
(2012) 03 DEL CK 0349
In the Delhi High Court
Case No : LPA No. 227 of 2012

Vishwakarma Projects India Pvt. Ltd.	APPELLANT
Vs	
Canara Bank	RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

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

Citation : (2012) 5 AD 1 : AIR 2012 Delhi 148 : (2013) 2 BC 263

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Anil Sharma, for the Appellant; V.K. Tandon with Mr. A.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. This Letters Patent Appeal is preferred by the appellant assailing the order dated 03.2.2012 passed by the learned Single Judge in Review Application No. 732 of 2011 in W.P.(C) No. 7261/2011, modifying the order dated 11.11.2011 in W.P.(C) 7261/2011. The brief facts which led to the filing of this appeal are as follows:

The appellant entered into an agreement with Gujarat Mineral Development Corporation (Rs. GMDC Rs. for brevity) on 20.2.2011 for the assignment of design and construction of 2 Nos. 130 meters high single flue chimney for Unit 1 and 2 of Akrimota Thermal Power Station at village Chher, Taluka-Lakhpat, District - Kuchh, Gujarat at the final quoted price of Rs. 2, 92, 92, 000/- (Two Crores Ninety Two Lacs and Ninety Two Thousand only). The appellant approached the respondent bank for a bank guarantee of Rs. 14, 64, 600/- and the respondent bank issued two performance bank guarantees in favour of GMDC. It is the case of the appellant that they time and again requested the respondent bank for renewal of bank guarantees, but the request was not acceded to by the

bank as a result of which, the respondent bank made the payment to GMDC on invocation of bank guarantees.

2. Thereafter the respondent filed and Original Application u/s 19 of Recovery of Debts due to Banks and Financial Institution Act, 1993 (hereinafter referred to as the DRT Act Rs.) before the Debt Recovery Tribunal praying inter alia to declare a sum of Rs. 23, 82, 180/- due as debt to the bank and its guarantors. Learned counsel for the appellant has further submitted that it requested for settlement of the NPA current account No. 3114 on various occasions.

3. The Tribunal vide its order dated 02.9.2009 allowed the OA of the respondent for recovery of Rs. 23, 82, 180/- and issued recovery certificate. Being aggrieved by this order, the appellant filed and appeal before the Debt Recovery Appellant Tribunal, New Delhi (hereinafter referred to as Rs. DRAT Rs.). The DRAT dismissed the appeal of the appellant on 26.4.2010. Thereafter on 09.7.2010 and 03.11.2010, the Recovery Officer issued a sale proclamation for the sale of property bearing No. 2, LGF towards the right side of the building, i.e., half portion adjoining property No. B-144, Kalkaji, New Delhi.

4. The appellant challenged the order of the DRAT dated 20.4.2010 and 26.4.2010 before this Court with the prayer to permit the appellant to deposit 25% of amount in lieu of 60%, but this Court dismissed the writ petitioner on the ground of delay and laches. Even the SLP filed by the appellant against this order of this Court met with the same fate.

5. Thereafter, the appellant requested the respondent for the settlement of the NPA account as per guidelines for one time settlement scheme of the RBI. After inaction on the part of the respondent to settle the NPA Account, the appellant filed W.P.(C) 7261 of 2011 before this Court for a direction to the respondent to settle the account of the appellant. This Court vide its order dated 11.11.2011 disposed of the writ petition with the direction to the appellant that if he wishes to settle to NPA account in terms of the said guidelines, the appellant should do within two weeks and the respondent was also directed to consider the case of the appellant in accordance with the aforesaid guidelines of RBI. The respondent filed a Review Application No. 732 of 2011 against the order dated 11.11.2011 before this Court. Vide orders dated 03.2.2012, this Court allowed the review application of the respondent and modified the order dated 11.11.2011 to the extent that the case of the appellant may be considered in terms of guidelines dated 04.10.2007.

6. From the aforesaid facts, it becomes dear that the respondent bank had filed Original Application u/s 19 of the Debt Recovery Act way back in March, 2004 and this OA was allowed by the Debt Recovery Tribunal vide order dated 02.9.2009 whereby decree of sum of Rs. 23, 82, 180/- along with interest was passed in favour of the respondent bank and against the appellant herein. It also becomes dear from the narration of the facts above that the appellant challenged the said order/decreed passed in the order, but did not succeed. Thus, the

respondent bank, in normal course, is entitled to the recovery of Rs. 23, 82, 180/- along with interest, which would also be substantial as on date. For recovery, all the aforesaid amounts are pending. In this recovery, since Flat No. 2, LGF was attached and approximately amount of Rs. 21 lacs has been recovered. The respondent bank also attached property No. C-126, Village-Kilokari, New Delhi as well as another property situated at Shahbuddinpur, Pargana, Tehsil & District - Muzzarfarnagar (UP).

7. Learned counsel for the appellant submits that the request of the appellant offering one Time Settlement (OTS) as per the Reserve Bank of India (in short Rs. RBI Rs.) scheme is to be considered in the aforesaid case. The entire issue is as to whether the appellant is entitled to OTS scheme dated 03.9.2005 guidelines or 04.10.2007 guidelines. Learned Single Judge in the impugned order has held that the guidelines of 2005 are not applicable. Some of the relevant terms of guidelines of 2005 may be taken note of at this state, which reads as under:

2. The guidelines will not, however, cover cases of willful default, fraud and malfeasance. Banks shall identify cases of willful default, fraud and malfeasance and initiate prompt action. Accordingly, guidelines for one-time settlement of dues relating to NPAs of public sector banks in SME sector are given below:

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c) These guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before courts/DRTs/BIFR, subject to consent decree being obtained from the Courts/ DRTs/BIFR.

d) Cases of willful default, fraud and malfeasance will not be covered.

e) The last date for receipt of applicants from borrowers will be as at the close of business on March 31, 2006. The processing under the revised guidelines shall be completed by June 30, 2006.

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[iii] Payment

The amount of settlement arrived at in both the above cases, shall preferably be paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement shall be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.

[iv] Sanctioning Authority

The decision on the one-time settlement and consequent sanction of waiver or remission or write-off shall be taken by the competent authority under the delegated powers.

[v] Non-discretionary treatment

Banks shall follow the above guidelines for one-time settlement of all NPAs covered under the scheme, without discrimination and a monthly report on the progress and details of settlements should be submitted by the concerned authority to the next higher authority and their Central Office. Banks may go for wide publicity and also give notice by January 31, 2006 to the eligible defaulting borrowers to avail of the opportunity for one-time settlement of their outstanding dues in terms of these guidelines. Adequate publicity to these guidelines through various means must be ensured.

(emphasis supplied)

8. It is dear from the above that these guidelines are not applicable in those cases where there is willful default. Furthermore, the last date for receipt of the application in terms of these guidelines was 31.3.2006 and the process was to be completed by January 30, 2006 in the event of accepting the proposal by the respondent bank the payment was to be made in lump sum. In exceptional cases, however, the borrower could get realization by offering 25% of the amount of settlement as upfront and 75% in installment in a period of one year together with interest. The aforesaid period lapsed long back. That apart, it is observed by the learned Single Judge that the appellant could not show that it had made any such request for one time settlement in terms of the said scheme.

9. Learned counsel for the appellant submits that on 20.12.2005, request was made offering a sum of Rs. 12 lacs in full and final settlement. However admittedly, such an offer was not made in terms of the aforesaid OTS scheme. A futile attempt is made by the learned counsel for the appellant that the appellant was supposed to give notice of the aforesaid scheme to all the defaulting borrowers to avail one time settlement and no such notice was given to the appellant.

10. No such plea has been taken earlier at any stage and therefore, we cannot allow the appellant to raise this issue. The RBI, thereafter, issued guidelines and we are of the opinion that the learned Single Judge has rightly referred to Para 5 of the said guidelines stating that this would be applicable in the present case:

Same principle should be used in compromise settlements. As the payment of the compromise amount may be in installments, the net present value of the settlement amount should be calculated and this amount should generally not be less than the net present value of the realizable value of securities.

11. It is also a matter of record that the respondent bank has a security which is valued as more than Rs. 1 Crore. The amount due in the account of the appellant when it was declared NPA was in the range of Rs. 21 lacs and for this reason also, the appellant could not invoke guidelines of 2005. Finding no merit, this appeal is accordingly dismissed.