

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 15318/2006

Date of Decision: 19th March, 2008

A.K.BHARDWAJ & ORS

..... Petitioner

Through: Mr. A. K. Aggarwal and Mr. M. C.
Kochchar, Advs.

versus

M/S KOTAK MAHINDRA BANK LTD & Respondent

Through: Mr. Sanjay Bhatt, Adv.

CORAM:

HON'BLE MR. JUSTICE T. S. THAKUR

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? **Yes.**
2. To be referred to the Reporter or not? **Yes.**
3. Whether the judgment should be reported in the Digest? **Yes.**

J U D G M E N T

Per Thakur, J(oral)

1. This Petition is an utter abuse of the process of this Court. It is directed against two orders, one of which is passed by the DRT and the other by the Appellate Tribunal, dismissing an application filed by the petitioners seeking rejection of the plaint on the ground that it disclosed no cause of action against them.

2. The genesis of the controversy lies in a claim made by three financial institutions namely ICICI, IDBI and IFCI before the Debt

Recovery Tribunal in which they have prayed for a decree against the defendants including the Petitioners herein for the recovery of an amount of over Rs.30 crores. The Petitioners are said to have executed deeds of guarantee and created equitable mortgages for repayment of the loan amount borrowed by a company that has gone sick and is presently under liquidation in this Court. The financing institutions have, in that background, sought a decree for recovery of the outstanding amount before the DRT in which the Petitioners first moved IA No. 218/2001 seeking rejection of the plaint on the ground that it did not disclose any cause of action against them. That application was dismissed by the DRT on 14.05.2001.

3. Aggrieved by the above order the petitioners appealed to the Appellate Tribunal, which appeal was disposed of on 13.07.2001 without interfering with the order of dismissal passed by the DRT. Liberty was, however, given to the petitioners to file a fresh representation before the Tribunal, if so advised. That is when the petitioners filed IA No. 534/2001 once again agitating the same issue and arguing that the plaint did not disclose any cause of action against them. The Tribunal considered that contention and rejected the same by a reasoned order dated 16.09.2002 in the following words:

“6. I do not find any force in the contention of the Ld. Counsel for the defendants no.2 to 5 that OA is barred by limitation and is liable to be dismissed. In the foreign currency loan of US \$ 617985 first agreement was executed on 30.04.1984. Subsequently, notes of amendment were executed in respect of this loan itself on 11.2.1985, 14.7.1986 and 10.07.1987 respectively. Supplemental head of agreement was executed on

11.2.1985 and thereafter notes of amendment were executed on 14.07.1986 and 10.07.1987. In respect of additional foreign currency loan also equitable mortgage was created on 9.5.1985. In respect of rupee term loan agreement was executed on 9.5.1985 and thereafter a note of amendment was also executed on 14.07.1987. Similarly, in respect of additional rupee term loan the agreement was executed on 14.7.1986. Equitable mortgage was created on 14.7.1986. Cash Subsidy loan agreement was executed on 18.8.1986. In short-term loan agreement was executed on 27.10.1987. In this loan category equitable mortgage was created on 27.10.1987. It is apparent from the above that in each facility the last document executed was in the year 1986-87. All these facilities were to be repaid in installments. Equitable mortgage in respect of immoveable property was involved, thus, period of limitation would be 12 years. The proceedings remained pending before the BIFR/AAIFR from 29.5.1995 to 24.2.1997 i.e. for almost two years. This period has to be excluded in the period of limitation. If this period excluded the OA filed on 19.8.1999 would be well within the period of limitation. Besides this, recall notice was issued to the defendant no.1 on 5.4.1999, whereas guarantee agreements were invoked against the defendants no. 2 and 5 on 12.5.1999, therefore, period of limitation would also commence from the date the loan was recalled more so when immovable property was involved for this reason also OA is well within the period of limitation and cannot be dismissed merely on an application filed by the defendants no.2 to 5. This application is accordingly dismissed being devoid of merits(emphasis supplied).

4. Aggrieved by the above findings of the Tribunal, the Petitioners appealed to the Appellate Tribunal which appeal also failed and was dismissed by an order dated 19.07.2006. The Appellate Tribunal observed:

“....7. Regarding first objection with regard to non-disclosure of cause of action, as raised by the learned counsel for the appellants, a reading of Para 5 of the impugned order would disclose that

the Tribunal has recorded that the cause of action arose not only on each and every date when agreements were executed in each credit facility but also when defendant no.1 defaulted in making payment of installment. Tribunal also recorded that cause of action further arose when equitable mortgage was created and/or extended, and that lastly on 5.4.99 when applicants issued recall notices to the defendant no.1 who was asked to pay the due of the applicants. The Tribunal also recorded that when applicants revoked guarantees of the defendant no.2 to 5 on 12.9.99 cause of action arose. The Tribunal has, in Para 6 of the impugned order, taken note of the execution of documents relating to the agreement on 30.04.84 and subsequent notes of amendment in respect of the loan itself on 11.2.85, 14.7.86 and 10.7.87 respectively and has held that cause of action is disclosed by the respondent-financial institution for filing the O.A.....”

5. We have heard learned counsel for the parties and perused the record. As seen above the entire controversy arises out of a suit being tried by the Tribunal. The Plaintiff- financial institutions have already concluded their evidence in the said suit. Defendants have now been given an opportunity to lead their evidence in rebuttal. No progress, however, is made in the suit for the past nearly 5 years on account of the applications filed by the Petitioners alleging that no cause of action is disclosed in the plaint against them. Apart from the fact that the applications appear to us to be an attempt to gain time and prevent the Tribunal from concluding the proceedings pending before it, we see no merit in the contention that the OA does not disclose any cause of action against the petitioners. As rightly observed by the Tribunal the Petitioners have executed deeds of guarantee. The Tribunal has also referred to various other documents to show that equitable mortgages

were created in connection with the loan facilities availed by the borrowing company. In the circumstances, the OA could not be said to be disclosing no cause of action against the defendants, petitioners herein. The contention of the Petitioners that the plaint deserved to be rejected even when deeds of guarantee were executed by them needs notice only to be rejected. The legal position as regards the approach to be adopted in the matters while dealing with an application under Order 7 Rule 11 CPC is well settled by the Supreme Court in a catena of judgments. In ***Vijai Pratap Singh vs. Dukh Haran Nath Singh, AIR 1962 SC 941***, paragraph 9, the Supreme Court held:

“....The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.....”

6. In this regard reference may also be made to ***D.Ramachandran vs. R.V.Janakiraman, (1999) 3 SCC, 267***, paragraph 8, wherein the Supreme Court held:

“It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.”

7. Further, in *Liverpool & London S. P. & I.Assn.Ltd.* vs. *M.V.Sea Success I and Anr.*, (2004) 9 SCC, 512, paragraph 146, the Court has observed:

“It may be true that Order 7 Rule 11(a) although authorizes the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action by the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit.”

8. There is no merit in the Writ Petition which fails and is dismissed with costs of Rs.10,000/- (rupees ten thousand).

T. S. THAKUR, J.

SIDDHARTH MRIDUL, J.

MARCH 19, 2008
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