

(2007) 03 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 7331 of 2006

Ultramatix Systems Pvt. Ltd.

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 5, Order 12 Rule 6
Companies Act, 1956 — Section 210, 211(5), 215, 216, 224
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 12(5), 2(5)
Evidence Act, 1872 — Section 17, 18, 21
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(20)

Citation : (2007) 6 ALLMR 327 : (2008) 1 BC 365 : (2007) 5 BomCR 862 : (2007) 4 MhLj 847

Hon'ble Judges : R.M. Savant, J;F.I. Rebello, J

Bench : Division Bench

Advocate : Amogh Paralikar, for the Appellant; S.J. Bhambhlani and Trupti P. Sanghvi, instructed by S.J. Bhambhlani and Co., for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. The petitioner is aggrieved by the orders passed by the Presiding Officer, Debts Recovery Tribunal, Pune dated 16-12-2003 and the order dated 22-3-2006 passed by the Debts Recovery Appellate Tribunal in appeal No. 22 of 2004. A few essential facts may be set out. The respondent No. 1 bank has filed Original Application No. 97 of 2003 against the petitioner and respondent Nos. 2 and 3 as the guarantors for recovery of an amount of Rs. 2,91,63,589.52 ps as on 3-6-2003. During the pendency of the O.A., the respondent No. 1 preferred an application under Rule 2 Sub-rule (5) of the Debts Recovery Tribunal (Procedure) Rules, 1993 which hereinafter shall be referred to as the "Rules". The application has to be read with Section 19(20) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter to be referred to as the said Act. The

respondent No. 1 by way of relief sought an order to direct the petitioner and respondent Nos. 2 and 3 to pay to respondent No. 1 an amount of Rs. 1,64,79,715.70 ps., being the amount of debt admitted by the petitioners within one month from the date of the order. There is one more relief which need not be adverted to. Along with the application of 16th June, 2003 was annexed the auditors report as also copies of the Profit and Loss Account for the year ended on 31st March, 2000. The Profit and Loss Account was signed by respondent Nos. 2 and 3 on 1-9-2000.

3. The petitioner herein filed their reply to the said application. The contention of the petitioner was that the application was misconceived and that the provisions under which the application was moved, would indicate that this power could be exercised after making proper application and not at the interim stage. By referring to Rule 12(5) of the Rules, it was contended that the admission contemplated by Rule 12(5) is required to be made in the proceedings after filing of the application. The respondent No. 1 had filed the purported application on the basis of the balance sheet. The figures in the balance sheet, it was submitted do not constitute an admission for the simple reason that the facts and figures are as per situation then existing which may not necessarily be the correct situation. If that was the correct situation, there was no need for adjudication of the claim. The petitioner was under compulsion to disclose the position as existing then, when the balance sheet was filed but that does not mean that it becomes an admission. The amount shown in the balance sheet becomes due only on admission before the Tribunal. The application, it was submitted, was devoid of merit and frivolous and accordingly ought to be dismissed.

4. The learned Tribunal, on considering the provisions of the Rule as also the Act, was pleased to hold that the contention that the provision of the Act and the Rule relied upon would only be invoked at the final hearing, was not a proper construction. The learned Tribunal was further pleased to hold that the word "admission" in Rule 12(5) though not defined, could not be inferred to mean that the admission is required to be made during the proceedings. The various other contentions as raised were rejected. The petitioner, it was held, had not explained the admission as contended in the balance sheet, as being erroneous and in the absence of any explanation, the application should have to be allowed. Reliance was placed on the judgment of *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, .

5. The petitioner aggrieved by the said order, preferred an appeal before the Appellate Tribunal. The learned Appellate Tribunal considered the meaning of the expression "admission" and came to the conclusion that the admission need not be in the course of the proceedings and could have been made even before the institution of the proceedings. The balance sheet which was annexed to the notice issued by the company in the 16th Annual General Meeting along with the Directors' Report duly signed by the Directors as well as the Auditors Report of the applicant company, would constitute an admission. Reference was also made

to the provisions of Order XII, Rule 6 of the CPC and the provisions of the Evidence Act. The learned Appellate Tribunal also relied on the judgment in the case of Uttam Singh Dugal and Company (supra) and was pleased to dismiss the appeal. This order, is also the subject-matter of the present petition.

6. At the hearing of the petition, the learned Counsel for the petitioner has submitted that the admission could not be an admission outside the proceedings but had to be an admission in the pleadings in the proceedings. In the instant case that was not so and consequently, the order of the Tribunal and the Appellate Tribunal are without jurisdiction and hence liable to be quashed and set aside. It is further submitted that the original application before the DRT was barred by limitation, considering that the cause action is the Profit and Loss Account of 31st March, 2000 and the original application has been filed only on 16-6-2003 and at any rate it is submitted that the petitioner should have been given an opportunity of filing the written statement. That was not done. For all the aforesaid reasons, it is submitted that the petition should be dismissed.

7. We have heard the learned Counsel for the parties. Let us firstly consider the provisions of the Act and the Rules. Section 19(20) of the Act reads as under:

The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

Rule 12(5) of the Rules reads as under:

Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission, by the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act to the extent of amount of debt due admitted by the defendant.

From a reading of these provisions, the question is whether an admission in the balance sheet/profit and loss account and not in pleadings or an admission before the Tribunal, can be said to be an admission warranting an order directing the petitioner to deposit the amount. Before considering that issue, we may also refer to the provisions of Order XII of the Code of Civil Procedure. Order XII, Rule 6 of the CPC provides for judgment on an admission. The rule specifically sets out that on an admission of fact either in the pleading or otherwise, oral or in writing, the Court may any stage of the suit either on the application of any party or of its own motion and without waiting for the decision on any of the question between the parties, make such order or give such judgment as it may think fit having regard to such admission. The expression, therefore, used is either in the pleading or otherwise. The language in Order XII, Rule 6, therefore, leaves no manner of doubt that the admission can be in the pleading which

means in the proceedings or otherwise, meaning thereby in any other proceeding or document. Admission is not defined under the provisions of the Act or for that matter Indian Evidence Act, 1872. Section 17 however, sets out that "An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned." u/s 18, statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. In other words, statements made by a party to the proceeding can be treated as admission by the party. Section 21 sets out the admissions are relevant and may be proved as against the person who makes them. It would, therefore, be clear from a consideration of these provisions, that an admission is a statement, oral or documentary made by any person which suggest an inference as to a fact in issue or relevant fact.

Under the provisions of the Indian Companies Act, there are certain statutory requirements. A perusal of Sections 210, 211(5), 215 and 216 of the Indian Companies Act, 1956 would indicate that the balance sheet and profit and loss account has to be filed by every company incorporated under the Act. u/s 224, every company at its annual meeting has to appoint an auditor. That auditor u/s 227 has been conferred powers. u/s 229, the auditor has to sign the auditor's report or sign or authenticate any document of the company required by law to be signed or authenticated by the auditor. On failure to comply with the provisions of Sections 227 and 229, such auditor is liable to be punished with fine which may extend to Rs. 10,000/-. In the application filed by the respondent No. 1, reliance was placed on the auditor's report and the profit and loss account as already mentioned above. The amounts claimed was in terms of the profit and loss account signed by the Director. The petitioners did not dispute by any fact that the sums contained in the auditor's report and profit and loss account were not the amounts due and payable. However, some vague pleas were taken, which would be irrelevant considering the statutory requirements of filing the balance sheet and profit and loss account.

We have no difficulty, therefore, in holding that the statement contained in the balance sheet and profit and loss account of the petitioner company would be an admission of its liability, unless subsequent balance sheets were filed to show that either the amounts have been paid or were not due and payable and/or any other material was produced to hold otherwise. That exercise was not done.

8. Having come to the conclusion that the amounts set out in the profit and loss account are an admission of amounts due by the petitioner to respondent No. 1, the question that has to be answered is whether the admission has to be in the course of the proceedings. We may refer to the judgment of the Supreme Court in *Uttam Singh Dugal and Co. Ltd. v. Union Bank of India and Ors.* The issue there arose considering the provisions of Order XII, Rule 6 of the Civil Procedure

Code. The contention urged was that resolutions or minutes of the meeting of the Board of Directors and resolution thereof cannot amount to a pleading to come within the ambit of the rule. The Supreme Court noted that before the trial Court, there was no pleading much less an explanation as to the circumstances in which the said admission was made so as to take it out of the category of admission. The Court noted that the matter could be decided even without referring to the expression "otherwise" in Rule 6 of Order XII of CPC and that an inference of liability could be drawn on the basis of the pleadings. In the instant case also, in the application, the respondent No. 1 had pleaded based on the profit and loss account of the petitioners that the amount set out therein was an admission that the amount was due and payable. There was no specific denial except for such vague pleadings. It is, therefore, clear that there was an admission by the petitioner in response to the application taken out by the respondent No. 1. No material was produced or explanation given of the circumstance under which the admission was made to take it out of the category of admissions which created the liability. On this count itself, the petition, in our opinion is liable to be dismissed as the admission would be admission binding on the petitioner and it was open to the Tribunal to pass an order in terms of Section 19(20) of the Act read with Rule 12(5) of the Rules.

Assuming it not to be so, then whether the admission is required to be made only in the pleadings. The language of the Rule does not lend itself to that construction, as the expression does not require that the admission must be made by the defendant in the pleadings before the Tribunal. The expression "defendant" has to be considered in the context of the opponent in the proceeding. The language used is to order such defendant to pay the amount to the extent of such admission. The language, therefore, used is susceptible of a wider meaning to include any admissions by the defendant. In other words, in proceedings either before the Tribunal or also in any other document. The object of the Act being to enable financial institutions to recover their debts expeditiously. Any other construction would defeat the very object of the Act. The language used in Order XII, Rule 5 of CPC is in the pleadings or otherwise, unlike the language of Rule 12(5) of the Rules. As we have noted, the statement contained in the profit and loss account duly certified by the auditor is based on the records of the company. Once the balance sheet/profit and loss account shows the amount and that as a statutory requirement of the Companies Act, we fail to understand as to how that cannot be an admission which can be proved against the company. It is for the company to establish by relevant facts that the admission would not be an admission in the eyes of law. In the instant case, the petitioner has been unable by any relevant fact to displace the admission made in the balance sheet. In our opinion, therefore, the admission in the balance sheet has been proved against the petitioner and as we have held earlier that such an admission even other than in the pleadings before the Tribunal can be proved against the party in making the admission. We have, therefore, no hesitation in holding that the expression "admission" in Rule 12(5) of the Rules

can be read to mean an admission both in the pleadings, in the proceedings as well as an admission of fact not in the proceedings and which is evidenced by any document or mode provided u/s 17 of the Indian Evidence Act. That contention must, therefore, be rejected.

9. The issue pertaining to limitation, in our opinion, is merely an afterthought. It was open to the petitioner to raise such a plea in its reply to the respondent No. 1's application. That was not done. Even otherwise, the profit and loss account was signed by the respondent Nos. 2 and 3 on behalf of the petitioner on 1-9-2000. The application was filed in June 2003. In other words, from the pleadings, it would be clear that it was within limitation.

10. For the aforesaid reasons, we find no merit in this petition. Accordingly, rule discharged. There shall be no order as to costs. Interim order, if any, stands vacated.