IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.43199 of 2018

28-11-2018

Between:

M/s. Virat Crane Bottling Ltd., D.No.25-2-1,
Opp: Mastan Darga, G.T. Road, Guntur
and 2 others

… Petitioners

And

Industrial Development Bank of India,
5-9-89/1 & 2, Chappel Road, P.B.No.370,
Hyderabad and another

… Respondents

! Counsel for the Petitioner : Mr. G.K. Peshpande

^ Counsel for Respondents : None Appeared

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AND
HON'BLE MS. JUSTICE J. UMA DEVI

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ORDER: *(per V. Ramasubramanian,J)*

Challenging an order of the Debts Recovery Tribunal-I, Hyderabad, rejecting the application of the petitioner seeking permission to cross-examine the witnesses examined on the side of the Bank, the borrower has come up with the above writ petition.

2. Heard Mr. G.K. Deshpande, learned counsel for the petitioners.

3. The respondent-bank filed an application way back in the year 2002, in O.A.No.13 of 2003, seeking to issue of a Certificate of Recovery for an amount of Rs.8,23,00,038/-. The loan, out of which the application arose, was sanctioned way back in the year 1999. It is stated that though the application was filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) way back in 2002, which got numbered in the year 2003, the application was dismissed for non-prosecution. But, it was restored six years later.

4. Be that as it may, the application for the issue of a Recovery Certificate is pending before the Debts Recovery Tribunal for the past more than 15 years, defeating the very object of creation of such Tribunals. In fact, if a suit had been filed before the ordinary Civil Court, it could have been seen the light of the day much earlier.

5. Whatever it be, the application was eventually taken up for hearing and the bank seems to have examined two witnesses on their side. Thereafter, the petitioner took out an application in I.A.No.3157 of 2018 seeking permission to cross-examine the witnesses. The said application was dismissed by the Tribunal forcing the petitioner to come up with the above writ petition.

6. The main contention of the learned counsel for the petitioner is that without assigning any valid reason for rejection of the request, the Tribunal has dismissed the prayer for cross-examination of the bank's witnesses. According to the learned counsel, very valuable rights of the petitioner will get defeated if the cross-examination is not permitted. It is the further contention of the learned counsel for the petitioner that the petitioner has taken an important defence in the written statement and that therefore, cross-examination of the witnesses cannot be denied. If denied, a gross injustice will be caused to the petitioner.

7. We have carefully considered the above submissions.

8. At the outset it should be pointed out that the proceedings before the Debts Recovery Tribunal are actually summary in nature. Sub-section (24) of Section 19 of the RDDB Act, 1993 mandates that every application filed under Section 19 (1) shall be dealt with as expeditiously as possible and every effort should be made to complete the proceedings in two hearings and to dispose of the application finally within 180 days. This mandate of law has actually been turned into an illusion.

9. It is true that under sub-section (2) of Section 22, the Tribunal is vested with the same powers as that of a Civil Court under the Code of Civil Procedure, 1908, in respect of certain things such as summoning and enforcing the attendance of any person and examining him on oath. But sub-section (1) of Section 22 makes it clear that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice. The Tribunal is also conferred with the power to regulate its own procedure. Keeping this in mind, we shall now come to the Rules. Sub-rule (9) of Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993, makes it clear that the Tribunal may, at any time, for sufficient reason, order that any particular fact shall be proved by affidavit. The Tribunal can also direct that the affidavit of a witness shall be read at the hearing, on such conditions as the Tribunal may think fit and proper.

10. The proviso to sub-rule (9) of Rule 12, empowers the Tribunal to permit cross-examination of witnesses. Therefore, it is necessary to extract sub-rule (9) together with the proviso thereunder, to Rule 12. It reads as follows:

> *"(9) 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."

11. It is seen from the proviso to Rule 12 (9) that two conditions are to be satisfied for the Tribunal to pass an order permitting a person to cross-examine a witness. The first is that the Tribunal should be convinced that it is necessary to grant such permission. The second is that the Tribunal should record reasons for its order.

12. In other words, the Tribunal is obliged under the proviso to Rule 12 (9) to record reasons for permitting a person to cross-examine a witness. It is not the other way about. The Tribunal should also be satisfied that the case requires such permission to be granted.

13. Keeping these parameters in mind let us have a look at the written statement filed by the petitioner in the Original Application. Paragraph 9 of the written statement filed by the petitioner contains the main substance of the defence taken by the petitioner to the application. Therefore, paragraph 7 of the written statement is reproduced as follows:

"7. With regard to the defaults committed by the defendants are denied and it may be put to strict proof of the same. It is submitted on several occasions, the defendant herein had approached the Applicant Bank, requesting for the "release" of balance amount of Rs.5 crores as the Applicant Bank sanctioned originally 10 crores, but released only an amount of Rs.5 crores to the Defendant No.1, that too after putting hectic efforts and follows made by the Defendant herein, even after they executed all the relevant documents as desired and directed by the Applicant Bank for an amount of Rs.10 crores. For this, the Applicant did not give any reply or initiate agony progress and the issue is pending with

them since long. Without giving any amicable solution, the Applicant Bank approached this Hon'ble Tribunal and by this, the RELIEF sought by the Applicant is not maintainable in the eye of law. However, the Defendant No.1 reserves their right to claim, damages against the Applicant Bank, as the Defendant No.1 could not run its unit, due to non-release of total amounts by the Applicant Bank, though they have sanctioned in favour of the Defendant No.1. Because, the Defendant No.1 has invested lot of amounts on their own, with a fond hope that the Applicant Bank would release the balance amount of Rs.5 crores, as sanctioned by virtue of the loan Agreement dt. 25.02.1999."

14. From paragraph 7 of the written statement extracted above, it is clear (i) that sanction of the loan is not disputed; (ii) that the disbursement of the loan is not disputed; and (iii) that non-payment is not disputed. Virtually, the claim of the petitioner is that only a part of the loan was disbursed and that due to non-disbursement of the remaining part of the loan, the petitioner suffered losses giving rise to a claim for damages.

15. In the light of such a stand taken by the petitioner, it is only a case of counter claim. Therefore, it is for the petitioner to establish the pleas taken by him through his own witnesses. The question of cross-examination in such cases does not arise.

16. As pointed out earlier, the Original Application was filed in the year 2002 for recovery of more than Rs.8.00 crores, and a period of more than 15 years have passed. Therefore, in the light of the factual background, we do not think that the Tribunal committed an error, in violation of the Rule 12 (9) of the Rules, 1993.

17. In so far as the defence taken in paragraphs 8 of the written statement is concerned, they revolve around the calculation of interest. It is a matter of record and no amount of oral evidence

can dislodge a claim for interest, to be calculated on the basis of the contract. The other defence taken in paragraph 13 is that the petitioner has time up to January 2006 to repay the amount. This is also something which does not turn on any oral evidence. Therefore, we find no illegality or irregularity in the order of the Tribunal.

Hence, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 28-11-2018

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