application for exoneration from the claim and it was dismissed by the DRT. But on appeal before this Tribunal as Misc. Appeal No. 73 of 2004, the contentions of the second defendant were upheld. The bank filed Writ Petition No. 1508 of 2005 before Bombay High Court but the same was dismissed.

6. It is also contended by the appellant that in the criminal case filed against him and the second defendant, they were tried before the Court of Special Judge, CBI in Case No. 3 of 1999. They were acquitted vide judgment dated 20.12.2013.

7. Under the circumstances, it is prayed that the appellant may be exonerated holding that the claim put forth against him by the bank is unsustainable, as it is not a "debt".

8. It is true that the second defendant was exonerated by this Tribunal and the finding was upheld by the Hon'ble Bombay High Court. But is the appellant similarly placed as the second defendant is the question that is required to be determined in this appeal.

9. The second defendant was exonerated mainly for the reason that there was no transaction between him and the bank. He had only facilitated the siphoning of money by the rest of the defendants colluding with them. The Hon'ble Bombay High Court also observed that the allegation of fraud or misappropriation of funds, if any, and specifically concerning the so-called facilities provided or acquired by the second defendant illegally by itself cannot be a sufficient reason to invoke the provisions of the RDDB Act against him along with the basic borrowers who are defendants Nos. 1, 3 and 4 who were admittedly provided

with these facilities for which they entered into transactions with the bank. The Hon'ble High Court specifically observed that the recovery against them falls within the provisions of the said Act.

10. Given the finding of the Hon'ble Bombay High Court, it cannot be said that the same parameters would apply to the appellant as was applied to the second defendant.

11. There is a catena of decisions as to what is a "debt" defined under Sec. 2(g) of the RDDB Act. Solomon Jacob vs National Bank of India Ltd AIR 2017 Bom.118, holds that a person to whom money has been paid by mistake must repay it. In United Bank of India vs. Debts Recovery Tribunal & Ors AIR 1999 SC 1381, the Hon'ble Supreme Court holds that the expression "debt" is wide enough to include a claim of an undetermined sum in that the entire averment in the plaint has to be looked into while decided whether the claim can be adjudicated upon by the DRT. The Hon'ble Bombay High Court has again in Amit H. Jhaveri and Ano. vs. Bank of Baroda & Ors. 2011 (1) Mh.L.J.55 held that the benefit of the financial assistance fraudulently taken by a person from the bank can be considered as a "debt" and the bank can proceed against him under the provisions of the RDDB Act. The Hon'ble High Court of Delhi has in M/s J U Mansukhani & Co. & Ano. vs. Presiding Officer & Ors AIR 2000 Delhi 103, held that demand draft fraudulently obtained in direct or indirect collusion with the bank officials is clearly a business activity of the bank and would fall within the definition of "debt" under Sec. 2(g) of the RDDB Act.

12. The acquittal of the appellant in the criminal case is not of any consequence as the criminal court was not called upon to determine the pecuniary claim of the bank. The standard of proof required to establish fraud and misappropriation in a criminal case is much higher than in a civil suit where the claim is determined based on preponderance of probabilities and not proof beyond a reasonable doubt. It will also not be out of place to observe that the appellant has not even contested the claim in the O.A. by filing a written statement. The order of the Tribunal below cannot therefore be found fault with. The appeal has no merits and hence, stands dismissed.