

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (STAMP) NO. 21125 OF 2019

M/s. Marine Products and Ors.

.. Petitioners

Vs.

Central Bank of India

.. Respondent

Mr. Jose George for the Petitioners.

Mr. Meghnath Navlani for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 13th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the Petitioners.
2. This is the second round when Appeal No. 199 of 2005 was decided by the learned Debt Recovery Appellate Tribunal. The earlier order dated 13.11.2014 disposing of the Appeal was set aside by a Division Bench of this Court in Writ Petition No. 1192 of 2015 on 20.09.2016 requiring the learned DRAT to decide three issues raised by the Petitioners. The impugned order dated 11.06.2019 has decided the said three issues.
3. The first issue decided was the grievance before the learned DRAT that notwithstanding a letter dated 16.11.1981 addressed by the Chief Manager of the Bank to the Petitioner credit in sum of ₹ 2.5 lakhs was not made in the account and the result thereof was an inflation of the claim not only on account of ₹ 2.5 lakhs shown as outstanding but even interest thereon.

4. The learned DRAT has dealt with this submission by noting that in the written statement filed by the Appellant no such plea was urged and secondly no letter dated 16.11.1981 as sought to be argued was produced before the learned DRT. We have repeatedly called upon learned Counsel for the Petitioners to show from the pleadings in the written statement filed a plea taken that the letter dated 16.11.1981 addressed by the Chief Manager of the Bank acknowledging credit in the sum of ₹ 2.5 lakhs has not been made in the account. No such plea has been shown.

5. At this stage, learned Counsel for the Petitioners changes track. The learned Counsel argues that an application was filed in the Appeal which is Exhibit U in the Appeal and the prayer made in the said application was to permit the Petitioners to lead additional evidence and prove the said letter. The real grievance surfaces now while dictating the order. The grievance is that after dismissing the Appeal it has been recorded that all pending applications are dismissed as infructuous.

6. Indeed, we find from a perusal of the impugned order that this is so.

7. Now, law guides us that if at the appellate stage an application is filed praying that the Appellant be permitted to lead additional evidence, the said application has to be decided guided by the provisions of Order XLI Rule 27 of the Code of Civil Procedure.

8. After the application is decided the Appeal has to be decided.

9. On this aspect of the matter we find a procedural error committed by the learned DRAT.

10. The second contention was to credit in sum of ₹ 5,000/- has not been given in the account which has been dealt with by the learned DRAT in paragraph 6 of the impugned order. The impugned order shows that credit of said sum was given and duly reflected in the revised Statement of Account but the grievance is that if the said amount was credited at the right time, the outstanding balance would have been reduced and this would have impacted the interest debited to the account. Unfortunately, the learned DRAT has not adverted to this aspect of the matter i.e. revoking the interest due after crediting ₹ 5000/-.

11. The third contention pertains to a credit in sum of ₹ 15382/- not being given. This dispute centers on authorization or lack thereof to receive the said sum from the National Insurance Company.

12. Since we are remanding the matter once again to the learned DRAT, we would require the learned DRAT to decide this issue as well once again. The reason for the remand that without deciding the Petitioners' application to lead additional evidence, the Appeal has been disposed of and the application seeking to lead additional evidence has been disposed of as infructuous.

13. This is a procedural infirmity in the impugned order. Secondly as noted above, the impact of crediting ₹ 5,000/- in the account in the revised statement but not recalculating the overdue interest has not been considered by the Tribunal.

14. The Petition is disposed of setting aside the impugned order dated 11.06.2019. We restore the Appeal No. 199 of 2005 for the second time with direction to the learned DRAT to first decide the Appellant's

application to lead additional evidence as also other Misc. Applications and thereafter decide the Appeal afresh.

15. No costs.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
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