IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.10944 of 2018

Mr.Rasheed Ahmed ...Petitioner

Vs

1. Bank of Baroda
Chennai Main Branch
J.C.House
New No.70, Old No.28
Rajaji Salai
Chennai 600 001.

2. The Registrar
Debts Recovery Tribunal - II
Spencer Plaza, Annex Building
Anna Salai
Chennai 600 006. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified mandamus, to quash the order, dated 21/2/2018 in I.A.No.753 of 2017 in O.A.No.519 of 2015 on the file of the second respondent/Debts Recovery Tribunal - II, Chennai and direct the first respondent/Bank of Baroda to furnish present Statement of Accounts and allow the petitioner to cross-examine the Chief Manager of the first respondent Bank under sub-rule (6) of Rule 12 of Debts Recovery Tribunal (Procedural) Rules, 1993.

For petitioner .. Mr.T.R.Senthil Kumar

O R D E R
(Order of the Court was made by S.MANIKUMAR, J)

Contending inter alia that a sum of Rs.30 lakhs was paid, in August 2015, Rs.4 lakhs till January 2016 and a further sum of Rs.50 lakhs, on 26/2/2016, for making proposal towards One Time Settlement, with Bank of Baroda, and that so far, the petitioner has paid Rs.84 lakhs, but then, the amount paid did not reflect in the statement of accounts, filed by Bank of Baroda, petitioner has filed I.A.No.753 of 2017, for cross-examining Mr.H.Birbal Meena, Chief Manager of Bank of Baroda, Main Branch, Chennai.

2. Opposing the prayer sought for, Assistant General Manager, Bank of Baroda, Chennai, has filed counter affidavit, wherein, at paragraph No.10, has contended that O.A was filed, on 16/12/2014, for recovery of dues.

3. Before the Tribunal, Bank has contended that Mr.Rasheed Ahmed, writ petitioner has made payment of Rs.2,04,900/-, in August 2015, Rs.2 lakhs on 16/9/2015, Rs.1 lakh, on 7/12/2015, Rs.1 lakh, on 21/11/2016 and a sum of Rs.41,60,000/-, on 26/2/2016. These payments cannot be reflected in the statement of accounts filed in O.A.No.519 of 2015. The allegations that these payments totaling to Rs.77,64,900/- were not given credit are false.

4. On the above pleadings, Debts Recovery Tribunal – 2, Chennai, vide, order, dated 21st February, 2018, in I.A.No.753 of 2017, in O.A.No.519 of 2015, at paragraph Nos.6 and 7 ordered as hereunder:-

> "6. The petitioner/defendant stated that the payments made by the petitioners were not reflected in the Statement of Account. If really, the petitioner/defendant has made payment before filing of the O.A and if it was not reflected, the payment receipt has to be produced at the time of arguments or filed with the counter proof affidavit. Further the petitioner/defendant has paid the payments after filing the O.A and that amount has to be adjusted on the appropriate date. Therefore, cross-examination of Mr.H.Birbal Meena is not a necessary one. The payments made must be proved by the petitioner/defendant by production of payment receipt, if those payments were not credited by the applicant bank. Hence, this petition cannot be allowed for the reasons stated above.
>
> 7. In the result, I.A.No.753 of 2017 is dismissed. No costs."

5. Material on record further discloses that petitioner has also filed I.A.No.754 of 2017 in O.A.No.519 of 2015, to furnish the statement of accounts. After hearing the learned counsel for the parties, on 21st February 2018, Debts Recovery Tribunal – 2, Chennai, ordered as hereunder:-

> "5. The respondent Bank filed Statement of Account along with the Original Application. If the payments were made by the petitioner/defendant before filing the O.A and this payment was not credited towards the loan account of the petitioner/defendant, the petitioner has right to produce the payment

receipt in the O.A proceedings to prove his claim. After filing the O.A., if any payment is made by the petitioner, payment receipt can be produced with CPA or at the time of arguments. The reasons stated by the petitioner is not an acceptable reason.

6. In the result, I.A.No.754 of 2017 is dismissed. No costs."

6. Being aggrieved by the order made in I.A.No.754 of 2017 in I.A.No.519 of 2015, dated 21st February 2018, instant writ petition is filed on the following grounds:-

7. As per RDDB Act, the DRT and the Appellate Tribunal, "shall be guided by the principles of natural justice". As per Section 22 (2) (a) to (h) of the RDDB Act, DRT and Appellate Tribunal shall have for the purpose of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit to undertake among other powers "requiring the discovery and production of documents" also. The Law of evidence plays a pivotal role in the effective functioning of the judicial system. "The existence of substantive rights can only be established by relevant and admissible evidence." Relevancy of facts is the key to determine the outcome of the judicial process which is based on fair trial without fear or favour and upholding the principles of natural Justice and Human Rights.

8. By inviting the attention of this Court to the letter, dated 4/3/2016, addressed to M/s. Fahim Tanning Company, Vellore, Mr.T.R.Senthil Kumar, learned counsel for the petitioner submitted that when the Bank had acknowledged receipt of Rs.50 lakhs, in the account, on 24/2/2016, contrary to the same, filed a counter affidavit, that a sum of Rs.41,60,000/-, alone was received, on 26/2/2016.

9. Learned counsel for the petitioner further submitted that respondent Bank, in their counter affidavit, at paragraph No.10, has clearly mentioned that payment of Rs.2,04,900/- in August 2015, Rs.2 lakhs, on 16/9/2015, Rs.1 lakh on 7/12/2015, Rs.1 lakh on 21/1/2016 and Rs.41,60,000/-, on 26/2/2016, were made.

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

11. In exercise of the powers conferred under sub-Sections 1 and 2 of Section 36 of the Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993 (25 of 1993), the Central Government have framed Debts Recovery Tribunal (Procedure) Rules, 1993. Sub-Clause 9 of Rule 12 of the said Rules reads thus:-

"The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross-examination, and in the event of the witness not appearing for cross-examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted."

12. Reliance was placed on the following judgments, by the learned counsel appearing for the petitioner.

(i). M/s. Sri Guru Raghavendra Sahakara Bank Niyamitha, rep. By CEO Sri Vasudev Maiya Vs. The Bank of India and another (W.P.No.55231 of 2013) (GM-DRT)
(ii). Smt.Pushpa A.Mulimani Vs. M/s. Sundicate Bank, Haveri District (W.P.No.19711 of 2014)
(iii). Maharashtra State Financial Corporation Vs. Debts Recovery Appellate Tribunal, Mumbai & Ors
(iv). V.K.Modi Vs. IFCI Ltd {W.P.(C) 7877 of 2015}.

13. In the case on hand, petitioner claims to have made payment on various dates. Vide letter, dated 4/3/2016, Bank has acknowledged payment of Rs.50 lakhs. If there was any payment made, remittance would be acknowledged in the counter foil or reflected in the statement of accounts.

14. As rightly observed by the Tribunal in I.A.No.754 of 2017 in O.A.No.519 of 2015, dated 21/2/2018, Bank along with original application has filed statement of accounts. As rightly observed by the Tribunal, if the payments made by the petitioner/defendant before filing of O.A, are not reflected, the petitioner can always produce payment receipt in the said O.A, to prove his claim. Order in I.A.No.754 of 2014 in O.A.No.519 of 2015 has not been challenged. As regards payment of Rs.50 lakhs, on 24/2/2016, Bank has acknowledged the same, vide letter, dated 4/3/2016. As rightly observed, petitioner can file proof of payment and in the absence of above, cross-examination is unnecessary. Decisions relied on are not applicable to the facts of this case.

15. In the light of the above discussion and decisions, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.
To

The Registrar
Debts Recovery Tribunal - II
Spencer Plaza, Annex Building
Anna Salai
Chennai 600 006.

+ 1 cc to Mr.T.R. Senthil Kumar, Advocate Sr.31600

W.P.No.10944 of 2018

(CS-DR)
EU(23/07/2018)