
(2007) 09 AHC CK 0128
In the Allahabad High Court
Case No : R.A. No. 653 of 2006

State Bank of Patiala

APPELLANT

Vs

Chopra Wheels Pvt. Ltd.and others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : (2007) 09 AHC CK 0128

Hon'ble Judges : R.S.Tripathi, J

Final Decision : Allowed

Judgement

R.S. Tripathi, Chairperson

1. In this appeal the order dated 13th December, 2005 passed by the D.R.T., Lucknow is under challenge. This order was passed in T.A. No. 805/2002 accepting the pleas of the present respondents for the payment and in full satisfaction under O.T.S. scheme (3rd Scheme) issued by the R.B.I.
2. Briefly stated the history giving rise to this appeal is that one suit No. 1526/1996 was filed before the Civil Court of Ghaziabad for recovery of Rs. 12,16,380.25. By virtue of enactment of RDDBFI Act, 1993, the above suit was transferred to D.R.T., Allahabad, where it was given a new number as T.A. No. 1045/2000. After establishment of D.R.T. at Lucknow, the above T.A. was transferred to D.R.T., Lucknow. During the proceedings the appellant bank and the respondents compromised the case for a sum of Rs. 16.12 lacs. The respondents deposited a sum of Rs. 2,66,120 with the bank and the matter was decided on the basis of above compromise. According to the appellant bank after compromise, the respondents committed default in payment in breach of the terms of compromise. Therefore, as per the default clause of the compromise, the bank was entitled to recover the entire amount of more than Rs. 40.00 lacs from the respondent. The respondents with a view to take the advantage of revised guidelines of R.B.I. in the form of O.T.S. (3rd Scheme) submitted a proposal for compromise as per the Guidelines of O.T.S. (3rd Scheme). By that time the respondents had deposited a sum of Rs. 8,62,300 and had further

deposited a sum of Rs 1 46 300 pursuant to the direction of the Tribunal. After considering the rival submissions, the learned Tribunal taking into account O.T.S. (3rd Scheme) issued by the R.B.I, on 29th January, 2003 passed impugned order giving reasons therefor, holding that the respondents were entitled for the settlement in accordance with the revised guidelines issued on 29th January, 2003 by the R.B.I, and passed the impugned order observing that proposal submitted by the respondents was acceptable and the Transfer Application No. 805/2002 was disposed off observing that the bank had already received the amount of non performing assets the appellant bank has challenged this order raising the following questions before this Tribunal:

- (a) Whether the D.R.T. has any power to settle the case suomoto?
- (b) Whether the D.R.T. has power to go against the terms of earlier compromise, which was settled between the parties and was reduced into writing, when the bank had not accepted the so called settlement as per O.T.S. (3rd Scheme)?
- (c) Whether the present case is covered by O.T.S. (3rd Scheme) was of 2003 in the facts and circumstances of this case?

3. The respondents have filed their replies in this appeal and have pleaded that previous compromise was for a sum of Rs. 16.12 lacs but this compromise was revoked by the bank itself. In the meantime O.T.S. 3rd Scheme was issued by the R.B.I. According to the respondents, the respondent company was closed in the year 1994, therefore, the terms of compromise dated 17th April, 2000 could not be complied with, although the respondents managed to deposit Rs. 4.16 lacs in pursuant to above compromise. It is pleaded on behalf of the respondents that in the Camp Court at Mathura a fresh compromise proposal under R.B.I. O.T.S. 3rd Scheme was filed by the respondents and as per the terms of this compromise, the total amount of Rs. 8,62,300 stood paid and the Hon'ble Tribunal accepted the plea of the respondents for O.T.S. 3rd Scheme compromise. Therefore, now the plea raised from the side of the appellant bank has no force. They have also pleaded that apart from Rs. 4.16 lacs, they deposited Rs. 1.00 lakh in connection with settlement as per directions of the D.R.T. and this amount was received by the appellant bank. The D.R.T. according to the respondents found that despite opportunity having been given to the appellant bank to file written objection against the application dated 26th August, 2004 for compromise, but no such objection was filed by the bank. The D.R.T. under the circumstances, advised the parties to settle the matter in the light of the proposal of the respondents, but bank failed to carry out the directions of the D.R.T. and ultimately finding no written reply to the application for compromise, under the O.T.S. 3rd Scheme, the learned D.R.T. took the view that the case was covered under the O.T.S. 3rd Scheme and passed the impugned order, therefore, this appeal has no force.

4. I have heard the learned Counsel for the appellant bank and learned Counsel for the respondent Nos. 1 to 6 at length and have also gone through the relevant

guidelines issued by the R.B.I, on 27th July, 2000, 10th April, 2001 and 29th January, 2003 available on the file. At the very outset the question of payment of Courtfee has been raised in this appeal. In the opinion of this Tribunal, Courtfee is payable on the basis of amount of controversy and the same has been done, therefore, this controversy should not detain us for a long. Further the matter of Courtfee is in between the person paying the Courtfee and the Government and 3rd party has nothing to do with it.

5. Learned Counsel for the appellant has vehemently argued before this Tribunal that after finalization of the earlier compromise in respect of which a sum of Rs. 4.16 lacs had been deposited by the respondents, on account of the default Clause of that compromise, the D.R.T. had no power to impose another compromise in terms of O.T.S. 3rd Scheme particularly when the respondent themselves had committed default and breach of the terms of earlier compromise. It is also argued from the side of the appellant that the D.R.T. has no power to impose any terms of compromise suo moto after breach of terms of earlier compromise. He has also contended that O.T.S. 3rd Scheme on account of default clause and breach of earlier compromise by the respondents, is not at all attracted. He has cited a ruling *Samsivati Trading Agency v. Union of India* AIR 2002 Cal., in support of his above argument. Against this, the learned Counsel for the respondents has drawn the attention of this Tribunal towards the order dated 10th November, 2005 passed by the learned D.R.T. He has pointed out that the Counsel for the appellant bank himself accepted the amount, which was offered before the D.R.T. from the side of the respondent and that amount has been received by the bank. His submission is that if at all the bank was not agreeable to the compromise under the O.T.S. 3rd Scheme, the cheque should have been returned to the respondents by the bank. His contention is that if at all the offer of cheque was accepted and the cheque had been encashed, it has to be presumed that the compromise was finally accepted. Drawing the attention of this Tribunal towards O.T.S. 3rd Scheme issued by the R.B.I, on 29th January, 2003, it is argued from the side of the respondent that the guidelines of R.B.I, are statutory and the appellant bank is liable to honour the above guidelines and if at all the banks failed to honour the guidelines of R.B.I., there will be absolutely no justification for the bank to advance any argument for noncomplying with the guidelines. He has also argued that there is a mention of wilful defaulter in the R.B.I, guidelines as contained in R.B.I, circular No. D.B.O.D. No. B.C. D.L. (W) 12/20.16.2002 (1) 9899 dated 20th February, 1999 and his submission is that in Clause 2 (iii) it has been provided that wilful defaulter will broadly cover the following:

- (a) Deliberate nonpayment of the dues despite adequate cash flow and good net worth.
- (b) Siphoning off of funds to the detriment of the defaulting unit.
- (c) Assets financed have either not been purchased or have been sold and proceeds have been misutilized.

(d) Misrepresentation /falsification of records.

(e) Disposal/removal of securities without bank's knowledge.

(f) Fraudulent transactions by the borrower.

On the strength of above circular/notification it is argued from the side of the respondents that the case of present respondents is not covered by any of the circumstances given in above Clause 2. He has tried to persuade this Tribunal to accept the argument that when the scheme of the R.B.I, is helpful to the borrower, which is the spirit of R.B.I, in issuing such guidelines, the learned D.R.T. has committed no error in passing the impugned order. Much stress has been given on the various order sheets of the D.R.T. to show that despite repeated opportunity, the bank failed to do anything to file objection. The learned Counsel for the respondent has submitted that it is not the plea of the bank that the bank official or the bank Counsel colluded with the respondent in accepting the cheque and thereafter encashing it. He has relied upon the rulings of *Canara Bank v. C.H. Venkataraman* 1 (2004) BC 32 (DRAT/DRT) of DRAT Chennai *Neetu Autos Pvt. Ltd. v. U.C.O. Bank* 1 (2003) BC 62 (DRAT/DRT) of DRAT, Chennai *Central Bank of India v. Ravindra* 2001 (45) ALR 695 (SC), decided by the Hon'ble Supreme Court, *Central Bank of India v. Sharad Rice Industries* 1 (2006) BC 182 (DRAT/DRT) of DRAT, Allahabad *Veneers Laminations (India) Ltd. v. State Bank of India II* (2006) BC 140 (DRAT/DRT) of DRAT, Chennai *Allahabad and S.P. Muthu v. Kirupakaran* 1 (2007) BC 257. of Hon'ble Madras High Court.

6. Having considered all above arguments, I have considered the material available on the record. First of all when we take up the contents of earlier compromise, we find that at pages 23 and 24 of memo of appeal there is a compromise proposal wherein the schedule of settlement is given in Clause (e) and in the same proposal in Clause F it is mentioned that "we will make the balance amount for up to 31st March, 2003 through selling out of parental property along with the financial help from the relatives". The admitted fact is that the above discussed compromise was accepted by the appellantbank and on the basis of this compromise, the learned Tribunal disposed of the T. A. for the recovery of amount of Rs. 16,12,214. It is also admitted fact that the total amount due as per statement of the appellantbank contained in Annexure A3 filed with the memo of appeal was Rs. 41,15,950, against which the amount of Rs. 10,62,274.25 was deposited and the balance left was Rs. 41,15,950/0. These figures cannot be challenged. Thus, sufficient relief was given by bank. The question is, whether the respondents can be taken to be wilful defaulter or not. In the instant case, the circular/notification issued by the R.B.I, vide Notification No. D.B.O.D. No. B.C. D.L. (W) 12/20.16.2002 (1) 9899 dated 20th February, 1999. In the very beginning of this notification contained "collection and dissemination of information of wilful defaulter of Rs. 25.00 lacs and above". In this very circular, wilful defaulter has been taken to cover "a deliberate nonpayment of the dues despite adequate cash flow and good net worth" and in the circular itself there is direction to form a committee consisting of three G.M./

D.G.Ms or equivalent to G.M./D.G.Ms for identifying the cases of wilful defaulter. In the III (F) there is a mention that the default to be categorized as wilful must be intentional, deliberate and calculated. In the instant case considering terms of acceptance of compromise by the respondents contained in Annexure II at page 23 annexed with the memo of appeal. When there is proposal from the side of the respondent company for payment of entire balance amount by 31st March, 2003 through selling out the parental property along with financial help from relatives and by Annexure II at page 22 of the memo of appeal the bank had made it clear that the compromise was being accepted on the condition that a total sum of Rs. 16,12,014 should be paid and if it is not paid by the stipulated period, the bank shall be free to recover its dues in total as has been claimed and prayed in the civil suit filed in this case. In the light of these materials keeping in view the admitted facts that the settlement by means of compromise Annexure II (pages 22 and 23) of the memo of appeal, the case was settled and part of the amount was got deposited and bank had to accept the same in pursuant to this forced settlement by the respondents, who subsequently failed to adhere to the terms of above compromise in making payment of the total amount by 31st March, 2003 as per compromise. The annexure at pages 25 to 46 of the memo of appeal are the copies of the plaint filed by the bank claiming the amount from the respondents and the statement of account filed by the bank in this appeal as Annexure No. 3 shows the balance of Rs. 41,15,950.

7. Under these circumstances, in the opinion of this Tribunal, the respondents have to be taken to be wilful defaulter particularly when they have not advanced any plea as to why the Clause F of Annexure No. 2 page 23 filed with the memo of appeal assuring to pay the entire amount by 31st March, 2003 by the sale of parental property etc., was not at all complied with and nothing has been averred as to what was the reason which compelled them to commit breach of this clause. It is also worth noting that in the reply filed by the respondents before this Tribunal para 5 (iv) only plea is that the company was closed down in the year 1994 and the respondent could not fulfil the compromise dated 17th April, 2000 i.e., after six years of closure. This, pleading is absolutely no explanation for their inability to sell the parental property or to arrange from relatives. Thus this Tribunal is unable to agree that the respondents are not wilful defaulters, simply because there is a mention in the R.B.I, circular dated 12th February, 1999 referred to above for deliberate nonpayment of the dues despite an adequate cash flow and good net worth. The learned D.R.T. failed to consider this aspect of the case.

8. The other important thing, which has to be mentioned here, is that it is settled principle of law that the Court/Tribunal has no power to impose the terms of settlement/compromise. In the instant case without the consent in writing of the appellant bank, the learned D.R.T. went to the extent of accepting the proposal of the respondents without considering the fact that the compromise is always to be arrived at as per the proposal and acceptance by the parties and not at the whims and wish of the Court or Tribunal. We have in its support *Gauri Ammo. v.*

Parameshwar AIR 1952 Travancore page 547 Similar view has been taken in the ruling United Bank of India v. Abhijeet Tea Corfipany (P) Ltd. AIR 1999 Cal 81. In the instant case what this Tribunal finds is that the D.R.T. has imposed its own terms of settlement as desired by the respondents when there is no consent in writing of the appellant bank. The rulings cited from the side of the respondents as Canara Bank v. C.H. Venkataraman; Neetu Autos (P) Ltd. v. UCO Bank; Central Bank of India v. Ravindra; Veneers Laminations (India) Ltd. v. State Bank of India, (supra) all relate to cases wherein facts were quite different and the terms of compromise were not like the terms of compromise of this case and in some of these cases, the question of account becoming N.P.A. was considered for applicability of the O.T.S. Scheme. There is no such controversy in the instant case.

9. The result of above discussions is that in the opinion of this Tribunal, the learned D.R.T. has committed error in passing impugned order. Therefore, this appeal has to be allowed and the impugned order has to be set aside.

ORDER

10. Appeal is hereby allowed. Impugned order is set aside. Copy of this judgment be sent to the D.R.T. concerned as well as to the parties for further proceedings in connection with recovery of the amount.