

* THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment delivered on: 19.08.2011
+ WP(C) No. 6036/2011

VRA ROAD LINES PETITIONER

Vs

BANK OF BARODA & ORS. RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Khosla, Advocate
For the Respondents: None

CORAM :-

**HON'BLE MR JUSTICE SANJAY KISHAN KAUL
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

SANJAY KISHAN KAUL, J (ORAL)

CM NO. 12187/2011 (Exemption)

Allowed subject to just exceptions.

Application stands disposed of.

WP(C) 6036/2011

1. By the captioned writ petition a challenge has been laid to the order dated 27.08.2004 passed by the Debt Recovery

Tribunal (in short 'DRT') in OA No. 11A/1996 and the order in appeal passed by the Debt Recovery Appellate Tribunal (in short 'DRAT') dated 11.02.2011.

2. For the disposal of this writ petition the following brief facts require to be noticed: The respondent no. 1, i.e., the Bank of Baroda, had advanced cash credit facilities to respondent no. 2, a private limited company, namely, M/s Stich Arts Exports Pvt. Ltd. These cash credit facilities were enhanced from time to time. Respondent no 1/bank at the request of respondent no. 2 opened, it appears, various letters of credit.

2.1 For the purposes of the instant case it would be important to note that letters of credit were opened by respondent no. 1/bank in favour of four (4) entities located in Salem in the State of Tamilnadu. These entities being: M/s Gajalazmi Exports, M/s Umakant Trading Company, M/s Kala Creation and M/s Money Enterprises. The purpose of opening the letters of credit in favour of aforesaid four (4) entities was to enable respondent no. 1/bank to purchase cloth from the entities, who were beneficiaries of the letter of credit, in order to enable it to manufacture garments for the purposes of its export business.

2.2 Importantly, as per the letters of credit the four entities/beneficiaries of the letter of credit were required to dispatch the goods in issue to the stated destination, in terms of the request

of defendant no. 1 through a transporter. The petitioner before us was the transporter who had been entrusted with the consignments of goods in issue valuing approximately ₹ 8,55,191.161/- for a consideration. The petitioner being the carrier had issued negotiable motor transport receipts in respect of the goods entrusted to it.

2.3 Thus the four (4) entities/ the beneficiaries of the letter of credit were able to obtain payment of the goods sold by them to respondent no. 2 against the letters of credit opened by respondent no. 1/ bank on delivery of the original motor transport receipts along with all other documents of title in original, as detailed out in the letter of credit to the respondent no. 1/bank.

2.4 Therefore, as per the arrangement in vogue respondent no. 1/ bank would present to respondent no. 2 the documents of title including the original motor transport receipt for the purposes of enabling respondent no. 2 to retire the same against payment made to it by respondent no. 2. On payment being received by respondent no. 1/bank from respondent no. 2 the said documents of title including the original motor transport receipt was required to be delivered by respondent no. 1/bank to respondent no. 2, who in turn would take delivery of the goods in issue from the petitioner.

3. In the given facts of the case the finding returned by both

the DRT and the DRAT is that respondent no. 2 did not seek retirement of the goods in issue by making payment to respondent no. 1/bank. Consequently a suit was filed in this court being suit no. 307/1986. On the enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short 'RDB Act'), the suit was transferred to DRT. The proceedings in the suit commenced from 12.12.1995. As indicated above, the suit was re-numbered as OA No. 11A/1996. In the said OA recovery was sought by the respondent no. 1/bank from the petitioner, respondent no. 2, respondent nos. 3 to 5 and respondent no. 6, jointly and severally of a sum of ₹ 10,46,188.78/- together with cost, pendente lite interest at the rate of 20% per annum.

3. The DRT after a detailed discussion on the merit of the case and consideration of the evidence on record passed a decree in favour of the respondent no. 1/bank, the petitioner and respondent nos. 2 to 6 in the sum of ₹ 10,46,188.78/- holding them liable jointly and severally, with a caveat that, in so far as the liability of the petitioner and respondent no. 6 are concerned, it would be limited to ₹ 8,55,191.16/-. In so far as respondent no. 6 is concerned, since he had passed away in the meanwhile, the DRT clarified that the liability of the legal heirs would be limited to the extent of properties inherited by them from the deceased

respondent no. 6 alongwith pendente lite and future interest at the rate of 11% per annum from the date of filing of the OA. The DRT further observed that in case the legal heirs of respondent no. 6 were to make payment within a period of three months from the date of its order, the rate of interest charged would be calculated at the rate of 10% per annum for the period in issue, i.e., pendente lite and post issuance of decree. The other respondents and the petitioner were also directed to pay the amount within three months of the date of the order, failing which the sum decreed was to be recovered by auction and sale of hypothecated and mortgaged properties and other properties of the judgment debtors.

4. Aggrieved by the order of the DRT, the petitioner preferred an appeal with the DRAT. The DRAT by the impugned judgment has dismissed the appeal of the petitioner.

5. Before us Mr Rajiv Khosla argued that the petitioner could not have been held liable for payment of monies to respondent no. 1/bank in view of the fact that there is an admission to the effect that, respondent no. 2 had received the goods in issue. Mr Kholsa further submitted that it has also come on record by way of evidence that the petitioner had sold its business to respondent no. 6, therefore, the liability, if any, qua the dues of respondent no. 1/bank would be that of the respondent no. 6.

The last contention of Mr Khosla was that the respondent no. 1/bank had filed alongwith the present action, which is, represented by OA NO. 11A/1996 three (3) other suits against entities, which were run by the family members of respondent nos. 2 to 5, who have been impleaded in the instant action in their capacity as guarantors. It was thus contended that in those suits/actions, the respondent no. 1/bank had arrived at a compromise whereby, it was to receive ₹ 4 crores with simple interest at the rate of 13.5% per annum w.e.f. 13.06.1996. By virtue of a settlement recorded on 16.01.1997 by the DRT the said suits/actions were to be withdrawn; the mortgaged property was to be released; and the other defendants in those suits/actions including the guarantees and securities furnished were to be released. Mr Khosla submitted that respondent no. 1/bank having compromised its claim in those suits was unnecessarily and oppressively seeking to recover dues from the petitioner when, the goods in issue had been handed over to respondent no. 2.

6. We may note at the outset that Mr Khosla has confined himself to the submissions noted by us hereinabove. Having heard the learned counsel for the petitioner, we are of the view that the petition is without merit for the reasons given hereinafter: As correctly appreciated both by the DRT and the

DRAT the respondent no. 1/bank held in original the motor transport receipt and all other documents of title. As per terms of the letter of credit, which were not disputed before us, the petitioner was required to hand over goods in issue to either respondent no. 1/bank or to its nominee, which in the instant case would have been respondent no. 2, had respondent no. 2 paid the money to respondent no. 1/bank and obtained the original motor transport receipt alongwith documents of title. Without doubt the petitioner failed to hand over the goods in issue to respondent no. 1/bank, despite it holding the documents of title. There is no doubt whatsoever that the petitioner was entrusted with the goods in issue.

7. The arguments of Mr Khosla, learned counsel for the petitioner, that the receipt of goods in issue by respondent no. 2 is admittedly is of no avail in the face of conditions stipulated in the letter of credit. In so far as the respondent no. 1/bank is concerned, it neither received the money from respondent no 2 on whose behalf letter of credit had been opened nor did it receive the goods in issue. Therefore, the respondent no. 1/bank was entitled to file an action amongst other against the petitioner. The argument of the petitioner that it had sold its business to respondent no. 6 and hence respondent no. 6, if at all, could be held liable, is also without merit. The respondent no.

1/bank would have no privity of contract with respondent no. 6. If there was any wrong doing on the part of respondent no. 6, surely remedies in law were available to the petitioner to take an appropriate action against respondent no. 6.

7.1 As a matter of fact the authorities below have noted the contents of notice dated 14.01.1985, issued by the advocate for the petitioner which records therein that the petitioner accepted the fact that it held goods for the bank. It is another matter, as noticed by the DRAT, that the petitioner sought to change track by writing a letter, within two months, contrary to the position taken in the notice dated 14.01.1985.

8. The other argument of the learned counsel for the petitioner that the compromise by respondent no. 1/bank with respondent no. 2 ought to have absolved the petitioner, is in our view also untenable. The DRT in paragraph 9 has extracted clause III of the compromise application filed in those actions, which in no uncertain terms allowed the respondent no. 1/bank to prosecute its claim against the petitioner. In our view, the compromise arrived at in other proceedings between respondent no. 1/bank and entities, who perhaps were, as alleged controlled by the family members of respondent nos. 3 to 5 herein, i.e., the guarantors, cannot impinge upon the legal tenability of the judgment and decree passed against the petitioner.

9. For the foregoing reasons, we are of the view that the writ petition is devoid of merit and hence, as indicated above, deserves to be dismissed. It is ordered accordingly.

SANJAY KISHAN KAUL, J

RAJIV SHAKDHER, J

AUGUST 19, 2011
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