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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: February 04, 2015

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W.P.(C) 1335/2011

BHEEM SINGH AND ORS

..... Petitioners

Through: Sh. R.P. Vats, Advocate.

versus

ORIENTAL BANK OF COMMERCE AND ORS

..... Respondents

Through: Sh. Vipin Jai, Advocate for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This appeal challenges an order passed by Debts Recovery Appellate Tribunal (hereinafter referred to as "the DRAT") on 02.11.2010 dismissing appeal No.144/2007 preferred by the petitioners against the order dated 01.06.2006 of the Debt Recovery Tribunal (hereinafter referred to as "the DRT") allowing original application (OA) No. 323/1996 thereby issuing recovery certificate.

2. In view of the directions that we proceed to issue, only certain basic facts need to be captured.

3. The OA was filed by respondent No. 1 Bank (Oriental Bank of Commerce) on 15.03.1996 impleading the petitioners as defendant Nos. 3 to 6. The petitioners were set *ex-parte* on the basis of reports of due service. The proceedings resulted in *ex-parte* judgment being rendered on 29.06.1999 by the DRT issuing recovery certificate in the sum of ₹1,52,68,255/- together with *pendent lite* and future interest. The

petitioners, after being served with notices issued by the recovery officer, moved application No. 15/01 on 18.06.2001, upon which the *ex-parte* judgment was set aside vide order dated 20.07.2004 of DRAT thereby reviving the proceedings for fresh adjudication by DRT.

4. It is the contention of the petitioners that in the wake of the notices issued by the recovery officer, upon learning that their signatures had been forged for purposes of creating mortgage in respect of the property they own in the context of loan advanced by the bank in favour of other respondents in the OA, a complaint was lodged with SHO, Police Station Loni (Ghaziabad) and since no action was taken thereupon, a criminal complaint was lodged with the Judicial Magistrate, Gaziabad under whose directions, by order dated 07.01.2001, FIR was registered by Economic Offences Wing, CID, Meerut. It is their contention that during the course of investigation into the said FIR, evidence was collected, *inter alia*, including opinion of handwriting experts as to the questioned signatures, affirming their stand.

5. In nutshell, the petitioners' case is that they had never stood guarantee for the loan advanced by the bank in favour of the said other respondents nor had submitted the title deeds of the property for such purposes. It is their contention that the signatures on documents purporting to be guarantee agreement and letter of guarantee have been forged. The petitioners seek to explain that the title deeds of the agricultural land, claimed by the bank to be mortgaged property, had been entrusted in the custody of Mr. Manoj Sachdeva, Chartered Accountant, who, upon inquiry by the petitioners, had claimed that the documents had been "misplaced". The petitioners seek to point out that the circumstances in which the title deeds entrusted in the custody of the said Mr. Manoj Sachdeva came to be deposited with the bank

in terms of the purported mortgage to secure the loan in favour of other parties has been a subject matter of investigation by the police in the case referred to above.

6. After the *ex-parte* judgment, rendered earlier by DRT, had been vacated and the proceedings re-opened for fresh adjudication by DRT, the petitioners requested for opportunity to cross-examine Mr. D.P. Dhingra who had been examined by the bank as AW-2. The said application was dismissed. The petitioners also prayed for original record of police pertaining to the investigation into the FIR mentioned above but the said request was also turned down. The petitioners raised grievance about these two orders in appeal before DRAT claiming they amounted to denial of effective opportunity to them for defence.

7. The DRAT by the impugned judgment rejected the appeal thereby affirming the order dated 01.06.2006 of DRT mainly observing that the defence set-up by the petitioners is incongruous and contradictory. For such purposes, DRAT proceeded to compare the contentions raised in the written statement submitted on 19.04.2005 that the averments in the FIR lodged on 07.08.2001 but noticeably, not examining the plea of denial of effective opportunity, particularly in the context of application for recall of AW-2 Mr. D.P. Dhingra for cross-examination.

8. While it may be correct that the conclusions reached by the investigating police in the crime registered on facts having a bearing on the controversy at hand, as indeed the findings (as and when) recorded by the criminal court in proceedings emanating therefrom, would not *ipso facto* be relevant, not the least binding on DRT, the relevancy of the material relied upon in such criminal case, at the instance of the petitioners, cannot be

denied. The basic defence taken by the petitioners is that their signatures were forged. This has been subject matter of inquiry including by way of gathering of opinion of government examiner of questioned document. Such opinion and the material on which it is founded remain relevant for purposes of corroboration of the word of the petitioners in the proceedings before DRT.

9. In above circumstances, to our mind, denial of the request for the relevant record to be summoned from the local police was neither just nor proper.

10. The DRAT has not gone into the question as to why the prayer for cross-examination of AW-2 Mr. D.P. Dhingra could not be permitted. We see no reason why such opportunity should have been denied in the first place. Given the contentious nature of the issue and that there is a background to the dispute about the documents genuineness, denial of cross-examination was – in this respect – unjustified.

11. We find the procedure has been short-shifted and conclusions on the basis of some contradictions (in the defence taken in the written statement as compared with the allegations in the FIR) have been pre-maturely drawn, without giving opportunity to the petitioners to offer explanation in such regard.

12. For the foregoing reasons, the order dated 01.06.2006 of DRT and judgment dated 02.11.2010 of DRAT are set aside. The matter is remitted to DRT with the following directions:-

- (i) The certified copies of all such documents as form part of the record of the criminal case referred to above, on which the petitioners rely, shall be called for by appropriate process from

the concerned police authorities/criminal court;

- (ii) For above purposes, the petitioners shall be permitted to move an application setting out the particulars of the documents, also explaining their respective relevance;
- (iii) The originals of all such documents as mentioned above shall be summoned, if need be (particularly if there is a controversy as to the genuineness thereof by either side) at appropriate stage for facilitating formal proof to be adduced; and
- (iv) AW-2 Mr. D.P. Dhingra examined as a witness by the bank shall be recalled for cross-examination for and on behalf of the petitioners on a suitable convenient date.

13. Subject to compliance with the above directions, the case shall be taken up for further proceedings by the DRT and adjudicated afresh in accordance with law. Given the delay that has occurred in conclusion of the proceedings which began before DRT in 1996, we direct the DRT to decide the case as expeditiously as possible, preferably within six months of the date of next appearance directed by us.

14. Parties shall appear before the DRT for further proceedings on 02.03.2015.

15. The writ petition is allowed to the above extent.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 04, 2015/ik