

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.09.2014

+ **W.P.(C) 7122/2012**

STATE BANK OF INDIA

..... Petitioner

versus

**M/S CONTINENTAL CONSTRUCTION
LTD. & OTHERS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Sh. S.L. Gupta, Sh. J.P. Gupta and
Sh. Loveleen Kaithwas

For the Respondents: Sh. Vinay Sharma for R-1, 2(iii) and 3.
Sh. Pawash Piyush for Sh. Vijay Verma
for R-2(ii).
Sh. Arun Kathpalia and Sh. Dhanpad Das for R-4

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner bank impugns an order dated 06.08.2012 (hereinafter referred to as the 'impugned order') passed by the Debt Recovery Appellate Tribunal, Delhi (DRAT-Delhi) whereby the order dated 02.02.2012 passed by Debt Recovery Tribunal, Delhi (DRT-Delhi) was set aside and an amendment to the written statement filed by respondent no.4 was allowed. The petitioner also seeks orders for appropriating the amount lying with it in Fixed Deposit in terms of an order dated 22.03.2006 passed by the Bombay High Court in W.P.(C) No.3768/2002.

2. Respondent no. 1 (hereafter “CCL”) is *inter alia* engaged in the business of civil construction and in the course of its business, entered into two civil construction contracts in Iraq, namely Diwaniyah Sewerage Project and the Karkh Water Supply Scheme Stage-I, IIA and IIB at Baghdad.

3. CCL approached the petitioner (hereafter “SBI-India”) to arrange an overdraft facility in U.S. Dollars at London, United Kingdom in order to part finance the costs and other related expenses for execution of the said projects. SBI-India through its branch office in London (SBI-London) provided an overdraft facility to CCL - initially upto a limit of USD 34 Million which was subsequently increased to USD 110.695 Million- against various Bank Guarantees executed by SBI-India in favour of SBI-London during the period 1981 to 1992.

4. CCL, C.L. Verma (respondent no.2, who has since expired and is represented by his legal heirs (respondent nos.2(i) to 2(v)), Chander Verma (respondent no.3) and M.S. Basi (respondent no.4) are stated to have executed counter-guarantees in favour of SBI-India for securing the amount payable under the bank guarantees executed by the SBI-India in favour of SBI-London. Further, at the request of CCL, the Export Import Bank of India (hereafter “Exim Bank”) shared the risk participation and exposure of SBI-India to the extent of 50% under the aforementioned Bank Guarantees.

5. CCL, allegedly, defaulted in repayment of overdraft/credit facilities and other loan accounts of SBI-London. Consequently, on 15.12.1992, SBI-London invoked the said Bank Guarantees and called upon SBI-India to

pay an amount of USD 108,011,369.44/- alongwith interest. In pursuance thereof, SBI-India paid a sum of USD 114.080/- million to SBI-London during the period from 19.02.1993 to 06.02.1995. Exim Bank, who shared the risk of SBI-India to the extent of 50% of Bank Guarantees, discharged its obligation and paid 50% of the said amount to SBI-India. However, respondent nos. 1 to 4 (hereafter referred to as “Counter Guarantors”) failed to pay the money to SBI-India. It is SBI’s case that the Counter Guarantors were obliged to pay the said amount immediately on demand. Since SBI-India paid the abovesaid amount to SBI-London by purchasing USD with Indian rupee as per the Reserve Bank of India guidelines, the liability of the respondents was sought to be crystallized in Indian Rupees.

6. Thereafter, a 'Deferred Dues Facility Agreement' dated 06.02.1995 was executed between SBI-India, CCL and Exim Bank whereby the liability of CCL towards SBI-India was quantified to ₹189,48,73,286/- and towards Exim Bank was quantified to ₹191,68,08,866/-. However, as per the agreement, the payment was deferred.

7. On 04.02.1998, SBI-India filed an application (OA No.38/1998) before DRT-Delhi against all respondents for a recovery of ₹89,21,25,119.08/-. In May 1999, Counter Guarantors filed their joint written statement. By an order dated 26.05.1999, DRT-Delhi allowed the said application in favour of SBI-India. The respondents appealed against the order dated 26.05.1999 to DRAT-Delhi *inter alia* alleging that no opportunity was granted to the parties to lead evidence. The DRAT, by an order dated 29.09.2010, accepted the contention of the respondents but instead of remanding the matter to DRT, directed that the parties to lead

evidence before it. Thereafter, a writ petition (W.P. No.7758/2010) was filed by the respondents in this Court challenging the DRAT's order of 29.09.2010, which was disposed of by this court by a consent order dated 05.09.2011 setting aside the DRAT's order and directing the parties to lead evidence before DRT-Delhi. In pursuance of the said directions, affidavit of evidence was filed by SBI-India, CCL and respondent no.4. However, respondent no. 3 and legal heirs of the respondent no.2 did not file their affidavit of evidence.

8. Subsequently, on 13.12.2011, respondent no.4 filed an application (I.A. No.923/2011) under Section 22(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) read with Rule 18 of the Debt Recovery Tribunal (Procedure) Rules, 1993 read with Order 6 Rule 17 of Code of Civil Procedure seeking amendment in the joint written statement filed by the respondents in May 1999. Respondent no.4 now sought to raise pleas viz., that the guarantees executed were void were without any contemporaneous consideration, that the demands made on the basis of the alleged Bank Guarantees were barred by limitation and that respondent no.4 stood discharged as there was unilateral conversion of loan from the US Dollars into Indian Rupee and the payment of the same was made by way of bonds issued by RBI and Government of India. It was further sought to be pleaded that the 'Deferred Dues Facility Agreement' dated 06.02.1995, executed after the Bank Guarantees were furnished by respondent no.4, stipulated the guarantees of only specified individuals which did not include respondent no.4 and, therefore, respondent no.4 stood discharged due to novation of contract.

9. Respondent no.4 contended that the aforesaid amendments were necessary for determining the real questions in controversy between the parties and were mainly clarificatory in nature. It was also contended that the same were not included in the written statement since the same were prepared in haste due to paucity of time.

10. By an order dated 02.02.2012, the said application was dismissed by DRT-Delhi on the ground that a new plea has been taken in the written statement that the guarantee was void which should have been raised at the earliest opportunity. Aggrieved by the same, respondent no.4 filed an appeal (Misc. Appeal No. 90/2012) before DRAT-Delhi. By an order dated 06.08.2012, the DRAT set aside the order of DRT and allowed the amendment of the written statement filed by respondent no.4. Aggrieved by the same, SBI-India has impugned DRAT's order dated 06.08.2012 in the present writ petition.

11. It is to be noted that the Exim Bank also filed an application (O.A. No.1241/2000) before the DRT-Bombay seeking recovery of a sum of ₹102,93,09,734.98/- from the respondents. On 03.08.2001, the Exim Bank filed an application seeking appropriation of USD 5 million (equivalent to ₹20.89 crores) to be received by CCL. By an order dated 27.12.2001, DRT-Bombay directed distribution of the said amount between Exim Bank and SBI-India in proportion of 50.08% and 49.92% respectively. CCL filed an appeal (Appeal No.20/2002) before DRAT-Bombay challenging the order dated 27.12.2001. By an interim order dated 05.02.2002, DRAT-Bombay upheld the arrangement made by DRT-Bombay, however, directed that said arrangement would not be applicable for future transaction.

12. Thereafter, on 04.04.2002, Exim Bank filed an application before DRAT-Bombay in Appeal No.20/2002 for distribution of a further sum of ₹47.57 crores which was expected to be received by CCL. By an order dated 12.06.2002, DRAT-Bombay allowed the said application. CCL challenged the order dated 12.06.2002 before the Bombay High Court in a writ petition (W.P.(C) No.3768/2002).

13. On 06.02.2004, DRT-Bombay passed a consent order in view of a settlement arrived between the parties. CCL filed an appeal before DRAT against the order of DRT-Bombay which was also dismissed by the DRAT.

14. By an order dated 22.03.2006, the Bombay High Court disposed of the said petition (W.P.(C) No.3768/2002) with a direction that the amount of ₹47.57 crores held by UCO bank on behalf of respondent no.1 be deposited with Exim Bank and SBI-India in proportion of 50.08% and 49.52% respectively.

15. Exim Bank, thereafter, filed an application for appropriation of the amount received by it from UCO Bank in terms of the order dated 22.03.2006. By an order dated 09.04.2008, the DRT-Bombay allowed the said application with the condition that the money so appropriated shall be subject to decision of the appeal pending before the DRAT-Delhi. By the present petition, the petitioner seeks permission of this Court to appropriate the amount received by it from UCO Bank and lying in a FDR.

16. The principal controversy that needs to be addressed is whether, in the given facts and circumstances, respondent no.4 can be permitted to amend its written statement at this belated stage.

17. It was contended by respondent no.4 that Debts Recovery Tribunal Regulations of Practice, 1997 are applicable to the proceedings pending before the DRT-Delhi and the provisions of the said Regulation permit amendment of the written statement and thus, respondent no.4 was entitled to amend the written statement that was stated to have been filed in haste due to paucity of time.

18. It was further contended by respondent no.4 that there was no delay in filing the application for amendment. It was submitted that by an order dated 05.09.2011, this Court remanded the matter to DRT-Delhi for leading the evidence. It was submitted that respondent no.4 filed an application for amendment on 13.12.2011 which was within a reasonable time (approx 99 days) of the matter being remitted to DRT-Delhi by this Court.

19. The contentions canvassed by respondent no.4 cannot be accepted. The Original Application (OA No.38/1998) filed by SBI-India had been adjudicated and a recovery certificate had been issued. The original adjudicatory proceedings, thus, stood concluded on 26.05.1999. The respondents' principal grievance at that stage was that they had not been permitted to lead evidence. The respondents pursued redressal of this grievance before DRAT-Delhi and thereafter, before this Court. It was in this context that this Court, by a consent order dated 05.09.2011, remanded the matter to DRT to permit the parties to lead evidence. The relevant extract of the said order is as under:

“After hearing learned counsels for the parties, it is agreed as under :

- i. *The impugned order dated 29.9.2010 in appeal No. 155/2000 and the order dated 26.5.1999 in OA No. 38/1998 be set aside. Ordered accordingly.*
- ii. *The parties will be given an opportunity to lead evidence. Respondent No. 1 Bank will file its evidence (we may note that the Bank had already filed an affidavit of evidence before the DRAT) within one (1) week. The appellant will file the affidavit of evidence within two (2) weeks thereafter.*
- iii. *In view of the matter being quite old, the DRT will give priority to the matter and endeavour to complete the proceedings within a maximum period of six (6) months from the first date of hearing.*
- iv. *Certain amounts whether in terms of money or FDR stand attached in pursuance of the recovery certificate issued by the DRT. The attachment/recovery will not be lifted by reason of orders of DRT and DRAT being set aside but would continue to remain in force till fresh order is passed by the DRT and the fate of attachment/recovery would, thus, depend on the order which emanates from the DRT or any subsequent order arising from a challenge laid to the said order.*
- v. *The parties to appear before the DRT on 29.9.2011.”*

20. It is apparent from the tenor of the above order that the remand was for a limited purpose and with the direction to conclude the proceedings expeditiously and in any event, within six months. It is also important to bear in mind that the said order was a consent order and the respondents cannot be permitted to now enlarge the scope of the controversy by seeking amendment of their written statement(s).

21. The contention that the application for amending the written statements was filed within a reasonable time is also *ex facie* without merit and not borne out by the sequence of events. Respondent no.4 had at no juncture sought amendment of its written statement but on the contrary had limited his grievance only to assailing the recovery certificate on the ground that the respondents had not been permitted to lead evidence. In the event, respondent no.4 desired to amend its written statement or raise additional pleas, the same could also have been indicated at various stages including before this Court. However, respondent no.4 chose to only press for an opportunity to lead evidence in the original proceeding.

22. The RDDB Act was enacted *inter alia* with the object of expeditious adjudication and recovery of debts due to banks and financial institutions. The Committee on the Financial System headed by Sh. M. Narasimhan had recommended setting up Special Tribunals with special powers for adjudication and speedy recovery of dues, for successful implementation of financial sector reforms. Subsequently, a committee set up in 1981 recommended setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The RDDB Act was enacted to implement the aforesaid recommendation. Given that expeditious recovery by summary procedure, is the substratal theme of the RDDB Act, permitting a liberal approach to amend pleadings at a belated stage would run contrary to the scheme of the RDDB Act.

23. Although, the learned counsel for the respondents submitted that no adjournments will be sought and the respondents would cooperate in expeditious disposal of the proceedings, we are not persuaded to hold that

respondent no.4 is entitled to amend the written statement, considering the matter was remanded only for the purpose of enabling evidence to be lead and a considerable time has already elapsed.

24. Before concluding, we must observe some of the averments that have sought to be included in the written statement by way of amendments may in any event be available to the petitioner at the time of final arguments before DRT as it is well settled that questions of law can be raised at any stage of the proceedings.

25. The Supreme Court in **Udhav Singh v. Madhav Rao Scindia: (1977)** **1 SCC 511**, had explained:-

“25. If the plea or ground of defence “raises issues of fact not arising out of the plaint”, such plea or ground is likely to take the plaintiff by surprise, and is therefore required to be pleaded. If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint, itself, no question of prejudice or surprise to the plaintiff arises. Nothing in the rule compels the defendant to plead such a ground, not debars him from setting it up at a later stage of the case, particularly when it does not depend on evidence but raises a pure question of law turning on a construction of the plaint. Thus, a plea of limitation that can be substantiated without any evidence and is apparent on the face of the plaint itself, may be allowed to be taken at any stage of the suit.”

26. The Supreme Court has, several matters permitted the parties to raise pure questions of law, for the first time, in petitions filed under Article 136

of the Constitution of India. In **Tarini Kamal Pandit v. Prafulla Kumar Chatterjee: (1979) 3 SCC 280**, the Supreme Court held as under:-

“14. Before we conclude we will shortly refer to the question of law raised by Mr L.N. Sinha on behalf of the defendant. He submitted that as the title in the property vested in the defendant by confirmation of the court sale and later by a registered conveyance, the plaintiffs cannot seek relief on the unregistered agreement Ext. 4 as conveying any title to them. This point was not taken in any of the courts below but learned counsel submitted that because it is a pure question of law not involving any investigation of facts and as it goes to the root of the matter the court may permit the point to be taken. As the point raised is a pure question of law not involving any investigation of the facts, we permitted the learned counsel to raise the question.”

27. In the circumstances, it is necessary to clarify that nothing stated in this judgment or in the earlier orders passed by DRT-Delhi on 26.05.1999 and by DRAT-Delhi on 29.09.2010, should be construed as limiting the rights of the respondents to agitate pure questions of law at the time of hearing before the DRT-Delhi without amending their written statements.

28. Since we have not examined the merits of the dispute between the parties, we are not commenting on the claim of the petitioner to appropriate the amount deposited in Fixed deposits pursuant to the orders of the Bombay High Court. In view of the order dated 05.09.2011 passed by this Court in W.P. No.7758/2010, the appropriation of the amount in FDR would be subject to the final adjudication order that may be passed by DRT-Delhi.

29. The writ petition is allowed with the aforesaid directions/ observations. No order as to costs.

VIBHU BAKHRU, J

S. RAVINDRA BHAT, J

SEPTEMBER 26, 2014
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