(2016) 12 DEL CK 0027

In the Delhi High Court

Case No : W.P.(C). 603 of 2016 and CM No.2471 of 2016

Vishal Hira Merchant Pvt. Ltd. APPELLANT

Vs

HDFC Bank RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Limitation Act, 1963 — Section 5
Recovery of Debts Due To Banks And Financial Institutions Act, 1993 — Section 19

Citation : (2017) AIR(Delhi) 49 : (2017) 161 DRJ 375 : (2017) 1 DRTC 793

Hon'ble Judges : Ms. Indira Banerjee and Mr.V. Kameswar Rao, JJ.

Bench : Division Bench

Advocate : Mr.Sanjay Poddar, Sr. Advocate with Ms. Bindu Das, Advocate, for the Petitioner; Mr. Kunal Tandon and Ms. Snigdha Sharma, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Indira Banerjee, J. - In this writ petition, the petitioners have challenged an order dated 6th October, 2015, passed by the learned Debt Recovery Appellate Tribunal dismissing Appeal No.373/2015, filed by the petitioners, thereby affirming an order dated 6th August, 2015, passed by the learned Debt Recovery Tribunal, dismissing the counter claim filed by the petitioners against the claim of the respondent-Bank only on the ground that the same was barred by limitation.

2. The respondent, HDFC Bank, (hereinafter referred to as HDFC Bank) instituted an original application No.39/2010 against the petitioner in the learned Debt Recovery Tribunal-III Delhi, for recovery of Rs.2,46,55,277.27 along with interest and costs from the petitioners. By an order dated 31st May, 2012, the learned Debt Recovery Tribunal III Delhi, closed the rights of the petitioners to file written statement and directed HDFC Bank to file ex parte evidence. The matter was directed to be listed before the Registrar on 2nd November, 2012, for filing evidence and exhibiting the documents.

3. On or about 6th May, 2014, the petitioners filed an application, praying for

leave to file the written statement and counter claim out of time.

4. By an order dated 21st May, 2015, the learned Debt Recovery Tribunal III allowed the said application and took the written statement filed by the petitioners on record, subject to payment of costs of Rs.2500/-.

5. Aggrieved by the said order dated 21st May, 2015, HDFC Bank filed an appeal being Miscellaneous Appeal No.198/2015 therefrom, before the Debt Recovery Appellate Tribunal, Delhi.

6. By an order dated 6th August, 2015, the learned Appellate Tribunal disposed of the appeal, holding that the written statement would be taken on record, subject to payment of additional costs of Rs.25000/- and that the learned Tribunal would adjudicate whether the counter claim, filed by the petitioners, could be entertained.

7. By an order dated 6th October, 2015, the counter claim filed by the petitioners was dismissed on the ground that the same was barred by limitation.

8. The petitioners filed an appeal being Appeal No.373/2015, against the aforesaid order of the learned Tribunal, which has been dismissed by the impugned order of the Debt Recovery Appellate Tribunal.

9. Mr.Poddar appearing on behalf of the petitioners rightly submitted that a counter claim under Section 19 (8) of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, (hereinafter referred to as the DRT Act) had to relate to cause of action, which had arisen before the filing of the original application, or before the filing of the written statement, on or before the last date fixed for defence of the respondent, Mr. Poddar also argued rightly that under Section 19 (9) of the DRT Act a counter claim had to be treated as a cross suit and tried along with the original application, so that all controversies and disputes could be settled in the same proceedings.

10. Mr. Poddar also argued, rightly that the Court had the discretion to permit a written statement including a written statement containing a counter claim to be filed belatedly, by condoning the delay in filing the written statement.

11. Mr. Poddar argued that in this case, though the petitioners had been permitted to file their written statement belatedly, their counter claim, which is part and parcel of their written statement was erroneously not entertained, on the ground that the same was barred by limitation.

12. Mr. Poddar argued that the cause of action, for which the counter claim was filed had arisen before the original application was filed by HDFC Bank, and in any case, before delivery of defence. He argued that the learned Debt Recovery Tribunal had the jurisdiction and power to condone the delay in filing an application under Section 19 of the DRT Act as well as a written statement, in view of Section 24 read with Section 2(b) of the DRT Act. The time for filing the written statement having been extended, the counter claim ought to have been

adjudicated along with the original application filed by the HDFC Bank.

13. Mr. Poddar''s argument that the question of whether the counter claim was barred by limitation or not, should have been decided with the original application, cannot be sustained in view of the direction in the order dated 6th August, 2015, of the Debt Recovery Appellate Tribunal, which has assumed finality.

14. The moot questions involved in this writ petition are, whether there is any prescribed period of limitation for raising a counter claim and if so, from what point of time, does the limitation start running; is a counter claim raised over three years after the filing of the original application ipso facto barred by limitation; can the delay in filing the counter claim be condoned beyond the period prescribed by the laws of limitation and whether condonation of the delay in filing a written statement would extend the period of limitation for raising the counter claim.

15. Section 19 of the DRT Act enables a bank or a financial institution to recover any debt from any person by making an application under the aforesaid section before the appropriate Debt Recovery Tribunal having jurisdiction. An application under Section 19 is in the nature of a suit in respect of which the provisions of the Limitation Act, would apply. This can also be deduced from Section 31 of the DRT Act, which provides as follows:

"31. Transfer of pending cases.-(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

16. A suit filed in a Civil Court, if transferred to the DRT, is to be decided in the same manner as an application under Section 19, from the stage, which was reached before such transfer or from any earlier stage as the Tribunal may deem fit.

17. Section 24 of the DRT Act provides that the provisions of the Limitation Act 1963 shall, as far as may be, apply to an application made to a Tribunal. An application under Section 19 being in the nature of a suit for recovery of debt, the limitation period prescribed in the limitation Act for filing a suit for recovery of the same debt would apply.

18. There is no provision in the Limitation Act, 1963 for condonation of delay in filing a suit. If a suit is time barred, it has to be dismissed. There can be no condonation of delay. Section 5 of the Limitation Act only applies to appeals and applications and not to a suit.

19. The Judgement of the Supreme Court in Indian Bank v. Mani Lal Govindji Khona reported in (2015) 3 SCC 712 cited on behalf of the petitioner is not an authority for the proposition that the delay in filing recovery proceedings, which is akin to a suit, or delay in raising a counter claim can be condoned. In the aforesaid case, the Supreme Court held that, since Section 5 of the Limitation Act applies to proceedings before the Debt Recovery Tribunal, the High Court had rightly condoned the delay of 23 days in filing a Miscellaneous Application for setting aside a sale and rectification of recovery certificate and decree.

20. A counter claim is in the nature of a cross suit. Under Section 19(8) and (9) of the DRT Act read with Order 8, Rule 6A (1) of the Civil Procedure Code, a counter claim can be raised in respect of a cause of action that has arisen before or after the filing of the suit/application for recovery, but before the defence is delivered, or before the time for delivering the defence has expired. A counter claim being in the nature of a cross suit as provided in Order 6A(2) of the Code, Article 113 of the Limitation Act would apply to a counter claim.

21. Time to file the written statement is condonable. However, delay in filing a counter claim cannot be condoned when the claim is barred by limitation. However the period of limitation starts running from the date of accrual of the right to sue. An application under Section 19 of the DRT Act for recovery of a claim has to be filed within the period of limitation for a suit to recover the debt. When an application is filed under Section 19, the respondent/defendant might file its written statement contesting the claim. The respondent/defendant may claim a set of. The respondent/defendant may also raise a counter claim. This counter claim need not be raised in the written statement itself. It may be filed separately, but within the period of limitation.

22. The provisions of the Limitation Act would apply to the filing of a counter claim. A counter claim would have to be filed within three years from the date of accrual of the right to sue. Reference may be made to the judgment of the Supreme Court in Mahendra Kumar & Anr. v. State of Madhya Pradesh reported in (1987) 3 SCC 265. Acknowledgment within the period of limitation with promise to pay would extend the period of limitation.

23. Section 5 of the Limitation Act, which provides for condonation of delay, only apply to appeals and applications and not to an application under Section 19, which is in effect and substance of a suit or to a counter claim.

24. The learned Debt Recovery Tribunal rejected the counter claim on the ground that the same was barred by limitation and the Debt Recovery Appellate Tribunal upheld the dismissal by the order impugned.

25. The DRT as well as DRAT rightly found in effect and substance that a counter claim barred by limitation could not be entertained by condonation of the delay. However, the finding that a counter claim placed three years after the filing of the original application would ipso facto be barred by limitation is ex facie misconceived. The learned DRT as well as DRAT misdirected themselves in not

considering, whether the counter claim had been filed within three years from the accrual of the right to sue.

26. For the reasons discussed above, the impugned orders of the learned DRT and the DRAT cannot be sustained and the same are set aside.

27. The learned Tribunal shall decide whether the counter claim was barred by limitation or not, afresh in the light of the observations above, on consideration of the materials produced by the respective parties in support of their contentions in this regard.

28. The writ application is disposed of accordingly.