

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) No.8042/2010 & CrI.M.A. No. 20744 & 20745/2010**
% **Date of Decision: 08.12.2010**

Shri Karun Raj Narang Petitioner

Through Mr. Shailen Bhatia and Ms. Zeba T.
Khan and APS Jadann, Advocates for
the petitioner

Versus

ICICI Bank Limited and Ors. Respondents

Through Mr. Sanjay Bhatt and Mr. Arvind
Kumar, Advocates for respondent Nos.
1 to 4

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

CM No. 20745/2010

Allowed subject to just exceptions.

WP(C) No.8042/2010 & CrI.M.A. No. 20744/2010

The petitioner has sought setting aside the order dated 28th October, 2010 passed by Debt Recovery Appellate Tribunal in Appeal

No.392/2010 arising out of an order dated 28th September, 2010 in OA No. 248/1999 rejecting the prayers made by the petitioner to cross-examine all the witnesses of respondent/applicant Institution, who have filed the detailed affidavits and to modify the order of the Appellate Tribunal allowing cross-examination of Smt. Karobi Acharjee, Chief Manager, ICICI Bank Limited for 15 minutes only permit the petitioner to fully cross-examine the said witness and to allow cross examination of other witnesses who have given detailed affidavits in support of the contentions and pleas of respondent nos.1 to 3.

Respondent No. 1 to 3, ICICI Bank Limited, M/s. Industrial Development Bank of India (IDBI) and IFCI Limited had filed the original application bearing No. 248/1999 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, for the recovery of amounts alleged to be due and payable by the respondent No. 5 being the principal borrower and the petitioner being the guarantor. The respondent Nos. 1 to 3 had claimed two loans, namely, Foreign Currency Loan and Rupees Loan, which were allegedly granted to respondent No.5 M/s. Digital Devices Limited.

According to the petitioner, he had ceased to be a Director of M/s. Digital Devices Limited in 1992 and thus had no information about the affairs of respondent No. 5 company since 1992.

In the original petition pending before the Debt Recovery Tribunal, the present petitioner had filed the written statement taking various pleas, inter alia, that he has been wrongly impleaded; the petition is barred by limitation; the original petition has not been filed by the proper person as the signatories of the petitions are not authorized by their respective institutions; the original application is bad for mis joinder of causes of action; in the alleged Foreign Currency Loan Agreement dated 29th August, 1988, clause 3.4 subtitled as guarantee was deleted by a line made across the same and it is also mentioned that the said clause is not applicable which is also countersigned by the parties; the personal guarantee dated 29th August, 1988 in Clause 24 specifically stipulates that the personal guarantee would be binding on the guarantor until the borrowers create effective security in favor of the lenders as per Article 3 of the Loan Agreement and other pleas.

The petitioner also contended that respondent Nos. 1 to 3 relied on certain documents which were not filed by them which included documents allegedly executed by the petitioner and alleged correspondence between the parties. According to the petitioner, respondent Nos.1 to 3's own case is that the petitioner has no connection whatsoever with the Foreign Currency Loan.

The grievance of the petitioner is that in the original application, three affidavits of Smt. Karobi Acharjee, Chief Manager, ICICI Bank Limited, respondent No.1; Sh. B. Das Gupta, DGM, IDBI, respondent No. 2 and Sh. D.D. Lahiri, Manager (Law), IFCI, respondent No. 3 were filed. It is also contended that despite the applications filed by the petitioner and the order passed to produce all the relevant documents, the respondent Nos. 1 to 3 have not produced all the relevant documents. In the circumstances, the petitioner filed an application for cross-examination of these witnesses of respondent Nos. 1 to 3.

The Debt Recovery Tribunal was of the view that the documents relied on by the petitioner are a matter of record and there is no necessity to cross-examine the witnesses and the points raised by the petitioner are a matter of argument and reliance was placed on (2002) 4 SCC 275, UOI & Anr. Vs. Delhi High Court Bar Association and Ors and therefore, the application of the petitioner to cross examine these witnesses was dismissed by order dated 28th September, 2010.

An appeal was filed by the petitioner against the order dated 28th September, 2010 which has also been disposed of by order dated 28th October, 2010 by Debt Recovery Appellate Tribunal holding that keeping in view the circumstances, the witness of respondent No. 1 Karobi Acharjee was allowed to be cross-examined for 15 minutes only and the cross-examination of the witness was restricted only to the

point of issue of guarantee and the cross examination of other witnesses was disallowed, however, without disclosing any reasons which order is challenged before this Court in the present writ petition.

The relevant order passed by the Appellate Tribunal is as under:

‘6. Keeping in view the facts and circumstances, I allow the appeal and direct the witness through the bank to appear before the Trial Court. As agreed she will be cross examined for 15 minutes only. As agreed the witness be produced before the Ld. Court on 8th November, 2010 at 12 Noon sharp for cross examination. It is made clear that the cross examination of the witness will be limited only to this point i.e issue of guarantee.

7. The appeal stands disposed of.

8. Copies of this order be furnished to the parties as per law and another copy be sent to the Ld. DRT forthwith.

In Delhi High Court Bar Association & Ors. (supra) the Supreme Court had held that the Tribunal has to decide the cases on the basis of documents and affidavits filed before it and in case there exists good reason to hold that the affidavits would not be sufficient, bonafide need for oral examination of witnesses, as provided under proviso to Sub Rule 6, may arise. Referring to proviso to Rule 12.6, it was held that the said proviso refers to the desire of an applicant or a defendant for the production of a witness for cross-examination. From this, it appears that once the parties have filed the affidavits in support of their respective cases, the desire for a witness to be cross-examined can

legitimately arise and at that time, if it appeals to Tribunal that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case, that it shall require the witnesses to be present for cross-examination and in the event of deponent not appearing, his affidavit shall not be taken into evidence.

Perusal of the affidavit of Smt. Karobi Acharjee reveals that it has 40 paragraphs and it also deals with the liability of the petitioner as a guarantor which fact has been denied by the petitioner. The affidavit deals with other pleas of the petitioner some of which are enumerated hereinbefore. Similarly, the affidavit of Sh. B. Dasgupta, DGM of respondent No. 2 is also extensive having about 42 paragraphs and deals with the liability of the petitioner in extenso and the affidavit of Sh. D.D. Lahiri, Manager(Law), IFCI Limited has about 40 paragraphs and also deals with the liability of the petitioner in extensor and deals with pleas and contentions raised by the petitioner. It appears that no reasons have been given by the Tribunal and Appellate Tribunal for not allowing the cross examination of respondent nos. 1 to 3's witnesses who have filed extensive affidavits dealing with various pleas and contentions of the petitioner.

After some arguments, learned counsel for the respondents states that without prejudice to the rights and contentions of the respondents, the petitioner be allowed to cross-examine three witnesses, namely,

Smt. Karobi Acharjee, Chief Manager, ICICI Bank Limited further, Mr. B. Dasgupta, DGM, IDBI, deponent of affidavit dated 5th February, 2004 and Mr. D.D. Lahiri, Manager (Law), IFCI Limited, deponent of the affidavits filed on behalf of the respondent nos. 1 to 3.

In view of the statement of learned counsel for the respondents, the order dated 28th October, 2010 in Misc. Application No. 759/2010 and in Misc. Appeal No. 392/2010, permitting the petitioner to cross-examine only Smt. Karobi Acharjee for 15 minutes on the point whether the petitioner is an alleged guarantor or not and declining the cross-examination of other witnesses without disclosing any reason and order of the Tribunal dated 28th September, 2010 disallowing the cross examination of the witnesses of the respondent nos. 1 to 3 are set aside and the petitioner is permitted to cross-examine the witnesses of respondent nos. 1 to 3 as detailed herein before.

In the facts and circumstances, the Tribunal shall make an endeavor to record the cross-examination of the witnesses of respondent Nos. 1 to 3 by the petitioner on day to day basis and conclude the cross-examination of all the witnesses of respondent nos. 1 to 3 by the petitioner preferably within two months. With these directions, the writ petition is disposed of.

CM No. 20744/2010 seeking stay of proceedings has become infructuous in view of the disposal of the writ petition and therefore the application is also disposed of in terms of the order passed in the writ petition. A copy of this order be sent to the concerned Debt Recovery Tribunal.

ANIL KUMAR, J.

DECEMBER 08,2010

'rs'

S.L. BHAYANA, J.