
(2007) 09 MAD CK 0222

In the Madras High Court

Case No : C.R.P. (NPD) No. 1018 of 2004, C.M.P. No. 7833 of 2004 and Review Application No. 181 of 2004

S.P. Narasimhan and Others

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 21

Citation : (2008) 4 BC 369

Hon'ble Judges : S.J. Mukhopadhyaya, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : N.L. Rajah and P.B. Sampathkumar, in Review application No. 181 of 2004, for the Appellant; P.B. Sampathkumar and N.L. Rajah in Review Application No. 181 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhyaya, J.—Petitioners to the Civil Revision Petition, i.e., Directors of Uni Organic Industries Limited (hereinafter referred to as Company), are the guarantors. The respondent/Punjab National Bank (hereinafter referred to as Bank) is the financial institution which filed an application i.e. O.A. No. 87 of 1997, u/s 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, before the Debts Recovery Tribunal-1, Chennai (in short, D.R.T.), for recovery of a sum of Rs. 2,81,18,129.40. An ex parte order was passed in the said proceedings by the D.R.T. Steps were taken by the judgment-debtors to set aside that ex parte order. As there was a delay of 125 days in filing the said application, IA Nos. 1079 to 1090 of 2001 came to be filed. After hearing the parties, the D.R.T. passed a common order allowing all the applications on condition that the petitioners deposit a sum of Rs. 1,00,00,000/- with the Decree Holder/Bank. The common order was challenged before the Debts Recovery Appellate Tribunal (in short, Appellate Tribunal) in M.A. No. 137 of 2003. The

Appellate Tribunal, by its order dated 10th February, 2004, allowed the Appeal in part by bringing down the sum to be deposited as Rs. 75,00,000/-. As against the aforesaid order, the present Revision has been filed.

2. Initially, the Revision Petition was allowed by the Division Bench by its order dated 12th May, 2004 and the petitioners were relieved from the obligation of depositing Rs. 75,00,000/- as ordered by the Appellate Tribunal. Aggrieved over the same, the Bank preferred the review application in question. By its order dated 24th March, 2005, though the Court noticed the fact that the amount had to be deposited not by the company in liquidation but by the Directors of the company i.e., the petitioners herein, who were the guarantors, however, observed that the Court could not change its order merely because it had made a mistake in appreciating the facts of the case. Both the aforesaid orders dated 12th May, 2004 and 24th March, 2005, passed in the Civil Revision Petition and the Review Application respectively, were set aside by the Supreme Court by order dated 7th March, 2007 in Civil Appeal No. 1190 of 2007.

3. The cases having been remitted to this Court, we have re-considered the matter and heard the parties.

4. Before proceeding further, we may mention that the earlier order, dated 12th May 2004, passed in the Civil Revision Petition, having been set aside by the Supreme Court, the review application has become infructuous.

5. So far as the Civil Revision Petition is concerned, learned Counsel for the petitioners submitted that the common order, dated 30th April, 2003, by which the D.R.T. directed the petitioners to pay a sum of Rs. 1,00,00,000/-, amounts to passing the decree in part without hearing the parties. The Appellate Tribunal, without taking notice of the same, had merely reduced the amount from Rs. 1,00,00,000/- to Rs. 75,00,000/-. According to the learned Counsel, a careful perusal of the provisions of law would suggest that the D.R.T. should not have passed the ex parte order without the Official Liquidator having been impleaded as a party to the proceedings and without prior permission of the B.I.F.R. (Board of Industrial and Financial Reconstruction).

6. In the present case, we are not prepared to answer on the issue as to whether the ex parte decree passed by the D.R.T. without the Official Liquidator having been impleaded as respondent to the proceedings and without permission of the B.I.F.R. was proper or not. Such issue/aspect is to be considered by the D.R.T. taking into consideration the submissions as may be made by the parties in that regard. The only question that arises for determination in this case is as to whether it is proper for this Court, while exercising its jurisdiction under Article 227 of the Constitution of India, to interfere with the order, dated 10.2.2004, whereby, the Appellate Tribunal reduced the amount to Rs. 75,00,000/- and directed the petitioners to deposit the same.

7. It is not in dispute that the petitioners preferred the appeal before the Appellate Tribunal u/s 20 of the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993. u/s 21 of the said Act, if an appeal is preferred by any person from whom the amount of debt is due to a Bank or a financial institution, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75% of the amount of debt so due from him as determined by the Tribunal u/s 19, however, the Appellate Tribunal is empowered to waive or reduce the amount to be deposited under the said provision for reasons to be recorded in writing. In the present case, approximately, a sum of Rs. 2.81 crores is shown to be due from the borrowers/guarantors. If the provision of Section 21 is strictly followed, then, the petitioners are liable to pay 75% of the debt that is due to the Bank. There is nothing on record to suggest that an application was filed for waiver or reduction of the amount. Such being the case and in the light of the legal provisions, we are not inclined to interfere with the order of the Appellate Tribunal on the mere ground that only a reduction has been made from Rs. 1,00,00,000/- to Rs. 75,00,000/-. Thus, there being no merit, the revision petition is liable to be dismissed.

8. Accordingly, the civil revision petition is dismissed. The review application is dismissed as being infructuous.

9. There shall be no order as to costs.

10. Connected miscellaneous petition stands closed.

Revision Petition and Review Application dismissed and C.M.P. closed.