

SUPREME COURT OF INDIA

K.R.Subbaiah

Vs.

Indian Bank, Madurai

(Aftab Alam and R.M.Lodha JJ.)

C.A.No.7880 of 2004

03.08.2010

JUDGEMENT

R.M. Lodha, J.

1. The judgment-debtors are in appeal, by special leave. Indian Bank-respondent (for short, 'the bank') sued the appellants for recovery of a sum of Rs. 14,06,152.80 with interest and costs before the Principal Sub Court, Madurai. On January 7, 1986, a preliminary decree was passed by the trial court against the appellants ex-parte, as prayed for by the bank, and one month's time was given for payment. On November 12, 1986, an ex-parte final decree was passed against the appellants in terms of the preliminary decree. The bank levied execution of the decree wherein two properties belonging to the first appellant were sold and a sum of Rs. 4,07,000/- was realized from that sale. During the pendency of the execution proceedings, the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') came into force and the execution proceedings were transferred to the Debt Recovery Tribunal, Chennai (for short, 'the Tribunal'). On April 26, 2000, the Tribunal issued recovery certificate in favour of the bank for a sum of Rs. 15, 66,731.49 with future interest @ 18% p.a. on Rs. 11,95,200/- from the date of decree till the date of realization with costs and for sale of the properties mentioned in the schedule. The proceedings before the Tribunal also remained ex-parte. It appears that pursuant to the recovery certificate dated April 26, 2000, initially an order of attachment of the judgment-debtors' two properties was passed on August 9, 2002 and then the order of proclamation of sale was made on October 11, 2002. The Debt Recovery Officer fixed November 15, 2002 as the date for auction of these two properties.

2. The appellants approached the High Court of Judicature at Madras by filing a civil revision petition challenging the debt recovery certificate, the order of proclamation of sale and the proceedings before the Debt Recovery Officer. The High Court, however, dismissed the civil revision petition on February 3, 2003 as not maintainable as the appellants had a statutory remedy of appeal under Section 20 of the 1993 Act. It may be noted here that while dismissing the civil revision petition, the High Court observed about the appellants'

willingness to pay Rs. 15,00,000/- in full and final settlement of the bank's claim. As regards the rate of interest, the High Court observed that the appellants may raise this aspect before the Debt Recovery Appellate Tribunal, (for short, 'the Appellate Tribunal'), if so advised.

3. The appellants then preferred appeal before the Appellate Tribunal, Chennai and since it was barred by time, they also prayed for condonation of delay in filing the same.

“However, the Appellate Tribunal was not convinced by the explanation put forth by the appellants and dismissed the appeal on July 2, 2003 on the ground of delay.”

4. The appellants then approached the High Court of Judicature at Madras challenging the order of the Appellate Tribunal. The High Court held that the Appellate Tribunal did not err in dismissing the appeal on the ground of delay and accordingly dismissed the revision petition on December 23, 2003. It is from this order that the present appeal has arisen.

5. On May 7, 2004 before this Court an amount of Rs.16 lakhs was handed over by the appellants to the bank by way of bank drafts. The Court noticed this fact and passed the following order:

“The petitioners have handed over an amount of Rs. 16 lakhs by way of bank drafts to the respondent bank. According to this Court's order dated 16.4.2004 the decretal amount was to be deposited. According to the petitioner this amount is the principal amount of Rs. 11,95, 200/- (Rupees eleven lakhs ninety five thousand and two hundred only) with 18% interest on the amount upto the date of the decree and 6% interest on the principal amount. The bank drafts are accepted by the learned counsel appearing on behalf of the respondent without prejudice. The respondent is entitled to appropriate the same towards the decretal dues. The amount which has been handed over in this Court shall be adjusted first against the decretal amount and thereafter against interest. In view of the payment made, issue notice. Notice is accepted by Mr. Himanshu Munshi, learned counsel appearing for the respondent.

Counter affidavit, if any, be filed within four weeks, Rejoinder affidavit may be filed within two weeks thereafter.

Pending disposal of the matter by this Court the attachment will continue but no further steps to be taken for sale of the petitioners property.”

6. The bank filed counter affidavit in opposition to SLP on July 23, 2004. We shall refer to the counter affidavit a little later. On November 29, 2004, leave was granted and interim order was directed to remain operative.

7. When the appeal was taken up for hearing by us, the learned counsel for the appellants submitted that the appellants desire to put an end to the litigation by making payment of the outstandings as on date on the basis of the statement (Annexure R1) submitted by the bank

before this Court along with the counter affidavit. Learned counsel submitted that the appellants shall pay interest @ 6% p.a. as reflected in the statement (Annexure R1) on the remaining amount after adjustment of Rs. 16 lakhs which was paid to the bank by way of bank drafts on May 7, 2004.

8. Mr. Himanshu Munshi, learned counsel for the bank, however, submitted that the appellants have to pay interest @18% p.a. on Rs. 11, 95,200/- from the date of decree till the date of realization as per the final decree. As regards the statement (Annexure R1) annexed with the counter affidavit by the bank, learned counsel submitted that interest calculated therein @ 6% was an error on the part of the Assistant General Manager, Circle Office, Madurai

9. The short controversy that survives for consideration is whether the submission made on behalf of the appellants to pay off the bank's outstandings as per the statement (Annexure R1) merits acceptance or not. Pertinently, the appellants' case before the Appellate Tribunal as well as the High Court was that the Principal Sub Court, Madurai had passed the final decree on November 12, 1986 against them for Rs. 15,60,562.75 and as per the said decree it was ordered that the bank is entitled to interest prescribed under Order 34 Rule 11 of the Code of Civil Procedure, 1908. The appellants' contention that the bank is entitled to subsequent interest @ 6% for the period after the decree on the principal amount of Rs. 11,95,200/- until realization was not gone into by the Appellate Tribunal since appeal was time barred. High Court also did not advert to this aspect as it found that dismissal of appeal by the Appellate Tribunal on the ground of delay was justified. It is true that in the recovery certificate it is mentioned that the bank is entitled to recover a sum of Rs. 15, 66,731.49 with future interest at the rate of 18% p.a. from the date of decree till the date of realization but the statement (Annexure R1) submitted by the bank along with counter affidavit shows otherwise. Annexure R1 is as follows:

“ADD: Int. due till 12.11.86 @18% (final decree) 2,32,818.40 Amount due as on 12.11.1986 16,38,971.20 ADD: Int.@ 6% on Rs.1638971.20*from 17,20,515.60 12.11.1986 Amount due 33,59,486.80 LESS:

Amount recovered from sale in 1993 - 407700 Int. Received from court 83559 Amount received at our end on 04.03.97 4,91,259.00 Amount due 28,68,227.80 LESS: Int.@ 6% on Rs. 491259/- from 4.3.97 2,11,658.60 to 27.07.04 Amount due 26,56,569.20 LESS:Deposited in Coimbatore DRT and 3,78,500.00 received at our end on 12.03.04 Amount due 22,78,069.20 LESS:Int. @ 6% on 378500=from 12.03.04 to 8,524.00 27.07.04 Amount due 22,69,545.20 LESS: Provident Fund received from HO 38,966.00 Personnel on 24.6.88 Amount due 22,30,579.20 LESS:Interest due on Provident Fund @10% - Outstanding amount 22,30,579.20”

10. A close look at the aforesaid statement would show that the interest until the date of the final decree was payable by the appellants at the rate of 18% p.a. and thereafter at the rate of 6% p.a. on due amount. Paragraph 5(iii) of the counter affidavit filed by the bank states that

the calculation (Annexure R1) is as per records of the bank. When the statement (Annexure R1) has been prepared by the bank as per its records, we find no merit in off the cuff argument advanced by learned counsel for the bank that there is an error in the statement (Annexure R1) with regard to the rate of interest. If that were so, the bank could have filed some supplementary affidavit for which they had ample opportunity in the last six years.

11. We are, thus, satisfied that the statement of the learned counsel for the appellants that the appellants shall discharge their liability till the date of actual payment on the basis of the statement (Annexure R1) deserves to be accepted.

12. The appeal is, accordingly, disposed of by the following order:

“(i) The statement (Annexure R1) annexed by the bank with their counter affidavit shall be the basis for calculating the due amount against the appellants as on July 31, 2010.

(ii) The bank shall communicate to the appellants exact amount due against them as on July 31, 2010 as indicated above. The amount of Rs. 16 lakhs paid by the appellants by way of bank drafts on May 7, 2004 shall be adjusted against the appellants' dues as directed by this Court in the order dated May 7, 2004.

(iii) The appellants shall pay the due amount within 15 days of the receipt of such communication alongwith further interest that may become due upto the date of payment.

(iv) On payment of the said amount, the liability of the appellants under the recovery certificate dated April 26, 2000 and any other recovery certificate issued thereafter shall be discharged and the attachment order dated August 9, 2002 shall stand raised and the order of proclamation of sale dated October 11, 2002 shall stand set aside.

(v) If the appellants fail to pay their dues as indicated above, the Debt Recovery Officer shall be at liberty to proceed with the auction of the attached properties. After recovery of the outstanding amount from the sale proceeds, the balance, if any, shall be paid to the appellants.”

13. The parties shall bear their own costs.