

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.01.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.742 of 2014

and

M.P.No.1 of 2014

Thejas Vijayan

... Petitioner

v.

Phonex Arc,
Assignee of Barclays Bank,
Rep. By its Authorized Signatory,
B.Muthukumar,
No.3, Dass India Towers,
II Floor, 2nd Line Beach, Parrys,
Chennai - 600 001.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the entire records of the order dated 03.12.2013 in M.A.no.118 of 2013 passed by the Debts Recovery Appellate Tribunal, Chennai and quash the same.

For Petitioner : Mr.T.Karunakaran

For Respondent : Mr.N.Namasivayam

ORDER

(Order of the Court was made by M.VENUGOPAL, J.)

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records of the order dated 03.12.2013 in M.A.No.118 of 2013 passed by the Debts Recovery Appellate Tribunal, Chennai.

2.The Debts Recovery Appellate Tribunal, Chennai, while passing the impugned order in M.A.No.118 of 2013, on 03.12.2013, had observed to the effect that 'It is seen that the respondent is the assignee of Barclays Bank and that it had already filed the assignment deed and that by inadvertence the page containing the details of the loan availed by the appellant had not

been filed in the annexure and that the Ld. Presiding Officer has permitted the filing of the said page before the tribunal below. The applicant in the OA cannot be denied the opportunity to prove its case before the tribunal below and the order of the Ld. Presiding Officer allowing the filing of a page which had been left out by inadvertence has only ensured that the respondent is not denied its right to establish its case before the tribunal below more particularly when the appellant has failed to demonstrate any prejudice and such being the case this tribunal is driven to conclude that the order of the Tribunal below warrants no interference' and resultantly, allowed the Appeal.

3.The Learned Counsel for the Petitioner submits that the impugned order passed by the Debts Recovery Appellate Tribunal dated 03.12.2013 in M.A.No.118 of 2013 is an illegal one and as such, the same is liable to be set aside.

4.The Learned Counsel for the Petitioner urges before this Court that the Respondent/Bank filed I.A.No.402 of 2013 by introducing a document, at a time when main O.A.No.161 of 2012 on the file of Debts Recovery Tribunal - II, Chennai was posted for 'Arguments'.

5.According to the Learned Counsel for the Petitioner, both the Debts Recovery Appellate Tribunal, Chennai and the Debts Recovery Tribunal - II, Chennai had failed to take into account that the additional document filed by the Respondent/Bank is an unregistered document viz., assignment agreement and the same cannot be marked as an Exhibit in O.A.No.161 of 2012 as per Section 17(b) of the Registration Act, 1908.

6.The Learned Counsel for the Petitioner brings it to the notice of this Court that Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 speaks of 'Procedure and powers of the Tribunal and the Appellate Tribunal' and in fact, both the Debts Recovery Appellate Tribunal and the Debts Recovery Tribunal - II, Chennai had failed to take into account of Order XIII Rule 1(1) of Civil Procedure Code.

7.The stand of the Writ Petitioner is that both the Debts Recovery Appellate Tribunal and the Debts Recovery Tribunal - II, Chennai had failed to consider that the Respondent/Bank filed the photocopy of additional document and in the said document, the signature of the Notary Advocate is not present and therefore, the document cannot be marked and hence, it is to be rejected.

8.The Learned Counsel for the Petitioner contends that the Debts Recovery Appellate Tribunal had accepted the submission of the Respondent/Bank that additional document was not filed due to inadvertence together with O.A.No.161 of 2012 and proof affidavit and consequently, allowed I.A.No.402 of 2013.

9.The Learned Counsel for the Petitioner submits that Order XIII Rule 1 speaks of 'original documents to be produced at or before the settlement of issues' and as such, the Tribunal was not right in permitting the Respondent/Bank to produce/file Additional document in I.A.No.402 of 2013.

10.In response, it is the submission of the Learned Counsel for the Respondent/Bank that the Assignment Deed consists of 20 pages detailing the terms of the 'Assignment' between the Barclays Bank, the Assignor and Phoenix ARC, the Assignee, and the Schedule contains 127 pages, with more than 25000 accounts. Further, although at the time of filing of the Original Application, the 'Assignment Deed' was filed, the schedule to the said deed, indicating the loan accounts inter alia the loan account of the Petitioner/Defendant, assigned to the Respondent/Bank was inadvertently left out. As such, the Respondent/ Bank sought leave of the Tribunal to order the inclusion of the schedule to the 'Assignment Deed', indicating the loan accounts inter alia the loan account of the Writ Petitioner, assigned to the Bank and further, the said document be considered as part and parcel of the 'Documents' already filed along with the 'Original Application' and the 'Proof Affidavit'.

11.It cannot be gainsaid that though Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides that the Tribunal and the Appellate Tribunal shall not be bound by procedure laid down in the Code of Civil Procedure but shall be guided by the principles of natural justice and subject to other provisions of the Act and Rules and shall have the power to regulate their own procedure including places at which they shall have their sittings, in the considered opinion of this Court.

12.There is no two opinion of the fact that the Tribunal under Recovery of Debts Due to Banks and Financial Institutions Act is constituted as an 'Authority' to resolve the dispute between the Bank and the defaulting customer with a view to enable the Bank to recover the amount due from the defaulting customer without approaching the Civil Court. The Tribunal under the Act is at liberty to regulate its own procedure and in terms of Section 22 of the Act, the provisions of Code of Civil Procedure do not apply to the proceedings before the Tribunal and the Tribunal is not bound by the procedure laid down by the Civil Procedure Code.

13.No wonder, the powers of Tribunal are limited. However, the area of jurisdiction is crystal clearly demarcated but within the bounds of its jurisdiction, it can exercise its express and implied powers in granting the relief or moulding the relief appropriately as the case may be, in a given case, of course, based on the facts and circumstances of the case which float on the surface. Undoubtedly, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 itself contemplates retention of 'Natural Justice'.

14.It is to be noted that technicalities of Code of Civil Procedure are not made applicable to the proceedings before the Tribunal. As a matter of fact, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, all proceedings before the Tribunal or the Appellate Tribunal are deemed to be judicial proceedings. In short, the Tribunal as well as the Appellate Tribunal are empowered to pass such orders and to give such directions as may be expedient or necessary with a view to secure the ends of justice.

15.At this stage, this Court aptly points out that as per the ingredients of Section 34 of the Indian Evidence Act, 1872, all entries in Books of Account, regularly kept in the 'Course of Business', are relevant whenever they refer to a matter into which the Court has to inquire, notwithstanding any corroboration. Also that, such entries though admissible are not by themselves sufficient to charge a person with liability as per decision The State of Andhra Pradesh V. Ganeswara Rao, A.I.R. 1963 SC 1850. The individual relying on the account book is required to prove not only the particular entries but also is required to show that the book is kept in regular course of business entries. In addition to that, he must let in some corroborative evidence.

16.Moreover, the entry in the Account Book may be used not by itself but under Sections 145, 157 or 160 of the Indian Evidence Act, 1872 to contradict, corroborate or refresh memory as per decision Keyarsosp V. Garbad, A.I.R. 1930 Nagpur 24(1). In fact, special provisions have been made in Bankers' Books Evidence Act, 1891 for a Bankers' Book whereby a certified copy of an entry in such a book is admissible in evidence. However, mere entries in Bank's Books of Accounts or mere copies thereof are not sufficient to charge a person with liability except where the person concerned accepts the correctness of entries, as per decision Chandradhar Goswami and others Vs. Gauhati Bank Limited, AIR 1967 SC 1058 at page 1060.

17.Added further, before an extract from an account book is admitted in evidence, it must be legally proved. In reality, the Court must render findings as regards its admissibility and cannot reject it on speculative reason, as per decision Sethodas V. Paro Devi, AIR 1975 Patna 452.

18.In fact, the position of Law is that where a document is relevant for deciding a 'Fact in Issue' or a 'point of Law', there is no impediment for a Court or a Tribunal to allow the same in order to have an effective adjudication of the controversies concerning the parties. In fact, a demand of a document ought not to be refused on mere technical view, resulting in an injustice to a litigant. More importantly, a Tribunal cannot refuse to look into a document merely because it is filed at the time of Original Application being posted for 'Arguments'.

19.The fact of the matter is that the Respondent/Bank cannot pick and choose to produce only 'part of the Accounts' and it is to produce entire accounts so as to enable the Tribunal to adjudicate upon the Original Application in an effective, efficacious and comprehensive fashion.

20.The main grievance of the Petitioner appears to be that when the main O.A. was in argument stage and also after hearing the Arguments of the Petitioner/Appellant, when the Respondent/Bank files I.A.No.402 of 2013 before the Tribunal, it clearly shows that the Respondent/Bank is trying to fill up the lacuna which cannot be accepted. It is also represented on behalf of the Petitioner that by inserting additional document without pleading in the Original Application, virtually amounts to allowing the Original Application and therefore, I.A.No.402 of 2013 to order the additional document in question is not to be permitted, in the interest of justice.

21.At this stage, this Court relevantly points out that the Debts Recovery Tribunal - II, Chennai on 03.10.2013 had allowed I.A.No.402 of 2013 (filed by the Respondent/Applicant/Bank), by inter alia observing that '... Therefore, in the interest of justice and to afford an opportunity to the Petitioner/Applicant to place the entire evidence on record, IA-402/2013 is allowed' and further observed that 'the relevant page filed by the Petitioner/Applicant shall form part of the copy of the Assignment Deed filed with the Proof Affidavit' and directed the matter to be called on 18.10.2013 at 3.00 p.m. for 'Arguments' on maintainability of Original Application.

22.That apart, the instant case in O.A.No.161 of 2012 is not one after 'conclusion of Hearing of the case' and 'Date fixed for pronouncing of orders'. As such, when the O.A. is pending for 'Arguments' at that time also, there is no fetter in Law for the Respondent/Bank to project an I.A. praying for reception of additional document, in the considered opinion of this Court.

23.When the Writ Petitioner, as an aggrieved person, filed M.A.No.118 of 2013 on the file of the Debts Recovery Appellate Tribunal, Chennai on 03.12.2013, the Appellate Tribunal had, among other things, opined that the Respondent/Bank (Applicant in OA) cannot be denied the opportunity to prove its case before the Tribunal below etc. and resultantly, concluded that the order of the Tribunal warranted no interference. In short, the Debts Recovery Appellate Tribunal, while dismissing M.A.No.118 of 2013, had also opined that the Appellant (Writ Petitioner) had failed to demonstrate any prejudice in regard to I.A.No.402 of 2013 being allowed by the Tribunal. Looking at from any angle, both the orders of the Debts Recovery Appellate Tribunal and the Debts Recovery Tribunal - II, Chennai are not liable to be interfered with, since they are valid and proper in law.

24.On a careful consideration of respective contentions and in view of the fact that I.A.No.402 of 2013 was allowed by the Tribunal on 03.10.2013 and also when the Original Application is pending for hearing Arguments on maintainability, this Court is of the considered view that it is always open to the Writ Petitioner to raise all factual and legal pleas before the Debts Recovery Tribunal - II, Chennai in regard to the proof, Relevancy and Admissibility of additional Document, in the manner known to law and in accordance with law and in this regard, the tribunal is directed to provide adequate opportunities to both parties and to proceed further in disposing of the Original Application 161 of 2012 as it deems fit and proper.

25.In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Debts Recovery Appellate Tribunal,
Chennai.

2.The Debts Recovery Tribunal - II, Chennai.

+ 1 cc to M/s. Namasivayam, Advocate Sr.3362

+ 1 cc to Mr.T. Karunakaran, Advocate SR.3333

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