

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 23rd May, 2011

+ W.P.(C) 7463/2010

O.P.ARORA Petitioner

Through: Petitioner in person

versus

SYNDICATE BANK AND ORS Respondents

Through: Mr.V.K.Dhar, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Petitioner O.P.Arora and his son Vishal Arora constituted a partnership under the name and style V.S.A.Ledermode. The partnership firm availed various credit facilities from Syndicate Bank. The account became sticky and the bank filed a recovery proceedings before the Debt Recovery Tribunal claiming a sum of ₹4,19,80,000/- as on 9.1.1998 when the claim was filed.

2. Vishal Arora offered a settlement which was accepted by the bank and as per the OTS dated 31.3.2000 the bank agreed to receive ₹2.45 crores in full and final settlement of its dues. Parties agreed to the amount being repaid with

agreed rate of interest in installments. The settlement was not honoured.

3. Vishal Arora entered into another settlement with the bank agreeing to repay ₹2.84 crores in installments together with interest at the agreed rate and in terms of the settlement the original application filed by the bank came to be disposed of with a consent decree in sum of ₹2.84 crores to be paid to the bank in installments together with agreed rate of interest with a default clause that if the terms of the OTS were breached the original amount claimed with the pendente lite rate of interest would be the decree in favour of the bank.

4. O.P.Arora i.e. the petitioner filed an appeal against the consent decree alleging that he had not consented to the settlement which his son had entered into with the bank and urged that the decree could be enforced only against his son and the partnership firm and not him. The appeal succeeded and the matter was remanded to the Debt Recovery Tribunal for recording evidence and passing a decree as required by law and needless to state this order was only to the benefit of O.P.Arora. As regards his son and the partnership firm the settlement decree stood final.

5. At the remanded stage, after recording evidence the Debt Recovery Tribunal passed a decree in favour of the bank and against O.P.Arora on 29.1.2010 in sum of ₹4,19,80,000/- together with agreed rate of interest.

6. It would be relevant to note that O.P.Arora claimed by way of defence that export proceeds received by the bank in sum of ₹8,69,32,594/- from September 1992 to July 1995 had not been accounted for by the bank and thus he claimed

that if said amount is adjusted, far from the bank being entitled to any decree, amount would be due to the partnership firm. While passing the decree vide order dated 29.1.2010, said aspect of the matter has been gone into by the Debt Recovery Tribunal under issue No.5.

7. It may be noted that the statement of account for said period had been misplaced in the bank but from the amount carry forwarded from time to time at the beginning of each financial year and further transactions reflected from the year 1996 onward and there being no evidence that the 'Brought Forward' sum was ever protested to at any point of time, the Tribunal held against O.P.Arora.

8. O.P.Arora filed an appeal against the decree and along therewith filed an application seeking waiver of the decretal amount to be deposited inasmuch as law requires 75% of the decretal amount to be deposited when the appeal is filed but confers a jurisdiction on the Appellate Tribunal to pass an appropriate order waving the said requirement.

9. Vide impugned order dated 5.4.2010 the Appellate Tribunal, noting that after the recovery proceedings have filed the bank had received ₹2.4 crores directed that 75% of the differential between ₹4.19 crores and ₹2.4 crores be deposited by the appellant i.e. O.P.Arora the writ petitioner.

10. Instant writ petition challenges the order dated 5.4.2010 and during arguments Sh.O.P.Arora relied upon communications received by him from the Ministry of Finance in which there was a reference to the bank admitting having misplaced the statement of account of the firm for the years 1992 till 1995. When we repeatedly questioned him as to

where was the statement of account of the firm and further questioned him that if his stand was correct that ₹8,69,32,549/- realized by the bank as remittance in the account had not been credited, it would be apparent that as against the bank being entitled to ₹4.19 crores, it would be the firm which would be entitled to ₹4.50 crores from the bank and this was prima facie unbelievable inasmuch as no prudent person would not detect such huge amounts not being correctly reflected in the statement of account, Sh.O.P.Arora had no answer and we must fairly note that being 78 years of age, with falling hearing and eyesight and not a very sharp mind, we were unable to have a meaningful dialogue which Sh.O.P.Arora who has chosen to argue the writ petition in person. He kept on referring to certain communications which he had with officers in various Ministries pertaining to the bank not producing the entire statement of account. He referred to certain orders passed levying penalty on him for not ensuring import of goods for which foreign exchange was remitted, and we need not burden ourselves with the same inasmuch as we see no connection with the statement of account of the bank with penalty levied upon him for not importing goods in respect whereof foreign exchange was remitted. We could not understand his grievance on said issue that the bank did not supply the relevant papers. What relevant papers could the bank supply? He could highlight none.

11. Having perused the decree passed by the Tribunal we note that the Tribunal has noted that on 16.9.1992 the partnership firm availed packing credit limit, import letter of credit limit and foreign documentary bills purchase limit in

various sums which were enhanced at request of the firm and its partners on 7.1.1995. Packing credit limit was enhanced to ₹1.05 crores, import letter of credit limit to ₹1.5 crores with some limits of ₹0.4 crores on INLC credit and ₹0.9 crores on foreign documentary bills purchase credit. In other words the firm had credits totaling ₹3.85 crores and by the time the suit was filed the amounts due were approximately ₹4.19 crores. It would be relevant to note that the previous credit facilities were in sum of ₹1.5 lacs, ₹5 lacs and ₹20 lacs only. It was only on 7.1.1995 that the credits were substantially enhanced and from this it is apparent that the dispute pertaining to the accounts not being produced for the period from September 1992 to July 1995 is a ruse created by the petitioner to predate upon the negligence of the bank. But, he cannot shy away from his responsibility to answer why did he never contemporaneously question the 'Brought Forward' amount each year in the statement of account as and when the financial year changed.

12. Law requires that the person appealing has to deposit 75% of the amount of debt so due and as determined by the Tribunal. The Appellate Tribunal has been empowered to reduce the amount but for good reasons. The amount decreed is ₹4,19,80,000/- and the same carries interest as per agreed rate and we note that the date of the claim was 9.1.1998. 13 years and 5 months have gone by and the decretal amount would be more than 3 times the said sum of ₹4,19,80,000/-.

13. Vide impugned order the petitioner has been directed to deposit 75% of the differential between

₹4,19,80,000/- less ₹2.4 crores and thus we see no scope to reduce the term of the deposit inasmuch as the petitioner has shown to us no special circumstance warranting the amount to be reduced any further.

14. We dismiss the writ petition but extend time for the petitioner to deposit the amount by 30th June, 2011.

15. Keeping in view the age of the petitioner we refrain from imposing cost.

16. DASTI.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 23, 2011
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