

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.10.2021

DATE OF DECISION : 21.06.2022

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NO.536 OF 2015

L.Jayakumar

... Appellant

.Vs.

1. Central Bank of India,
Rep. By its General Manager,
48/49, Montieth Road,
Egmore, Chennai - 8.

2. Central Bank of India,
Asset Recovery Cell,
Rep. By its Assistant General Manager,
Regional Office,
48/49, Montieth Road,
Egmore, Chennai - 8.

... Respondents

PRAYER:-

Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 20.10.2014 passed in W.P.No.17177 of 2011 by the learned Single Judge of this Court.

PRAYER IN W.P.NO.17177 OF 2011:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents herein to pay the arrears of legal fees and the remuneration of the petitioner to a sum of Rs.26,42,615/- with interest.

For Appellant : Mr.T.R.Rajaraman
Standing Counsel
For Mr.V.Karthikeyan

For Respondents : Mr.T.M.Hariharan

JUDGMENT

T.RAJA, J.

Unsuccessful appellant has brought this appeal challenging the correctness of the impugned order passed by the learned Single Judge in W.P.No.17177 of 2011, dated 20.10.2014.

2. It is the claim of the appellant before the learned Single Judge that the respondent bank refused to pay the arrears of legal fees and remuneration to a sum of Rs.26,42,615/- along with interest. Therefore, he filed W.P.No.17177 of 2011 seeking for issuance of a writ of mandamus to direct the respondent bank to pay the above said payment. Learned Single Judge refused to accept the said prayer of the writ petitioner/appellant. Aggrieved by the same, the appellant/writ petitioner has filed the present writ appeal.

3. Learned Senior counsel for the appellant submitted that the appellant is an Advocate and Senior Member in the Bar having practice in the Madras High Court for over 36 years. He was in the panel of Advocates nearly 36 years in most of the nationalized banks and corporate including Central Government undertaking Companies. The appellant and his brother were partners in a registered legal firm M/s.L.Jayakumar & Associates, in which, the appellant was having 80% share till 2008. The said firm is one among the panel of Advocates for various nationalized Banks, Central Government and State Government Undertaking and the appellant was to appear at Delhi, Mumbai, Bangalore, Hyderabad and Kerala.

4. Whiles, in the year 2001, the appellant was requested to assist a Nationalized Bank (Canara Bank) to collect confidential particulars of a chronic defaulter in London while he was in London. In the middle of 2003, the respondent bank approached the appellant and informed that M/s.S&S Power Switch Gear Limited was their customer, however, since the said Concern became a Sick Unit, the respondent bank was to find a way to recover a sum of Rs.472.24 lakhs in the recovery proceeding pending on the file of DRT, Madras, in O.A.No.223/03 (New No.526/07). The appellant, after studying various factors, opined that the said Company might have created an artificial loss with an intention to prevent the creditors from realising their investments and loan, therefore, unless all the consortium of all the banks, who have advanced loan, make a joint effort expeditiously before the alleged winding up proceeding, it would

be difficult to recover the said loan. Thereafter, based on the advise of the appellant, the respondent bank decided to initiate necessary legal action, for which, the respondent bank offered payment of 5% as fees to the appellant in the event of succeeding in his efforts to recover atleast 25% of the book debt. Thereafter, the appellant had explored all the possibilities to recover the loan from the said Company with a condition that the respondent bank should cooperate with his efforts to proceed against all the Directors of the said Company both in the Insolvency Court and Criminal Court under Sections 405, 415, 418, 463, 468 read with 34 IPC. Agreeing with the said suggestions made by the appellant, the respondent bank by their letter dated 30.07.2004 offered Rs.60,000/- as fees plus 5% from and out of the recovery made either through the Court or through compromise, provided the recovery exceeds 25% of the amount due in the account as per prescribed norms of the Bank. Although the appellant initially demanded higher payment of fees and incentive, after holding discussion with the officials of the Bank, he had agreed to take efforts to recover the loan amount by initiating insolvency proceedings and criminal proceedings against the Directors of the Company. The Respondent bank had also agreed to pay separate fees for insolvency proceeding and other proceedings filed against the said Company both in the High Court and DRT.

5. In the meantime, the said M/s.S.S.Power Switch Gear Limited filed an application under Section 5 of the SICK Industrial Companies (Special Provision) Act, 1985, seeking to stay all the proceedings pending in the DRT. Subsequently, the Board for Industrial and Financial Reconstruction (BIFR) issued a notice dated 08.11.2005 for winding up of the said Company and the said notice was forwarded to the High Court under Section 20 (1) of the Sick Industrial Companies (Special Provision) Act, 1985, suggesting for winding up of "S&S Power Switch Gear Limited" with immediate effect. Thereafter, the said Company preferred an appeal Nos.140/03 and 173/05 before AAIFR (Appellate Authority for Industrial and Financial Reconstruction), New Delhi, and the said Appellate Authority, by order dated 30.03.2006, while granting interim stay, gave an opportunity to the said Company to settle the claims of all the secured and unsecured creditors. Pending the proceeding before the AAIFR, New Delhi, the said M/s.S&S Power Switch Gear Limited preferred an appeal before the High Court (Company Court) seeking for approval of their Scheme of agreement under Section 391 of Companies Act, 1956, and the High Court, by order dated 26.04.2006, ordered to convene a meeting of the secured creditors for the purpose of approving their scheme of arrangement under the Chairmanship of the Hon'ble Mr.Justice Govindarajan, former Judge of Madras High Court. Subsequently,

in the meeting of the secured creditors held on 31.05.2006, it was resolved by all the creditors to accept 20% of the Principal outstanding towards full and final settlement of their outstanding debts. Based on the report submitted by the Hon'ble Mr. Justice Govindarajan, the High Court, by order dated 19.08.2006, approved the scheme of arrangement with an observation that the scheme will come into force from 01.04.2006 and binding on all the creditors. After the orders passed by the High Court, the said Company paid 20% of the Principal Outstanding, namely, Rs.73,62,728/-. The respondent bank, by their letter dated 26.10.2006, agreed to sanction Rs.30,000/- towards fees to the appellant in the proposed application in C.P.No.119/06. The appellant also sent bills claiming 5% incentives based on the letter dated 30.07.2004 of the respondent bank read with the letter dated 25.08.2005 of the appellant.

6. By narrating the aforesaid facts, it is contended by the learned Senior counsel for the appellant that it was a marathon fight for about 6 to 7 years for securing the benefit of the respondent bank, but, unfortunately, the respondent bank neglected to pay the incentives in terms of their offer made vide letter dated 30.07.2004. Finally, the respondent bank by their letter dated 13.07.2009 informed the appellant that the incentive of 5% cannot be accepted as the recovery made through compromise settlement has not exceeded 25% of the amount due in the account. When there was an agreement between the appellant and the respondent bank for payment of 5% incentive to the appellant, which works out to Rs.12,65,000/-, it is not open to the respondent bank to escape from their commitment for making such payment.

7. Continuing further, it is submitted that now the respondent bank is liable to pay 5% incentive as per their letter dated 30.07.2004, which works out to Rs.12,65,000/-, with accrued interest of 20% on the incentives from March, 2009 to June, 2011, which works out to Rs.5,48,167/-. This apart, they will have to settle following payments:-

Pending bills	=	Rs.2,57,874/-
(+) accrued interest of 20% on pending bills	=	Rs.51,574/-
Litigation expenses	=	Rs.20000/-
Mental agony	=	Rs.5,00,000/-.

With these submissions, learned Senior counsel prayed for allowing the writ appeal with a direction to the respondent bank to pay the aforesaid sum to the appellant.

8. Per contra, learned counsel for the respondent bank, reiterating the stand taken in their counter affidavit filed before the learned Single Judge, submitted that the respondent bank had never agreed for payment of 5% incentive on any amount recovered. As per the letter dated 30.07.2004 of the respondent bank, it is clear that fee of Rs.60,000/- would be paid in three installments; and an incentive of 5% would be paid from and out of the recovery made provided recovery exceeds 25% of the amount due in the account. Thus, it is clear that the Bank did not accept the claim of the appellant seeking payment of such incentive on the recovery made, whereas it is on the total claim. As a matter of fact, the Bank cannot accept any such claim against the recovery policy of the Bank. It is further argued that the Central Office of the Bank, vide letter dated 30.03.2009, communicated the sanction of OTS at Rs.2,53,00,000/-. But, the contractual dues to the Bank on the said date was Rs.20,81,30,369/-, hence, the amount recovered was far below 25% of the dues. Therefore, the demand made by the appellant for payment of 5% incentives was rightly refused by the Bank, because, the Bank has never agreed for payment of 5% incentive from and out of the recovery made. With these submissions, he has prayed for dismissal of the writ appeal.

9. Heard the learned counsel appearing on either side and perused the materials available before this Court.

10. It is not in dispute that the services of the appellant were engaged for initiation of insolvency proceedings against the Directors/Guarantors of M/s.S&S.Power Switch Gear Limited, a Sick Unit. As per the letter dated 30.07.2004 of the respondent bank, the engagement of the appellant was subject to the condition of payment of Rs.60,000/- towards his fees to be paid in three installments, besides incentive of 5% from and out of the recovery made provided recovery exceeds 25% of the amount due in the account. The Central Office of the Bank, by letter dated 30.03.2009, communicated sanction of OTS (One Time Settlement) amount of Rs.2,53,00,000/- to the Zonal Manager, Zonal Office, Central Bank of India, Chennai. It is averred in the counter affidavit that the contractual dues to be paid by the M/s.S.S.Power Switchgear Limited to the respondent bank as on 30.03.2009 were Rs.20,81,30,369/-. Whiles, as per the agreed terms of letter dated 30.07.2004, an incentive of 5% has to be paid from and out of the recovery made provided if the

recovery exceeds 25% of the amount due in the account. But, in the present case, the amount so recovered represents only 12% of the total dues i.e. Rs.20,81,30,369/- as averred in the counter affidavit without any supporting document and if such sum is taken into consideration, then the amount so recovered is far below 25% of the contractual dues as offered in the letter dated 30.07.2004 of the respondent bank.

11. Secondly, it is a contract between the private parties, namely, the appellant and the respondent bank. As per the letter dated 30.07.2004 of the respondent bank, the appellant was engaged for initiation of insolvency proceedings against Directors/Guarantors of M/s.S&S.Power Switch Gear Limited, a Sick Unit, but, the engagement was subject to the payment of Rs.60,000/- towards his fees and an incentive of 5% from and out of the recovery made provided recovery exceeds 25% of the amount due in the account. Whether such payment has to be payable to the appellant or not on the basis of contract entered between them is a disputed question of fact. However, the Bank claims that the amount so recovered represents only 12% of the total dues which is far below 25% of the contractual dues, but, it was disputed by the appellant stating that no such document has been produced to substantiate the total contractual dues. Thus, in our considered view, they should have gone before the Civil Court to adjudicate upon the disputed question of fact, as it is settled law that the disputed questions of fact cannot be determined in a writ petition. Therefore, since the issue in hand is being contract in nature, the same has to be decided only by the Civil Court, not by way of filing writ petition under Article 226 of the Constitution of India as rightly decided by the learned Single Judge.

12. In fine, for the reasons stated above, we do not find any error or illegality in the impugned order passed by the learned Single Judge and accordingly, the writ appeal stands dismissed giving liberty to the appellant to approach the Civil Court for appropriate relief. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager,
Central Bank of India,
48/49, Montieth Road,
Egmore, Chennai - 8.
2. The Assistant General Manager,
Central Bank of India,
Asset Recovery Cell,
Regional Office,
48/49, Montieth Road,
Egmore, Chennai - 8.

+1cc to Mr.V.Karthikeyan, Advocate, S.R.No.37487
+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.37978

W.A.NO.536 OF 2015

EV(CO)
PBS/15/07/2022