

(2019) 10 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Petition No. 8506 Of 2018

Sushma Raina

APPELLANT

Vs

Canara Bank And Ors

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 19, 20, 21

Citation : (2019) 264 DLT 579 : (2020) 1 AD(Delhi) 397

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Gurubaksh Singh, Virender Singh, Jarnal Singh, Pratap Chandra Rana

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, J

1. This petition is directed against an order dated 1st February, 2018 passed by the Debt Recovery Appellate Tribunal ("DRAT") in Misc. Cas. No 64/2018 in Appeal No. 151/2016.

2. The background to the present petition is that the Petitioner is an employee of a sister concern of Respondent No. 2 company i.e. Vimoha Exports Pvt. Ltd. It is stated that the said Respondent company had availed of some credit facility from Respondent No. 1, Canara Bank, in connection with which security documents were executed way back on 31st December, 1994.

3. The Petitioner claims that the notices issued by the Bank for recall of the loan advanced to Respondent No. 2 company was not received by her. Be that as it may, the undisputed fact is that Respondent No. 1 bank filed OA No. 351/1999 in the Debt Recovery Tribunal-II Delhi ("DRT-II") on 20th August, 1999 against Respondent No. 2 company and others, which included the present Petitioner. On 26th November, 2012, the DRT-II passed an order holding that Respondent No. 1 bank was entitled to recover a sum of Rs. 26, 83, 063/- from the defendants to

that application, which included the present Petitioner, jointly and severally, together with interest at the rate of 12% per annum from 28th August, 1999 till the date of recovery. The defendants were then asked to appear before the Recovery Officer on 28th January, 2013.

4. According to the Petitioner, it is at this stage that on 12th February, 2013 she received the recovery notice whereupon she filed an application being M.A. No. 68/2013 on 26th March, 2013 before the DRT-II for setting aside the ex-parte judgment dated 26th November, 2012. By an order dated 23rd September, 2014, the DRT-II dismissed the said application.

5. Against the said dismissal, the petitioner filed an appeal under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDDB & FI Act") before the DRAT. Along with the said appeal, the petitioner filed an application being I.A. Nos. 839-840/2014 under Section 21 of the RDDB & FI Act seeking waiver of the pre-deposit amount.

6. It will be noted at this stage that at the time of the filing of the aforementioned appeal together with the application for waiver of the pre-deposit, Section 21 of the RDDB & FI Act read as under:

"21. Deposit of amount of debt due, on filing appeal.

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

7. It will be seen from the reading of the above provisions that at that stage Section 21 of the RDDB & FI Act provided for a discretion in the DRAT to waive the whole of the pre-deposit amount for reasons to be recorded in writing.

8. While the said appeal and application were pending consideration before the DRAT, a change was brought about in Section 21 of the RDDB & FI Act by Act No. 44 of 2016 with effect from 1st September, 2016. The amended Section 21 of the RDDB & FI Act (which incidentally has been renamed in 2017 as the Recovery of Debts and Bankruptcy Act, 1993) reads as under:

"21. Deposit of amount of debt due, on filing appeal.

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty percent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due to be deposited under this section."

9. It will thus be seen that a marked change was brought about by reducing the pre-deposit amount from 75% to 50% in the main part of Section 21 but removing the discretion available to the DRAT in the proviso to Section 21. The amended Section 21 permitted the DRAT, for reasons to be recorded in writing, to reduce the amount "by such amount which shall not be less than twenty-five per cent of the amount of such debt so due." In other words, the discretion of the DRAT was curtailed to only reducing it from 50% to 25% and not completely waiving the pre-deposit.

10. For reasons that are not entirely clear, the Petitioner's aforementioned application for waiver of pre-deposit was finally disposed of by the DRAT only on 23rd August, 2017 which is nearly 3 years after it was first filed. While counsel for the Respondent Bank would argue that this delay was caused due to non-appearance of the counsel for the Appellant before the DRAT on several dates, counsel for the Petitioner states that it was in fact the absence of counsel for the Bank which resulted in the matter getting adjourned.

11. It is not possible at this stage for this Court to ascertain whether the delay in the DRAT disposing of the Petitioner's application was due to either the Petitioner or the Bank. The fact remains that on the date that the application was finally disposed of i.e. 23rd August, 2017 there was no appearance on behalf of the Bank. What is, however, relevant is that the order dated 23rd August, 2017 directing the Petitioner to deposit 25% of the amount of debt within one month from the order of the DRAT was passed by the DRAT in light of the amended Section 21 of the RDDB & FI Act. This is apparent from the following observations in the said order:

"Thus, appeal being against for the final order of the DRT where by the recovery certificate was issued against the appellant amongst others and therefore this appeal can be entertained on merits, after she has crossed the hurdle of making a pre-deposit under Section (21) of the RDDBF Act, according to which the pre-deposit amount is 50 per cent of the amount of debt determined by the DRT.

In order to claim the benefit of proviso of Section 21 where appellate tribunal has the power to reduce the amount of pre-deposit by 25 per cent. Ld. Counsel for the appellant has submitted that the appellant being housewife and victim of fraud should not be burdened with the condition of pre-deposit of even 25 per cent. However, this, tribunal has no jurisdiction whatsoever to grant waiver beyond 25 per cent of the amount recoverable under the R.C. issued by the DRT Ld. Counsel for the appellant has also submitted that since they were 7 defendants in the O.A. this liability of pre-deposit should be equally divided amongst them. However, this submission cannot be accepted as only the

appellant is challenging the final order of the DRT while others have chosen not to challenge the same. Considering all facts and circumstances, the appellant is directed to deposit 25 per cent of the amount of debt in question within 1 month from today with the Registrar of this Tribunal."

12. It is thus plain that the DRAT considered that it had no discretion to grant waiver of the pre-deposit beyond 25% of the amount recoverable and this was in terms of the amended Section 21 of the RDDB & FI Act. It appears to the Court that this is where the error crept in and when the Petitioner went back to the DRAT with an application for recall of the above order, said application was dismissed by the impugned order dated 1st February, 2018 with the DRAT again maintaining that "after amendment in 2016, the Appellate Tribunal has been left with no discretion to reduce the amount of pre-deposit below 25% and exercising that discretion this Tribunal had directed the appellant to make a deposit of only 25% of the amount of debt in dispute."

13. The facts of the present case speak for themselves. It is plain that on the date that the Petitioner filed the appeal along with the application for waiver of the pre-deposit i.e. 14th November, 2014, it is the unamended Section 21 of the RDDB & FI Act that applied. The DRAT was therefore obligated to apply the unamended provision when it finally examined and disposed of the Petitioner's application for waiver of the pre-deposit.

14. The legal position in this regard has been explained in *Moti Ram v. Suraj Bhan and Ors.* AIR 1960 SC 655 that "it is well-settled that where an amendment affects vested rights the amendment would be operated prospectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication."

15. The Court is therefore satisfied that the DRAT was in error when in the first instance on 23rd August, 2017, it disposed of the petitioner's application for waiver of the pre-deposit amount by applying the amended Section 21 of the RDDB & F.I. Act. For the same reason, the Court sets aside the said order as well as the subsequent order dated 1st February, 2018 declining to recall the earlier order.

16. Consequently, the Court directs that the Petitioner's application for waiver of the pre-deposit shall be again placed before the DRAT on 4th November, 2019 for disposal in accordance with the unamended Section 21 of RDDB & FI Act. On that date the Petitioner through counsel should appear without fail, as should the counsel for the Respondent Bank.

17. The petition is disposed of in the above terms.