

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.20925 of 2017
and
WMP.No.21810 of 2017

M/s.Balaji Oil Industries Pvt. Ltd.,
Plot No.39, II Main Road
SIPCOT Industrial Complex
Ranipet -632 403
represented by its
Managing Director .. Petitioner

Versus

State Bank of India
Mannady Branch
represented by its Manager
31, Stringer Street
Chennai - 600 108. .. Respondent

Writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in respect of the order dated 26.04.2017 passed in R.A.No.65 of 2014 on the file of the Debt Recovery Appellate Tribunal, Chennai, modifying the order dated 28.03.2012 passed in O.A.No.196 of 2010 on the file of the Debt Recovery Tribunal-II, Chennai and quash the same.

For Petitioner : Mr.T.Ravikumar

For Respondent : Notice served
No appearance

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The petitioner has filed the Writ Petition seeking to quash the order of the Debt Recovery Appellate Tribunal, Chennai, dated 26.04.2017 made in R.A.No.65 of 2014, modifying the order

of the Debt Recovery Tribunal-II, Chennai, dated 28.03.2012 passed in O.A.No.196 of 2010.

2. The brief facts of the case are as follows:-

The respondent bank filed an application in O.A.No.196 of 2010 before the Debt Recovery Tribunal-II, Chennai, claiming a sum of Rs.26,70,000/- (Rupees Twenty Six Lakhs and Seventy Thousand only), alleging that the bank has erroneously given double credit of the said sum to the petitioner's account on 12.01.2006. But the petitioner Industry denied the alleged double credit by the bank and stated that a sum of Rs.26,70,000/- (Rs.13,50,000/- + Rs.13,20,000/-) was credited on realisation of two cheques and a sum of Rs.26,70,000/- was deposited in Bank on account of sale of old Tanker Lorries, by way of transfer. The petitioner also contested the application on the grounds of limitation, jurisdiction and non-joinder of necessary parties. However, the Debt Recovery Tribunal-II, Chennai, has given a finding that the Bank is entitled to recover a sum of Rs.26,70,000/- with future interest at the rate of 12% p.a with monthly rests. Aggrieved against the said order, the petitioner has preferred an Appeal before the Debt Recovery Appellate Tribunal, Chennai, in R.A.No.65 of 2014. The Debt Recovery Appellate Tribunal allowed the Appeal, in respect of interest portion alone and reduced the same from 12% p.a to 6% p.a. Therefore, challenging the aforesaid order, the petitioner is before this Court.

3. Even though interim stay of the order of Debt Recovery Appellate Tribunal was ordered and notice served on the respondent bank, name also printed in the cause list and that the case was adjourned several times giving opportunity to the bank, Manager of the respondent bank has not chosen to appear before this Court either in person or through counsel. Hence, this Court is constrained to pass final order in the absence of the respondent bank.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. From the perusal of records, it is seen that the petitioner Industry was maintaining a cash-credit account for its business purpose with Wallajapet Branch of the respondent bank and on 10.10.2016, the petitioner Industry presented two cheques bearing Nos.570120 and 517563 for Rs.13,50,000/- drawn on HDFC Bank and Rs.13,20,000/- drawn on ICICI Bank respectively and the cheques were posted in the petitioner's account on 10.01.2006 for the value dated 12.01.2016 and that the same were realised on the value date. Subsequently, on the same day, erroneously another credit was said to have been given for a sum of Rs.26,70,000/- to the account of the petitioner Industry.

6. It is alleged by the respondent bank before the Tribunal that the mistake was known to the respondent bank only during reconciliation of clearing by the Branch concerned on 23.03.2010. Immediately, the respondent bank wrote a letter dated 25.03.2010 to the petitioner requesting to reimburse the amount of Rs.26,70,000/- with interest, which was received by the petitioner on 26.03.2010, but the petitioner neither came forward to reimburse the amount nor gave any reply to the said letter. The respondent bank sent repeated reminders requesting the petitioner to repay the amount.

7. The case of the respondent bank before the Tribunal is that erroneous double credit was given to the account of the petitioner and the petitioner promised to repay the said amount, but did not reimburse any amount to the respondent bank. It is also submitted that eventhough the petitioner knew about the double credit given erroneously by the bank, the petitioner did not choose to repay the same. Therefore, the respondent bank issued legal notice dated 18.06.2010 calling upon the petitioner to repay the amount with interest at the rate of 15.75% with monthly rests. The petitioner received the said legal notice on 21.06.2010, but did not choose to reply or make any payment. Hence, the respondent bank filed the application in O.A.No.196 of 2010 before the Debt Recovery Tribunal-II, to recover the said amount with interest.

8. The petitioner filed a reply statement before the Tribunal countering the claim made by the respondent bank, contending inter alia that the Original Application is not maintainable either in law or on facts and it should be dismissed. The petitioner also denied receipt of any double payments on 12.01.2006 that too, claimed after a lapse of four years. The petitioner contended that the claim of the bank is neither a 'debt' nor 'due' to the bank and it is barred by limitation and the Tribunal has no jurisdiction to try the issue. It is also contended by the petitioner that the respondent bank has not chosen to implead State Bank of India (Commercial Branch), Walajabad, which is alleged to have made wrong credit, as a party to the proceedings before the Debt Recovery Tribunal-II and therefore, the Original Application is defective of non-joinder of necessary party.

9. The petitioner also contended that the petitioner received a sum of Rs.26,70,000/- out of sale of old tanker lorries by way of transfer of amount, as the petitioner Industry delivered the vehicles to the respective buyers. The petitioner also stated that the single credit of Rs.26,70,000/- by transfer, was a different transaction and in the course of business transaction, they had several amounts credited and that does not mean that double payment was credited to the account of

the petitioner. The petitioner further stated that the respondent bank has also taken advantage of the amount credited, which was similar to the amount credited on 10.01.2006, and made a claim, after four years, with a view to avoid any action against the bank officials. The petitioner further averred that the petitioner's officials met the respondent bank officials in person and explained the real facts and the bank was also satisfied with the clarification. The petitioner Industry neither borrowed any amount as loan/debt nor any amount was due to the bank and hence, the petitioner is not debtor.

10. Before the Tribunal, it was also stated by the petitioner that the bank has suppressed the material facts and misled the Tribunal and there is no document to prove the alleged erroneous double credit and there is no corroboration by way of oral evidence before the appropriate forum, within the four corners of the laws to find out as to whether the petitioner is liable to pay the above amount, if at all the respondent bank had any genuine claim over the petitioner. The Original Application was contested by the petitioner Industry claiming that the claim of the bank, as false and frivolous.

11. The Debt Recovery Tribunal-II, Chennai, considered the following points and passed an order:-

- "a. Whether the claim made by the applicant bank in the present O.A. is a 'debt' due to the applicant bank coming within Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (shortly called as 'RDDB&FI Act') ?
- b. Whether the applicant bank made double credit entry of Rs.26,70,000/- in the account of the Defendant on 12.01.2006 ?
- c. Whether the defendant withdrew the entire amount from its account pursuant to double credit entry made by the Applicant Bank ?
- d. Whether the credit of Rs.26,70,000/- in the account of the defendant represents the sale proceeds of old Tanker Lorries of the Defendant ?
- e. Whether the OA is barred by limitation ?
- f. Whether the applicant Bank is entitled to Recovery Certificate as prayed for in the above OA ?"

From the perusal of seven points raised for consideration, it is seen that the issue of limitation and issue as to whether the claim of the bank is 'debt' within the meaning of the 'debt' used in RDDBFI Act, 1993, were also raised. The Debt Recovery Tribunal-II, Chennai answered all the points/issues in

affirmative and allowed the application in favour of the bank. Aggrieved against the same, the petitioner herein filed an appeal before the Debt Recovery Appellate Tribunal, Chennai raising various grounds and the Appellate Tribunal, Chennai also confirmed the order of the Debt Recovery Tribunal-II in all aspects, except reducing the rate of interest from 12% p.a. to 6% p.a. Therefore, challenging the order of the Debt Recovery Appellate Tribunal, the petitioner is before this Court.

12. The main issue before this Court is whether the bank can approach the Debt Recovery Tribunal-II, Chennai for recovery of the said sum, which is claimed to be due to the bank. The other point which has to be discussed and determined is, limitation for initiation of Original Application by the respondent bank.

13. Regarding the first issue of jurisdiction is concerned, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was enacted for the purpose of speedy and expeditious recovery of debts due to the banks and financial institutions. The expression 'debt' is defined in Section 2(g) of RDDBFI Act, 1993, which reads as follows:-

"2(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, 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."

14. The word 'debt' ordinarily means a loan or money advanced or in other words owed or due or sum, which is under the obligation to pay or return to the other. However, the definition under Section 2(g) of the RDDBFI Act, 1993 implies vital meaning for the word 'debt', which includes liability towards the bank during the course of any transaction activities, which is legally recoverable, on the date of application. The words "on the date of application" are significant.

15. The word 'liability' in Section 2(g) of the RDDBFI Act, 1993 has to be read in the light of Section 72 of the Indian Contract Act, 1872, which reads as follows:-

72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.—

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

Section 72 of the Indian Contract Act allows recovery of money, paid voluntarily i.e., without any compulsion or undue influence or without knowledge of the fact that, money was already paid. The statutory right to recover money under this Section cannot be rejected on the ground that upon consideration of the whole circumstances, if one party, whether under the mistake of fact, pays to another any money which is not due or otherwise, that money must be repaid.

16. Section 72 of the Indian Contract Act lays down a clear and unambiguous position of law entitling a party to the relief claimed by him. Equitable consideration would scarcely be imported in the absence of estoppel, waiver and limitation. Section 72 of the Indian Contract Act finds place in the Statute only to prevent 'unjust enrichment'.

17. The principle of 'unjust enrichment' as held by the Hon'ble Supreme Court, in the decision reported in AIR 1990 SC 313 (Mahabir Kishore ..vs.. State of Madhya Pradesh) is as follows:-

The principle of 'unjust enrichment' requires that:-

- (1) the defendant has been enriched by receipt of the benefit;
- (2) his enrichment is at the expenses of the plaintiff;
- and
- (3) the retrenchment of enrichment be unjust.

Thus, it is very clear that payment made voluntarily or otherwise under mistake, either in law or fact, can be recovered once the mistake is established. As such in law, the respondent bank is entitled to recover the money credited by mistake or under coercion. The mistake could have happened inadvertently or an act of commission or omission by the employees of the bank. According to the bank, when the amount has been wrongly credited and when a demand is made to repay, and when the customer retains the money wrongfully and refused to return the same, then the same amounts to unjust enrichment. It is the submission of the bank that on account of such obligation to repay or return the money received by mistake, such amount is a liability, constituting 'debt' within the meaning of 'debt', as per Section 2(g) of RDBFI Act, 1993. Hence, bank is entitled to recover the amount, credited into the petitioner's account as 'debt', however, subject to limitation. Accordingly, the first

point is answered.

18. As far as the question of limitation, viz., whether the bank is within the period of limitation, to seek for recovery is concerned, it is alleged that on 10.01.2006, the petitioner had presented two cheques, valuing Rs.13,50,000/- and Rs.13,20,000/- respectively, for collection; same were posted to the petitioner's account on 10.01.2006 for value dated 12.01.2006; and realised on the value date, for the respective amount. According to the bank, subsequently, on the same day, another sum of Rs.26,70,000/- was credited into the petitioner's account wrongly. Before the Debt Recovery Tribunal-II, Chennai, as well as Debt Recovery Appellate Tribunal, Chennai, it is stated by the respondent bank that only on 23.03.2010, the mistake came to light, during reconciliation of clearing by the branch concerned. Immediately, the bank wrote a letter to the petitioner on 25.03.2010 requesting the petitioner to reimburse the amount with interest. The petitioner received the demand letter on 26.03.2010, however failed to return the money, which was credited by the respondent bank mistakenly. Hence, on 17.09.2010, the respondent bank has approached the Debt Recovery Tribunal-II by filing an application.

19. Now, it is to be seen whether the point of limitation has to be calculated from the date of discovery of wrong double credit or from the date on which wrong credit was made in the petitioner's account.

20. Section 24 of the Limitation Act, 1963 reads as follows:-

"24. Computation of time mentioned in instruments.-All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian calendar."

21. It is to be noted that as far as the bank is concerned, even from the year 2000, most of the banks have been utilising digital facilities for making entries as against manual entries. In the earlier days, banks had been manually operating and entries were made manually, in such situation, inadvertent mistakes could be possible. However, the present scenario is different. After computerisation and digitalisation, since from 2000, more particularly, after centrally connecting the branches of banks to its main branch, each and every transaction can be monitored and checked by computers anywhere and mistakes are very less. In fact, every bank adopt a process called 'Bank and Site End-of-Day Process', by which, every bank on the touch of the button in the keyboard of the computer will come to know the entries, transactions made in a particular day, which will be accurate. Hence, it is not

proper on the part of the bank to contend that they discovered the mistake and the loss to the bank only on 23.03.2010, ie., after four years of the mistake.

22. Under these circumstances, it would be appropriate to refer three years period of limitation, as contemplated under the provisions of Limitation Act, 1963, to claim any recovery, which includes recovery of unjust enrichment also. The period of limitation prescribed for a claim of recovery of money is three years from the date on which cause of action arose. In this regard, it is naive on the part of the bank to state that double credit was erroneously given to the petitioner's account to the tune of Rs.26,70,000/- on 12.01.2006 and this mistake came to their knowledge only on 23.03.2010 during reconciliation of clearing by the branch concerned. This explanation by the bank is totally unacceptable, that too, when the entire world is digitalised for all the financial transactions through banks ever since 2000 or even much before.

23. The documents filed by the petitioner do not support his statement that on the very same day, the petitioner received a sum of Rs.26,70,000/- out of the sale of old tanker lorries by way of transfer of amount and the sum of value of earlier two cheques are equivalent to the amount received by the petitioner out of the sale proceeds of old tanker lorries. The above statement of the petitioner is not substantiated by any proof. Morally the petitioner ought to have reimbursed not at the request of the bank, but by himself coming forward to have re-credited the same amount or brought to the knowledge of the bank. What is lost is not bank's money, but the public money, unjustly enriched by the petitioner, at the mistake of the bank employees. The petitioner has not produced any documents to prove that the petitioner has sold old tanker lorries for the said sum. The petitioner has not produced any oral or documentary evidence before the Debt Recovery Tribunal-II or Debt Recovery Appellate Tribunal or before this Court, to the effect that to whom he sold the tanker lorries and the buyer, who transferred the money into his account etc.,. Even the name of the buyer has not been mentioned anywhere. The petitioner has only filed the Statement of Account dated 29.10.2011 prepared by the Chartered Accountant for the period from 1 January 2006 to 31 January 2006, which, as per Chartered Accountant, is extracted from the Ledger Account of the petitioner. The said statement is enclosed at page Nos.11 to 17 of the typed set of papers. The said document cannot be accepted, since in the said document, there is no whisper about the person/s who has/have purchased the tanker lorries and how the buyer has transferred the amount to the petitioner. Except the ledger book, no other document has been produced before the Debt Recovery Tribunal-II to prove that the said amount was

credited into his account, by way of transfer, by sale of old tanker lorries.

24. Surprisingly, the petitioner has filed a letter dated 29.07.2008 of the Chief Manager addressed to the petitioner, sent through Fax dated 03.05.2012. The contents of the said letter is extracted below:

"Dear Sirs,
Your Account No.10269256317
Final Settlement of Accounts

With reference to the above, we have to advise that the payment towards all the bank accounts have been settled in full and there is no due to the bank as on date."

When the petitioner has submitted that they had no account regarding any loan or any credit facility, We are surprised to see the above letter dated 29.07.2008, which creates doubt in the mind of the Court.

25. The Debt Recovery Tribunal-II, as well as Debt Recovery Appellate Tribunal have lost sight of the question of limitation, whether the cause of action arose on the very same day ie. on 12.01.2006, the date on which wrong credit was made or on 23.03.2010, the date on which the mistake came to light as alleged by the bank. The Tribunals ought not to have taken the date of cause of action as 23.03.2010, the date on which, according to the respondent bank, the mistake came to their light during reconciliation of clearing the branch concerned. If this statement is to be taken, then even after many years, the bank may say that the mistake came to their light only then and claimed the money when the banks have committed mistakes. This cannot be accepted, because law of limitation has to be taken into account. Even though a prima facie case has been made out by the bank, action taken by the bank for recovery, after the period of limitation cannot be accepted. The second point is answered accordingly.

26. In the above circumstances, the orders passed by the Debt Recovery Tribunal-II and Debt Recovery Appellate Tribunal cannot be sustained and the Writ Petition is allowed.

27. At the same time, as stated earlier, the petitioner has unjustly enriched not the bank's money, but the public money due to the mistake of the employees of the respondent bank during the transaction period i.e., 10.01.2006 and 12.01.2006. In spite of receiving the notice and the matter being adjourned on many occasions, the bank has not chosen to appear before this Hon'ble High Court. Therefore, the cloud still persists

regarding the act of the bank officials whether they have done it mistakenly or intentionally or there was any collusion between the officials of the bank and the petitioner. When the banks initiate SARFAESI proceedings against a common man even for a meagre amount, action of the bank in the present case, where the amount involved is Rs.26,70,000/-, which has more value in 2006, should be condemned and such mistake should not happen in future. Even though this Court feels that it would be appropriate to issue direction to the Central Agency and also the management of the bank to enquire into the above issue and initiate appropriate necessary action against the employees, who were responsible for such mistake/wrong credit given to the petitioner on 12.01.2006, for their lethargic and negligent act and also the officials who have not audited the same, which culminated into loss of huge public money, but considering the lapse of time, this Court directs the management of the bank to take appropriate steps for not repeating such lethargic and negligent acts/mistakes by its employees in future.

27. In the result, the Writ Petition is allowed, with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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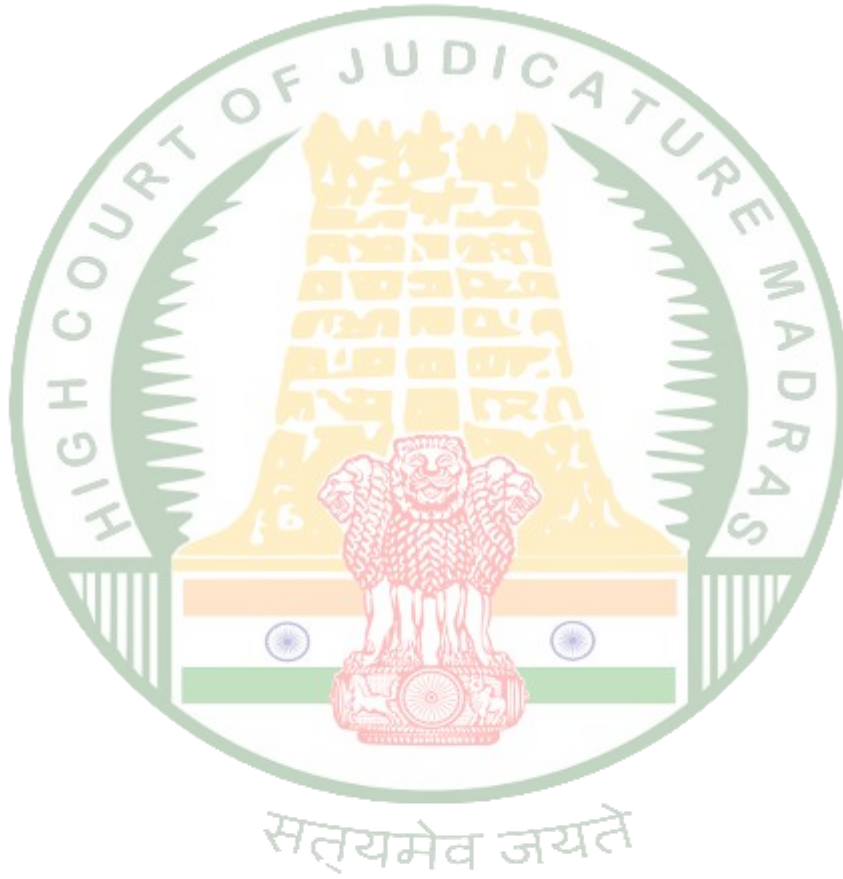
1. The Chairperson
Debt Recovery Appellate Tribunal
Chennai.
2. The Presiding Officer
Debt Recovery Tribunal-II
Chennai.
3. The Manager
State Bank of India
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31, Stringer Street
Chennai - 600 108.

+1cc to Mr.T.Ravi Kumar, Advocate SR.No.5077

+1cc to Mr.S.Sethuraman, Advocate SR.No.5636

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