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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 20th April, 2015

+ W.P.(C) 3823/2015 & C.M.No.6830-31/2015

ANAND SHRI VASTAV AND ANR.

..... Petitioners

Through: Mr.Pallav Saxena, Mr. Visheshwar
Shrivastav and Mr.Abhishek Kumar,
Advs.

versus

KOTAK MAHINDRA BANK AND ANR.

..... Respondents

Through: Mr.Sresh Dutt Dobhal, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner is aggrieved by an order of the Debts Recovery Appellate Tribunal (DRAT) dated 20.11.2014 rejecting his appeal No.167/2014. That appeal was directed against an order of the DRT dated 22.08.2013 in an application filed by the respondent (hereinafter referred to as "the Bank") i.e. O.A.No. 567/1999.

2. The brief facts are that concededly the petitioner availed of credit facility from the bank based upon an agreement dated 02.12.1994. The amount released to the petitioner was to the tune of Rs.4.37 crores. Upon its default in the repayment in terms of the agreement the bank initiated proceedings before the DRT being O.A.No. 567/1999 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions, 1993

(hereinafter referred to as “Recovery Act”). The petitioner’s defence was that , *inter alia*, that application was time barred since the alleged cause of action had occurred long prior to the institution of proceedings. It was secondly urged that the bank’s representative who had in fact executed the documents was not authorized to do so and consequently the terms of the agreement were not binding upon petitioner. This was after acknowledging receipt of Rs.4.37 crores which concededly the petitioner availed of. The third ground urged was that the guarantees were not invoked legally in terms of the documents which sought to recall the loan. The DRT in its order rejected all the three contentions. Aggrieved, the petitioner approached the DRAT and repeated the same contentions before it.

3. The DRAT relied upon the decision in *State of Tripura vs. Arabinda Chakraborty* 2014 6 SCC 460 and after analysis of the relevant facts held that the plea in respect of limitation lacks substance. The second ground i.e. disbursement of the loan being in violation of the sanction letter too was rejected:

To substantiate his plea that the loan was disbursed in violation of sanction letter, the counsel for the appellants has referred to special conditions where the disbursement was to be made only on furnishing of additional unconditional and irrevocable personal guarantee of Mr. Anand Srivastava, Mr. G.P. Srivastava and corporate guarantee from IEPC Limited in favour of the Lender. In this regard, reference is made to Articles 3.4 of the agreement, which is as under:

"3.4 GUARANTEE

The Borrower shall procure irrevocable and unconditional a personal guarantee from Mr. Anand Shrivastav, in favour of the Lender and a corporate guarantee from IEPC Limited in favour

of the Lender, for the due repayment of the Loan and the payment of all interest and other monies payable by the Borrower in the form prescribed by the Lender and to be delivered to the Lender before any part of the Loan is advanced. The Borrower shall not pay any guarantee commission to the said Guarantors."

As per the counsel, this is the document relied upon by the bank. The plea also is that the O.A. was not filed by a competent officer. In this regard, the counsel has referred to Annexure A-1 as per which DGM, Legal had the authority to sign the plaint, affidavit etc.

I have not been able to appreciate the argument advanced by Mr. Saxena that violation of terms of getting additional guarantee before disbursement of loan would relieve the appellant borrowers from the liability to repay the amount which he has taken as advance. The reference made by the counsel to the definition of term 'debt' in section 2(g) of the RDDBFI Act even if read in any manner cannot lend support to the submission made by the counsel for the appellants. As per this section, 'debt' means any liability which is claimed as due from a person by the bank etc. during the course of any business activity, which may be in cash or otherwise, whether secured or unsecured or assigned or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on and legally recoverable on, the date of the application. The emphasis by the counsel on the words 'legally recoverable', in my view, would not mean that if this additional security was not taken before disbursement the loan, it will fall out of the definition of the term 'debt'.

To meet the objection that the O.A. was bad for non joinder of necessary party, the counsel for the respondent would refer to

Memorandum of Entry to show that Shri Anand Srivastav, Director of the company had made the deposit of the title stating that he was doing so on behalf of the company. The counsel would thus submit that this company was impleaded as party, as it was owning the property. The property was mortgaged being on lease with the company and, therefore, cannot be said that this O.A. was bad for non joinder of any necessary party.”

4. This Court has considered the contention of the petitioner. Significantly, the petitioner does not dispute the disbursement of Rs.4.37 crores pursuant to the agreement signed. Its first plea that the bank representative was not authorised to execute the terms is in our opinion devoid of merits. Having availed the credit facilities extended by the Bank without any demur, the question of authorization – at least with regard to credit facility could not have been urged by the petitioner. So far as the ground of limitation goes, the material on record shows that in terms of the agreement, the last payment was to be made by April, 2002. Taking note of this contention, the DRT as well as subsequently the DRAT were of the opinion that the application under Section 19 was filed within the period of limitation. Likewise, the plea with regard to recall of loan being contrary to law lacks in merits.

5. To invoke the discretionary jurisdiction of this Court, the litigant has to show not merely some error but something that touches upon the foundation of the findings of the Tribunal or Tribunals below. Judicial review be permissible on grounds of illegality procedural irregularity, *malafide* that leads to a result which is manifestly erroneous on the face of the record or so irrational that no reasonable minded person could have

arrived at it. The Writ Court is not a Court of fact and is obliged to the record in every case.

6. We see none of these elements herein calling for interference. Consequently, we hold that the writ petition is lacking in merits and, therefore stands dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 20, 2015
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