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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : April 19, 2016

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W.P.(C) 1675/2015

M/S. ISHVAKOO IMPEX PVT. LTD.

..... Petitioner

Represented by: Mr.Rajeeve Mehra, Sr.Advocate
instructed by Mr.Abhay Chauhan, and
Ms.Shruti Aggarwal, Advocates

versus

BANK OF MAHARASHTRA & ORS.

..... Respondents

Represented by: Mr.Gunjan Kumar, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Counter affidavit has not been filed by respondent No.1 in spite of advance copy of the writ petition being served upon the said respondent before the writ petition was filed and counsel for the respondent No.1 appeared on the first date of hearing of the writ petition on February 23, 2015 when notice was issued and accepted by learned counsel for respondent No.1.
2. Thereafter the matter was adjourned from time to time because it was stated that parties were trying to settle the matter.
3. Today learned counsel for the parties state that between the petitioner and respondent No.1 no settlement talks were being held Settlement talks were with Ajay Marwah, Meenakshi Marwah and Saroj Marwah, who are respondents No.3 to 5 in the writ petition.

4. Be that as it may, we have heard learned counsel for the parties and as we proceed to dictate judgment, learned counsel for the parties state that with consent the writ petition could be disposed of remanding the matter to the Debts Recovery Appellate Tribunal.

5. Therefore, the reason for remand is being noted by us.

6. In a judgment pronounced today in WP(C) 11595/2015 ICICI Bank Ltd. vs. Competent Dyestuff & Allied Products Pvt.Ltd. & Anr. as to how a judgment has to be written, we had indicated as follows:-

“15. We are not rendering any opinion on the quantification of the amounts and what we have written hereinabove is to guide the DRAT as to in what manner the judgment has to be written. A judgment must have a brief overview of the facts to set the scene. A succinct statement of the issues to foreshadow the structure must emerge. If relevant, a succinct statement of the procedural history could be written. An impartial statement of each parties’ position on each issue has to find a mention. A clear statement of the flaws in the losing parties’ position on each issue has to be recorded. Evidence supporting findings on the issues and reference to the law or a standard upon which the judgment is based has to be written.”

7. The same is the problem in the instant case. The impugned order is more like a narrative of a story and less a judgment.

8. It is trite that if a company offers its property as a security for a debt of a third party there has to be a resolution by the Board of Directors and the charge created on the property of the company is registered with the Registrar of Companies.

9. The first respondent filed an Original Application invoking remedy under Section 19 of the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993. It impleaded one Bitum Impex and Meenakshi Marwah as defendants No.1 and 2 pleading that Ajay Marwah, Saroj Marwah and the petitioner as also Sheetal Enterprises, a sole proprietary firm of Ajay Marwah, impleaded as defendants No.3 to 6, were guarantors of the debts payable by the firm. The application was registered as OA No.270/2010. Claim in the OA was in sum of ₹7,25,65,047/-. It was pleaded that Bitum Impex was in default.

10. Surprisingly, on the very first date of hearing, when the Original Application filed by the first respondent bank was listed, representation through counsel was made under the authority of Ajay Marwah and Meenakshi Marwah. By said date the respondent No.1 has initiated action under Section 13 of the SARFAESI Act and a petition under Section 17 of SARFAESI Act was filed and surprisingly the petitioners before Debts Recovery Tribunal are the respondents of the instant writ petition; Ajay Marwah, Saroj Marwah, Bitum Impex and Sheetal Enterprises. On the very first date of hearing, Debts Recovery Tribunal decreed claim in the Original Application filed by the petitioner and disposed of the petition filed under Section 17 of SARFAESI Act. The decree was on admission.

11. Nobody bothered to see whether the petitioner company was properly represented. No vakalatnama properly executed on behalf of the petitioner was ensured by Debts Recovery Tribunal as having been filed. What had happened was that the two directors of the petitioner i.e. Ajay Marwah and Saroj Marwah sold shares of the petitioner to Sharma Family and the directors were replaced.

12. Another Original Application registered as OA No.280/2010 was filed by the bank against Sheetal Enterprises on the plea that it was a

partnership firm of which Pankaj Thakkar and Ajay Marwah were partners, a plea which was contrary to the plea in OA No.279/2010 wherein Sheetal Enterprises was stated to be the sole proprietary firm of Ajay Marwah. Even that Original Application was allowed without a contest on admission.

13. When the decree passed by the Debts Recovery Tribunal came to the notice of the new management of the petitioner, an appeal was filed which has been dismissed by Debts Recovery Appellate Tribunal vide impugned order dated July 31, 2014 and we find that except for story narrating, there is no reference to any document or any particular order passed by Debts Recovery Appellate Tribunal where there is an admission of liability of the petitioner when represented through its Director Sh.D.S.Sharma.

14. It was the duty of the Debts Recovery Appellate Tribunal to see whether the grievance of the petitioner through its Director Sh.D.S.Sharma, that there was no proper representation before Debts Recovery Tribunal by the petitioner company was correct and if correct, the consequence thereof. It was the duty of the Debts Recovery Appellate Tribunal to see and ensure whether, without any summons being issued and much less served upon the petitioner, representation by counsel on the very first date when the Original Application filed by the bank was allowed, would bind the petitioner, keeping in view that record which shows that no vakalatnama was filed by the counsel with a resolution by the petitioner company authorising Ajay Marwah to defend the petitioner company. In the decision reported as AIR 2006 SC 269 Uday Shankar Triyar vs. Ram Kalewar Prasad Singh & Anr., concerning a vakalatnama, in para 21 of the decision, the Supreme Court had held as under:-

“21. We may at this juncture digress and express our concern in regard to the manner in which defective Vakalatnamas are routinely filed in courts. Vakalatnama, a species of Power of Attorney, is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an Agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank Vakalatnamas and filling them subsequently should be avoided. We may take judicial notice of the following defects routinely found in Vakalatnamas filed in courts :

- (a) Failure to mention the name/s of the person/s executing the Vakalatnama, and leaving the relevant column blank;*
- (b) Failure to disclose the name, designation or authority of the person executing the Vakalatnama on behalf of the grantor (where the Vakalatnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the Vakalatnama).*
- (c) Failure on the part of the pleader in whose favour the Vakalatnama is executed, to sign it in token of its acceptance.*
- (d) Failure to identify the person executing the Vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the Vakalatnama.*
- (e) Failure to mention the address of the pleader for purpose of service (in particular in cases of outstation counsel).*
- (f) Where the Vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact*

that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the Vakalatnama without any endorsement/statement that the signature is for 'self and as guardian of his minor children'. Similarly, where a firm and its partner, or a company and its Director, or a Trust and its trustee, or an organisation and its office-bearer, execute a Vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorized to sign on behalf of the corporate body/firm/society/organisation.

(g) Where the Vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an Attorney-holder and failure to annex a copy of the power of attorney;

(h) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets. (Many a time it is not possible to know who have signed the Vakalatnama where the signatures are illegible scrawls);

(i) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for tiling an appeal or revision. (It is not uncommon in some areas for mofussil lawyers to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court, and engage a pleader for appearance in a higher court and execute a Vakalatnama in favour of such pleader).

We have referred to the above routine detects, as Registries/ Offices do not verify the Vakalatnamas with the care and caution they deserve. Such failure many a time leads to avoidable complications at later stages, as in the present case. The need to issue appropriate instructions to the Registries/Offices to properly check and verify the Vakalatnamas filed requires emphasis. Be that as it may.”

15. It was the duty of Debts Recovery Appellate Tribunal to see whether any charge was created by the petitioner company regarding personal debts of two of its Directors who were carrying on business as a sole proprietor and/or as partners. It is settled law that any charge created by a company has to be informed to the Registrar of Companies. The reason being that said record maintained by the Registrar of Companies is open to public scrutiny.

16. How were the Sharma family to know whether the petitioner company is liable for the personal debts of two of its Directors? With respect to the petitioner company it is not in dispute that the new management is maintaining an account with respondent No.1 and the account is a regular account without any default.

17. Since learned counsel for the respondent No.1 does not desire any further reasons to be recorded inasmuch as the matter is being remanded we terminate our opinion by simply recording that the facts noted by us hereinabove, are to bring out the deficiencies in the impugned order which does not conform to the jurisprudence of what a judgment should contain. The jurisprudence of what a judgment should contain has been highlighted by us hereinabove in paragraph 6.

18. The writ petition is accordingly disposed of setting aside the impugned order dated July 31, 2014. Appeal No.137/2011, Appeal No.138/2011 and Appeal No.486/2013 which have been disposed of by the singular impugned order are restored for adjudication on merits by Debts Recovery Appellate Tribunal.

19. Interim orders restraining respondent No.1 bank from selling any property of the petitioner shall enure till the disposal of the appeals by Debts

Recovery Appellate Tribunal.

20. No costs.

CM No.3017/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 19, 2016

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