

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.27258 of 2019

Nand Kishore Sonthalla

.. Petitioner

-vs-

1.M/s.Deutsche Bank AG,
No.114 M.G. Road,
Nungambakkam,
Chennai 600 034

Presently having office at:
A-4A Western Tower,
Sunny Side, Ground Floor,
Shafi Mohammed Road,
Thousand Lights,
Chennai-600 006
rep. by its Authorised Representative S.Thajudeen.

2.M/s.Karismaa MEP Services Pvt Ltd.,
rep. by its Director Manoj Kantibhai Sheth,
No.14, Murrays Gate Road,
Alwarpet, Chennai - 600 018.

Also at:
340 I, South Main Road,
Kapaleeswarar Nagar,
Chennai - 600 115.

3.Manoj Kantibhai Sheth,
Director of M/s.Karismaa MEP Services Ltd.,
No.14, Murrays Gate Road,
Alwarpet, Chennai - 600 018.

Also at:
340 I, South Main Road,
Kapaleeswarar Nagar,
Chennai - 600 115.

No.23, Flat 1-C, 1st Main Road,
Shastri Nagar, Adyar,
Chennai - 600 020.

4.Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the fourth respondent comprised in its order dated 26.8.2019 passed in R.A.No.130 of 2018, confirming the order dated 31.8.2017 passed by the Debts Recovery Tribunal-I, Chennai in O.A.No.310 of 2014 and quash the same as contrary to law and unsustainable and consequently, direct the fourth respondent to forthwith refund/return the sum of Rs.10,00,000/- (Rupees ten lakhs only) deposited by the petitioner pursuant to the proceedings of the fourth respondent in AIR No.110/2018 dated 27.3.2018.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.T.K.M.Sai Krishnan
for M/s.Sai Krishnan
Associates
for respondent No.1

No Appearance
for respondent Nos.2 and 3

R4 - Tribunal

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioner, Mr.Nand Kishore Sonthalla, son of Govind Prasad, residing at New No.F-66, Old F-42, Shyam Kun, Anna Nagar (East), Chennai - 600 102, has filed this writ petition against the order dated 31.8.2017 passed by the learned Debts Recovery

Tribunal-I, Chennai in O.A.No.310 of 2014 filed by the first respondent (M/s.Deutsche Bank AG v. Karismaa MEP Services Private Limited and others) and also the order passed by the learned Debt Recovery Appellate Tribunal dated 26.8.2019 in R.A.No.130 of 2018 filed by the petitioner (Nand Kishore Sonthalla v. M/s.Deutsche Bank AG and others).

2. The relevant portion of the orders passed by both the learned Tribunals are quoted below for ready reference:

"(i) O.A.No.310 of 2014, dated 31.8.2017 on the file of the Debts Recovery Tribunal-I, Chennai.

6.5 Insofar as the plea of the defendants that the second defendant has signed in his personal capacity, as such, he is not liable for the claim of the 1st defendant, I have carefully perused the documents. The first defendant is a company represented by its Directors, viz. The 2nd and 3rd defendants herein. The applicant bank filed Ex.A15, Board Resolution of the first defendant company. The said Board Resolution is not disputed by the defendants. Both the directors of the first defendant company viz., defendants 2 and 3 have signed the same, wherein it was resolved to negotiate, finalise, sign, execute and deliver all deeds, documents, etc. in connection with the business instalment loan from the applicant bank. Admittedly, the defendants sought and obtained business instalment loan from the applicant bank and later defaulted. Therefore, Ex.A15, Board Resolution totally silences the argument of the defendants that the second defendant has signed in his personal capacity and as such he is not liable for the OA claim. Barring the said plea, no the plea worth has been raised.

6.6 Therefore, the Tribunal having carefully considered the Proof Affidavit and Ex.A1 to A15 besides the material placed before it, it is fully convinced that the applicant bank has established its claim against the defendants and therefore, it is entitled for a recovery certificate. Point No.1 is answered accordingly.

7. Whether the applicant bank is entitled for pendent lite and future interest, if so, at what rate?

Insofar as the interest is concerned, the defendants did not dispute the same in their common

written statement. That apart, the Tribunal di not find any reason, whatsoever, to interfere with the contractual rate of interest and future interest. Therefore, the interference of the Tribunal insofar as the rate of interest is concerned is uncalled for. Accordingly, it is held that the applicant bank is entitled for the contractual rate of interest charged in the OA. Point No.2 is answered accordingly.

8. In the result, application is allowed as under:

(a) The applicant bank is entitled to recover a sum of Rs.20,11,095.17p as on 14.11.2014 together with future interest @ 19% p.a. from 15.11.2014 till realisation in full from the defendants jointly and severally.

(b) It is further ordered that in case of default of payment by the defendants, the Applicant Bank is at liberty to sell the schedule mentioned property and appropriate the sale proceeds towards the decretal dues,

(c) If the sale proceeds are not found sufficient to cover the amount due and payable to the Applicant Bank, defendants 2 and 3 are personally liable for all such amounts due.

(d) It is further ordered that any amount remitted or realized if any, during the course of the proceedings, shall be given due credit to the loan account of the defendants.

(e) The applicant bank is entitled for costs of this application.

9. The applicant bank is directed to file costs memo within two weeks of the receipt of this order.

10. Issue recovery certificate in favour of the applicant bank in terms of this final order.

11. Communicate a copy of this order to the parties concerned in terms of Rule 16 read with Rule 2(c) of DRT (Procedure) Rules, 1993."

(ii) R.A.No.130 of 2018, dated 26.8.2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

The record further reveals that appellant had left the company without any information and knowledge of the bank. According to agreement of sanction of loan, it was the duty of the company to intimate the bank, before change of Directors who was having major portion (i.e.) 48% share. The company was duty bound to intimate the bank regarding new Director, who was having only 28% share.

In such a situation, it can safely be presumed and inferred that in fact, real dispute is between the Directors and Company inter-se, for bank or against bank, interest of the company is the same whether bank is represented by present Director or by earlier Director.

In such a situation order of Presiding Officer though is well discussed and reasonable order. However, in view of peculiar facts and circumstances of the case, impugned order deserve to be modified and is liable to the extent that bank will ensure the recovery of dues from the borrower company and its present Director at first instance. In case bank remains unsuccessful in recovery, only then bank will proceed against the appellant.

The appellant had made a pre-deposit of Rs.9 lakhs. The bank is directed to receive it and appropriate the same against loan account.

With the above observations, appeal is disposed of."

3. The learned counsel for the petitioner, Mr.R.Parthasarathy, has urged before us that the petitioner being Ex-Director of the second respondent borrower viz., M/s.Karismaa MEP Service Private Limited, could not be held personally liable for the debt determined in favour of the first respondent - M/s.Deutsche Bank AG, and, therefore, the learned Debts Recovery Tribunal-I, Chennai, in its order dated 31.8.2017 passed in O.A.No.310 of 2014, has wrongly held that: (i) the defendants, including the present petitioner, are jointly and severally liable to pay the debt amount in question; and (ii) if the sale proceeds are not sufficient to recover the amount payable to the applicant bank (first respondent herein), defendants 2 and 3 are personally liable for all such amounts due.

4. The learned counsel for the petitioner submitted that the petitioner, being Director of the second respondent Company at the relevant point of time, later on resigned and, therefore,

could not be held personally liable and there was no personal guarantee by the petitioner/Director in favour of the first respondent Bank at any point of time and merely because the documents of loan were signed by the petitioner as Director at the relevant point of time, he cannot be held liable to the first respondent Bank. The borrower, being a juristic person, was liable only to the extent the assets which are mortgaged with the first respondent Bank. He further submitted that similarly the learned Debt Recovery Appellate Tribunal has confirmed the said order passed by the learned Debts Recovery Tribunal-I saying that it is well discussed and reasonable order and modified the said order only to the extent that recovery shall be first made from the borrower Company and its present Director and in case the bank remains unsuccessful in the recovery, only then the bank will proceed against the petitioner herein.

5. There is no dispute from the side of the first respondent Bank that no separate personal guarantee was executed by the petitioner in favour of the first respondent Bank to enforce the recovery of debt from the petitioner. However, the learned counsel for the first respondent Bank, Mr.T.K.M.Sai Krishnan, sought to raise and argue with regard to the need to lift the corporate veil in the present case.

6. We are not inclined to accept the later submission of the learned counsel for the first respondent Bank for lifting of corporate veil. In the first instance, it is not a usual thing to be done. It is only when fraud is established that the lifting of such corporate veil becomes necessary after recording proper reasons and not otherwise. Since there is no such case established, we are not going into the merits of the case, we are not inclined to entertain the said plea of the first respondent Bank at this stage.

7. Coming to the first and foremost argument raised before us by the learned counsel for the petitioner, we are at little dismay at the manner in which both the Tribunals have passed their orders in the present case, completely ignoring the existence of a corporate borrower and the independent existence of its Directors.

8. It is well settled that a Limited Company incorporated under the provisions of the Companies Act, 1956 has a separate and independent character and it is a juristic person in its own capacity. The Directors are entrusted with the responsibility of looking after the affairs of the Company as entrusted to them by the shareholders by adopting due procedure prescribed in the Articles of Association. Unless there is a separate contract, the Directors cannot be held personally liable, as has

been done in the present case. We do not find any merit in the arguments advanced by the learned counsel for the first respondent Bank in this regard and, therefore, we are of the opinion that the learned Tribunals have failed to appreciate such legal distinction in the facts before them.

10. While the learned Debts Recovery Tribunal-I, Chennai, in paragraph 6.5, quoted above, referred to the Board Resolution Ex.A15 of the Company and observed that the said Board Resolution was signed by the second and third defendants also, it fell in error, while concluding that the said Board Resolution Ex.A15 totally silences the argument of the defendants that the second defendant had not signed in his personal capacity and as such he is not liable for the OA claim. There was neither any demand, nor documents of the Directors' personal liability before us. The learned Debts Recovery Tribunal-I, Chennai, at the conclusion in paragraph 8 of the impugned order, ex facie, erred while allowing the application held that the defendants are jointly and severally liable.

11. The difference between Partnership law and Corporate law has been given a complete go-by while making such observations in the said order. The modification in the order of the learned Debt Recovery Appellate Tribunal made by the Appellate Tribunal that in case the first respondent Bank remains unsuccessful in recovery from the borrower Company and its present Directors, then the first respondent Bank can recover from the petitioner herein is also incorrect in our understanding of legal position.

12. The Tribunals constituted under special enactments like Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act and Insolvency and Bankruptcy Code, etc., which are special measures enacted by the Parliament to provide speedy mechanism to the Banks and Financial Institutions for recovery of their defaulted loans, are expected to be manned by persons with specialized knowledge of Company and Banking laws and they are also expected atleast not to lose sight of the basic tenets of such Corporate and Banking laws. They are the fact finding bodies, which can act only on the basis of the relevant evidences and materials on record. Therefore, while giving their findings, they must also look into the relevant documents, their validity, etc., and then assign reasons for fixing such liability on the person concerned. The sweeping and bald averments or reasons in the impugned orders of the Tribunals causes not only illegality, but frustrates the very purpose of a judicial remedy provided to the aggrieved parties.

13. Therefore, without entering into the merits of the case placed before us, we are only setting aside the orders of both the learned Tribunals and remit the matter back to the learned Debts Recovery Tribunal-I, Chennai, for deciding the Original Application viz., O.A.No.310 of 2014 of the first respondent Bank afresh in accordance with law.

14. The writ petition is allowed in terms aforesaid. No costs. Consequently, W.M.P.Nos.26673 and 26681 of 2019 are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bbr

To:

- 1.The Authorised Representative,
M/s.Deutsche Bank AG,
No.114 M.G. Road,
Nungambakkam,
Chennai 600 034.
Presently having office at:
A-4A Western Tower,
Sunny Side, Ground Floor,
Shafi Mohammed Road,
Thousand Lights, Chennai-600 006.
- 2.The Debt Recovery Appellate Tribunal,
Chennai.
- 3.The Debts Recovery Tribunal-I,
Chennai.

W.P.No.27258 of 2019

CP(CO)
GMY(03/12/2019)