IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2015

DELIVERED ON : 30.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.14718 and 14720 of 2007
& Connected MPs.

W.P.No.14718 of 2007

Punjab National Bank
Rep. by its Senior Manager
ARM Branch
Chennai-600 002 ...Petitioner

vs.

1. P. Vasantha
2. T. Eithiraj
3. P. Duraisamy Naidu (deceased)

4. Debts Recovery Appellate Tribunal
   Rep. by its Registrar
   No.55, Ethiraja Salai
   Egmore, Chennai-8.

5. B.D.S. Savithiri
6. Shoba Rani
7. Kavitha ...Respondents

(RR5 to 7 substituted as LRs of
deceased third respondent
vide order dated 7.8.2015
in M.P.No.3 of 2013)

W.P.No.14720 of 2007

Punjab National Bank
Rep. by its Senior Manager
ARM Branch
Chennai-600 002 ...Petitioner

vs.

1. G.Purushothaman (deceased)
2. T. Eithiraj
3. P. Duraisamy Naidu (deceased)

4. Debts Recovery Appellate Tribunal
   Rep. by its Registrar
   No.55, Ethiraja Salai
   Egmore, Chennai-8.

5. P. Vasantha
6. P. Kotteeswaran

(RR5 & 6 substituted as LRs of deceased 1st respondent vide order dated 7.8.2015 in M.P.No.3/2013)

7. B.D.S. Savithiri
8. Shoba Rani
9. Kavitha
10. Nagarjunan ...Respondents

(RR7 to 10 substituted as LRs of deceased third respondent vide order dated 7.8.2015 in M.P.No.4 of 2013)

Prayer :

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records relating to R.A.Nos.6 and 7 of 2006 dated 30 August 2006 on the file of the fourth respondent and quash the same.

Mr.S.Kothandaraman for Mr.K.Radhakrishnamurthy	:	For Petitioner in both W.Ps.
Mr. P. Krishnan	:	For R1 W.P.No.14718/2007 & for RR 5 & 6 in W.P.No.14720/2007
Mr.T.V.Krishnamachari	:	For R.4 in both W.Ps.
No appearance	:	For RR2,5 & 7 in W.P.14718/2007 & RR 2, 7 to 10 in W.P.14720/2007

COMMON ORDER

SATISH K. AGNIHOTRI & K.K.SASIDHARAN, JJ

These two writ petitions are directed against the common order dated 30 August 2006 in R.A.Nos.6 and 7 of 2006, whereby and whereunder the Debts Recovery Appellate Tribunal, Chennai modified the order dated 4 October 2004 passed separately in T.A.Nos.355 and 393 of 2001 by directing the petitioner to accept the one time settlement amount with simple interest at 12% per annum.

Summary of facts:
W.P.No.14718 of 2007

2. The first respondent in W.P.No.14718 of 2007 availed financial assistance from the petitioner for construction of a commercial complex. Since repayment was not made as per schedule, the Bank filed a Civil Suit in C.S.No.1193 of 1993 before the original side of the High Court. Subsequently the suit was transferred to the Debts Recovery Tribunal (hereinafter referred to as "DRT") and re-numbered as T.A.No.393 of 2001. The DRT after contest issued a Recovery Certificate for a sum of Rs.17,12,922.15 with future interest at the rate of 24.75% per annum till realisation. The order dated 4 October 2004 was challenged before the Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT"), in R.A.No.7 of 2006. The DRAT was of the view that the first respondent is entitled to the benefits of one time settlement ("OTS" in short) approved by the petitioner earlier and held that the liability is to pay only

a sum of Rs.12.50 lakhs with interest at 12.5% from 31 March 2001. The order passed by the DRAT is challenged in W.P.No.14718 of 2007.

W.P.No.14720 of 2007

3. The first respondent, since deceased, took a loan from the petitioner in 1989 and by deposit of title deeds created an equitable mortgage. The loan was taken for construction of flats. Since the first respondent defaulted in repayment, the petitioner filed a Civil Suit in C.S.No.1192 of 1993 before the original side of this Court. The suit was later transferred to DRT, Chennai. The DRT after negativing the contentions taken by the first respondent, issued a Recovery Certificate in favour of the petitioner for a sum of Rs.16,11,546.40 with future interest at 24.75% per annum. The first respondent along with sureties filed appeal before the DRAT, Chennai. The DRAT extended the benefits of OTS to the first respondent and modified the Recovery Certificate. The first respondent was directed to pay a sum of Rs.12.5 lakhs with interest at 12.5%. The order dated 30 August 2006 is challenged in this writ petition at the instance of the Bank.

Rival Submissions:

4. The learned counsel for the petitioner contended that the DRAT exceeded its brief by extending the benefits of OTS of the year 2001 to the borrowers without there being a prayer for the same in the concerned appeals. The prayer was to consider their case under the OTS of 2005. The borrowers are not entitled to the benefits of even the OTS of 2005. It was contended that the borrowers failed to adhere to the terms of OTS 2001 and as such the DRAT erred in granting the benefits on the basis of lapsed OTS.

5. The learned counsel for the borrowers justified the impugned common order. According to the learned counsel, the borrowers have remitted considerable amount pursuant to the OTS granted by the Bank earlier. The DRAT was therefore correct in modifying the Recovery Certificates. It was his further contention that the borrowers have remitted considerable amount subsequent to the order passed by DRAT and during the pendency of writ petitions and as such no interference is called for in the common order.

Discussion and Conclusion:

6. The borrowers have availed financial assistance from Bank by giving collateral security. Since repayments were not made as per schedule, the Bank initially filed two suits in C.S.Nos.1192 and 1193/1993 before the original side of this Court. The Civil Suits were later transferred to DRT, Chennai.

7. Before the DRT, OTS was not an issue. The borrowers have taken up several contentions to make it appear as if they were not aware of the transactions and signatures were obtained in blank printed forms. The DRT negatived those contentions and issued Recovery Certificates in favour of the petitioner. The matter was taken up in appeal.

8. The DRAT considered the appeals filed by the borrowers and opined that the liability is only to pay the amount settled earlier by way of OTS.

9. The core question is whether DRAT was correct in modifying the Recovery Certificates on the basis of an earlier settlement, which was not an issue either before DRT or in the connected appeals.

10. The memorandum of grounds of appeals in R.A.Nos.6 and 7 of 2006 do not contain any material to suggest that OTS granted earlier was put in issue before the DRAT. The appeals were filed by the borrowers challenging the quantum as well as the rate of interest. The DRAT without any pleadings or supporting materials framed an issue whether the borrowers were entitled to the benefits of RBI Guidelines for OTS of 2005.

11. The DRAT after framing an issue with regard to the applicability of OTS of 2005 arrived at a finding that the borrowers are not entitled to the benefits of the settlement scheme launched in 2005. Since substantial issue framed by the DRAT was answered against the borrowers, there was no occasion thereafter to consider the validity of settlement made by the parties earlier. The DRAT in spite of answering the first issue regarding applicability of OTS of 2005 against the borrowers, proceeded to consider the background facts to extend the benefits of earlier OTS, which was not even prayed for by the borrowers.

12. Even with respect to the earlier settlement arrived at between the Bank and Borrowers, the DRAT found that the borrowers have not fulfilled their obligation. The borrowers were expected to pay the compromise amount of Rs.12.5 lakhs on or before 31 January 2002. Since the settled amount was not paid before the cut off date, the Bank cancelled the OTS and informed the borrowers by communication dated 6 April 2002. The Bank at a later point of time by telegram dated 30 April 2002 once again informed the borrowers that there was no settlement as on date. The first respondent in W.P.No.14720 filed a writ petition in W.P. 18455 of 2002 to direct the Bank to honour the settlement and receive the settled amount of Rs.12.50 lakhs in each of the accounts with interest at 11.5% per annum from 1 April 2002. The writ petition was dismissed. The borrower filed intra court appeal in W.A.No.2330 of 2002. The appeal was taken up along with W.P.No.36180 of 2002 filed by the first respondent in W.P.No.14718 of 2007, for the very same relief.

13. The Division Bench dismissed the intra court appeal and writ petition by judgment dated 24 October 2002 with the following observation:

> "The writ petitioners being the borrowers have no legal right to compel the creditor bank to agree to a compromise for settlement of loans. Besides, the recovery proceedings are pending before the second respondent and it is always open to the borrowers to seek appropriate relief in that forum. The prayer sought for by the petitioners is misconceived in the above factual matrix and the learned Single Judge has rightly dismissed the writ petition. "

14. It is quite unfortunate that despite the judgment dated 24 October 2002 in W.A.No.2330 of 2002 and W.P.No.36180 of 2002 holding that the borrowers have no right to compel the Bank to agree to a compromise, the DRAT granted the very same relief by directing the Bank to accept the amount as per the compromise.

15. The DRAT is a Tribunal constituted under the provisions of Recovery of Debts due to Banks and Financial Institutions Act. The High Court exercises judicial review over the decision rendered by the Tribunals. Judicial discipline warrants that the

Tribunal respect the decision rendered by the High Court. By directing the Bank to accept the amount as per compromise, the DRAT virtually acted like an appellate authority over the decision rendered by a Division Bench of this Court in the very same subject matter.

16. The borrowers failed to honour the terms of settlement. The Bank was therefore correct in cancelling the compromise arrived at with the borrowers. The stand taken by the Bank was approved by the Division Bench in W.A.No.2330 of 2002 and W.P.No.36180 of 2002. Such being the position, the direction given by the DRAT is legally unsustainable. We therefore set aside the order passed by DRAT permitting the borrowers to pay the OTS amount with interest.

Subsequent Interest:

17. The Bank claimed interest at 24.75% per annum. The contract rate was 8% per annum above the RBI rate with a minimum of 18% per annum. The borrowers challenged the rate of interest specifically in their written statement. The DRT without any discussion awarded future interest at 24.75% per annum.

18. The borrowers in their appeal questioned the rate of interest also. The DRAT while granting the relief on the strength of the earlier settlement, directed the borrowers to pay interest at 12.50%.

19. The memorandum of grounds of appeal in R.A.No.6 and 7 of 2006 clearly shows that payment of interest was very much an issue before the DRAT at the instance of the borrowers.

20. The question therefore is whether the DRT was correct in permitting the Bank to collect subsequent interest at 24.75% per annum.

21. Section 34 of the Code of Civil Procedure provides for interest on the principal sum adjudged from the date of the suit to the date of the decree in addition to the interest on principal sum for any period prior to the institution of suit besides interest subsequent to the decree at such rate not exceeding six per cent per annum.

22. The Supreme Court in Sovintorg (India) Ltd., v. State Bank of India, New Delhi[1] observed that the provisions of Interest Act and the General Provisions under Section 34 of Civil Procedure Code based upon justice, equity and good conscience would authorise even forums constituted under various acts to award interest.

23. The agreement entered into by the borrowers permits the Bank to collect interest at 18% per annum with quarterly rest. The borrowers are therefore liable to pay interest at 18% per annum from the date of default. The Bank has not produced any document before the DRT to show the interest charged by RBI so as to collect 8% per annum above the said rate. We are therefore of the view that the DRT was not correct in awarding interest at 24.75% from the date of suit.

Conclusion:

24. The orders passed by DRT and DRAT with respect to interest are modified. The borrowers are directed to pay interest at 18% per annum from the date of suit to the date of order viz., 4 October 2004. There shall be a further direction to pay simple interest at the rate of 12% per annum from the date of order till realisation. The amount paid by the borrowers subsequent to the order passed by the DRAT should also be given due credit.

25. The writ petitions are allowed in part as indicated above. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Tr/

1 (1999) 6 SCC 406

To

Debts Recovery Appellate Tribunal
Rep. by its Registrar
No.55, Ethiraja Salai
Egmore, Chennai-8.

2 CCs to Mr.T.V.Krishnamachari, Advocate SR.No. 59084, 59085

1 CC to Mr. P. Krishnan, Advocate SR.No. 59311

2 CCs to Mr.K.Radhakrishnamurthy, Advocate SR.No. 59103

W.P.Nos.14718 and 14720 of 2007

CA (CO)
PSI (16.11.2015)