

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 01.08.2023

+ **W.P.(C) 5995/2021 and CM APPL. 18952/2021**

HARINDER DHINGRA

..... Petitioner

versus

INDIAN OVERSEAS BANK & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Neha Kapoor and Mr. Kaushal Mehta,
Advocates

For the Respondents: Mr. Mayank Bansal, Advocate for R-1.
Mr. Sanjeev Bhandari and Mr. Kunal Mittal,
Advocates for R-4.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****AMIT MAHAJAN, J**

1. The present writ petition has been filed challenging the order dated 07.05.2021, passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**') in Misc. Appeal No. 343/2019 (hereafter referred to as '**the impugned order**').



2. The learned DRAT, by its impugned order, had allowed the appeal filed by Respondent No. 4 (H.N. Singh) and has set aside the order dated 28.06.2019, passed by the learned Debts Recovery Tribunal (hereafter '**DRT**').

3. The learned DRT, by its order dated 28.06.2019, had dismissed the application, being I.A. No. 777/2019, whereby H.N. Singh was seeking impleadment of the petitioner herein as a defendant in the suit, being O.A. No. 97/2005, filed by Respondent No. 1, Bank, for recovery of outstanding dues of ₹2,61,46,022/- from Respondent No. 2, M/s Elegance Fabrics Pvt. Ltd. (hereafter '**M/s Elegance**') and its guarantors, being, Poonam Dhingra, H.N. Singh and Prashant Dhingra (Respondent Nos. 3, 4 and 5 respectively) and others.

4. The learned DRAT, by the impugned order, has directed the impleadment of the petitioner as a party defendant.

Brief Facts

5. The Respondent No. 1, Bank, had extended financial facilities to M/s Elegance in the year 2003 and, Prashant Dhingra and Poonam Dhingra, being the Directors of M/s Elegance, had also given their personal guarantees for repayment of the dues. The facilities included banking credit facility and foreign bills discounting.

6. Respondent Nos. 6 to 8 herein, were represented as buyers of the garments from M/s Elegance. The bills discounted, however, were not



cleared and no repayment was made to the Bank which led to filing of the suit, being O.A. No. 97/2005 before the learned DRT.

7. I.A. Nos. 630/2019 and 631/2019 under Section 19(25), read with Section 22 of the Recovery of Debts and Bankruptcy Act, 1993, were filed by the petitioner in O.A. No. 97/2005, seeking his impleadment and also release of property bearing no. D-4A/7, DLF-I, Gurugram, Haryana. It was claimed that the said property was purchased by the petitioner along with his wife, Poonam Dhingra, through a registered sale deed dated 30.04.2001. The property was attached by the orders passed by learned DRT in O.A. 97/2005. It was claimed that the petitioner is neither the borrower nor a guarantor or mortgager and the property ought not to be attached.

8. Another application, being I.A. No. 777/2019 Section 19(25), read with Section 22 of the Recovery of Debts and Bankruptcy Act, 1993, was filed by H.N. Singh, seeking directions for impleadment of the petitioner as a party defendant and also for directions to the petitioner to deposit a sum of ₹2.53 crores with the Bank. It was alleged that, pursuant to the bill discounting, an amount of ₹2.53 crores, given by Respondent Nos. 6 to 8, was to be credited in the Bank's account.

9. It was claimed that the petitioner, along with others committed fraud and opened another account of the company, where H.N. Singh, despite being the Director, was not shown as signatory. The amount which was to go into Bank's credit on account of bills discounting was deposited in the said account and was siphoned off into the account of



another firm, being Golden Harvest, of which the petitioner, is the proprietor.

10. Learned DRT, by its order dated 28.06.2019, dismissed the applications filed by the petitioner as well as by H.N. Singh.

11. The appeal was filed by H.N. Singh, challenging the order dated 28.06.2019, before the learned DRAT. The learned DRAT allowed the appeal filed by H.N. Singh and ordered the petitioner to be impleaded as defendant in O.A. 97/2005, which led to filing of the present writ petition.

Arguments

12. Learned counsel for the petitioner submits that the petitioner had, no relation, whatsoever, with the borrower company. She submits that the impleadment of the petitioner was sought belatedly, after fifteen years of filing of the suit by the Bank. She further submits that the Bank is the *dominus litus* of the case and cannot be forced to add a third party as a defendant. The Bank, in the present case, has not sought impleadment of the petitioner.

13. She submits that the petitioner is a third party to the loan transaction between the Bank and the borrower and there is nothing to show that the petitioner, in any manner, had guaranteed the repayment of loan taken by M/s Elegance.

14. She further submits that, even if it is to be presumed that M/s Elegance has siphoned off money and have transferred the same into



the petitioner's account, the same will not make the petitioner, a necessary party for the recovery of loan by the Bank.

15. She submits that the payment, *qua* the discounted bills in question, were, admittedly, made into the account of M/s Elegance. Any transaction which M/s Elegance had with the petitioner, has nothing to do with the Bank's right to recover money from the borrower, M/s Elegance.

16. She further submits that the petitioner had filed the application for his impleadment only for the reason that the residential property belonging to the petitioner was sought to be attached by the learned DRT. The petitioner, being not a borrower or a guarantor, could not be saddled with a liability which would make the house of the petitioner, liable for attachment.

17. Lastly, it was submitted that the amount of ₹2.53 crores was, even otherwise, transferred in the account of Golden Harvest and the petitioner cannot be impleaded in his individual capacity.

18. Learned counsel relied upon the judgment passed by the coordinate Benches of this Court in ***W.P.(C) 5857/2014: IDBI Bank Limited v. Esslon Synthetics Ltd. and Ors.*** and in ***W.P.(C) 2431/2018: Anup Deb and Anr. v. Pratibha Deb and Anr.***, in support of his contention that the Bank can file a suit for recovery of the dues only against the borrowers.



19. Mr. Sanjeev Bhandari, learned counsel for H.N. Singh, submits that the present case is a clear case of fraud being committed by Prashant Dhingra, Poonam Dhingra and the petitioner (Harinder Dhingra).

20. He submits that the petitioner, with other co-accused, fraudulently opened a separate bank account in the name of the borrower company and received a sum of ₹2.53 crores from the buyers abroad in the said bank account. The amount was then transferred into the account of the petitioner in his proprietorship firm by the name of Golden Harvest.

21. He submits that the money belonged to the bank and was to be received in the loan account maintained with Indian Overseas Bank.

22. He, therefore, submits that the petitioner is liable to return the said money to the bank, and is a necessary and proper party to the recovery proceedings initiated before the learned DRT.

23. Learned counsel for Respondent No. 1, Indian Overseas Bank, supports the order passed by the learned DRAT. It is pleaded that the bank officials did not have the knowledge of such fraudulent transaction in the beginning. The bank came to know about the siphoning off the bank funds only in the year 2019 when the I.A. No. 777 of 2019 was filed by H.N. Singh.



24. He, therefore, submits that in view of the changed circumstances, the petitioner has rightly been impleaded in the proceedings pending before the learned DRT.

Conclusion

25. It is an admitted case that the Indian Overseas Bank had granted the facility of Foreign Documentary Demand Bill Purchased (FDDBP) and Foreign Documentary Usage Bill Discounted (FDUBD) including packing credit facility, to M/s Elegance. The loan and guarantee documents were aggregated by M/s Elegance and Respondent No. 3, 4 and 5, being the Directors of M/s Elegance.

26. It is also an admitted fact that the bills were drawn on Respondent No. 6 to 8 and they were to remit the amount straight to the bank. The amount was to be remitted in *lieu* of the goods supplied by M/s Elegance. The bank had discounted the bills and had made payments to M/s Elegance.

27. It is also not disputed that the amount was remitted by Respondent No. 6 to 8 in a different account maintained by M/s Elegance. The bank, having not received the money, had filed the application for recovery of its dues, before the learned DRT.

28. The allegation, in the present case, that is made by H.N. Singh, is that the amount remitted by Respondent No. 6 to 8, which was meant for repayment of the dues of the bank, was deposited in a separate



account maintained by M/s Elegance and was siphoned off by the petitioner through its proprietorship concern – Golden Harvest.

29. The petitioner has not disputed that the money has been transferred to his account from the account of M/s Elegance. The only argument raised by the learned counsel for the petitioner is that even if the said amount was meant to be credited in favour of the bank, the petitioner can still not be made a party / defendant in the application filed by the bank for recovery of its dues from M/s Elegance.

30. The argument, in our opinion, is unmerited for more than one reason.

31. Firstly, the petitioner himself has filed an application of his impleadment as a proper party in the application pending before the learned DRT.

32. Secondly, it is an admitted case that the bank's claim arises out of the bill discounting facility being granted to M/s Elegance. In terms thereof, the amount was admittedly required to be transferred by Respondent No. 6 to 8 into the account of M/s Elegance maintained with Respondent No. 1 bank. The bank, therefore, is entitled to file an application for issuance of Recovery Certificate. When the amount which was to be deposited in the bank's account, has allegedly been siphoned off in the manner as pleaded, the petitioner cannot be termed as not a proper and necessary party. H.N. Singh has made specific allegations that since the money, which was legitimately to be



transferred into the account of the bank, has been siphoned off, he is not liable to pay any money to the bank.

33. Thirdly, the bank is admittedly a *dominus litis*. It has taken a specific stand that the petitioner is a necessary and proper party for the purpose of effectively adjudicating the application filed before the learned DRT. It has also been specifically pleaded by the bank that it is only in the year 2019 that it came to know about the alleged fraud being played and the alleged manner in which the money, which was supposed to be deposited by Respondent No. 6 to 8 in the account maintained with the bank, has surreptitiously been sent in another account maintained by M/s Elegance. The said money, admittedly, belongs to the bank. The bank is, therefore, within its right to lay a claim over the said amount. Therefore, even though an application for impleadment of the petitioner was filed by H.N. Singh, but the bank, having supported the case of the impleadment of the petitioner, in our view, would step into the shoes of H.N. Singh.

34. It is not disputed that the bank is within its right to amend the application and make the petitioner, a defendant.

35. On being asked, it was informed that the bank has already filed the amended OA before the learned DRT and has sought relief against the petitioner. It would, therefore, be wrong to assume that the bank had only impleaded the petitioner as necessary and proper party because of the orders passed by the learned DRAT.



36. The bank, admittedly, being *dominus litis*, has every right to file a claim against the person, who it claims and pleads to be necessary and proper party for the purpose of recovery of its dues. However, any final order that may be passed by the learned DRT, would definitely depend upon the requisite pleadings and the evidence led by the parties.

37. The judgments relied upon by the learned counsel for the petitioner are also not applicable to the facts of the present case. In ***Anup Deb and Anr. v. Pratibha Deb and Anr.*** (*supra*), this Court was examining whether the DRAT, in terms of Section 19(18) and Section 19(25), can exercise *suo moto* powers in public interest. The learned DRT, in that case, had attached a residential house to the petitioners therein, while exercising *suo moto* powers. This Court, examining the law, held that the Tribunal being creature of statute, cannot exercise *suo moto* powers and attach properties which were not subject matter of the proceedings.

38. In ***IDBI Bank Limited v. Esslon Synthetics Ltd. and Ors.*** (*supra*), this Court, after examining the facts of the case, held that the DRT did not possess the jurisdiction to implead LML to the pending OA. In that case, the bank had filed an application before the learned DRT for recovery of its dues against Esslon. The loan was initially granted to LML and pursuant to the agreement between Esslon and LML, Esslon had undertaken all the term loan liabilities on LML including the dues to IDBI. The application for impleadment of LML was filed by Esslon, which was allowed by the learned DRT and by the learned DRAT. The orders, passed by the learned DRT and the learned



DRAT, were challenged by the IDBI. This Court held that IDBI, being *dominus litis*, cannot be compelled to make LML a party / defendant in the proceedings pending before the learned DRT. After examining the facts of the case, this Court came to a conclusion that the agreement of assignment was admitted and therefore, LML was not a necessary or proper party to the proceedings.

39. The ratio laid down by this Court in the said case, in our opinion, is not applicable to facts of the present case.

40. The argument that the petitioner being neither the borrower nor the guarantor, cannot be made party for the recovery of the dues, is also meritless. The petitioner is sought to be impleaded not for the reason of him being a borrower or a guarantor, but for the reason that the amount, which legitimately belonged to the bank, has been transferred into his account in a fraudulent manner. If the allegations are true, then the bank is entitled for recovery of the said amount.

41. The learned DRAT rightly observed that the bank did not have any knowledge and also was not expected to have any such knowledge of the alleged fraudulent transaction for a long period of time. The litigation involves recovery of a large amount of public money.

42. Admittedly, the bank being *dominus litis*, is categorically seeking the impleadment of the petitioner. Also, if the money which was to be deposited in the bank's account has gone to a third party's account, the said party cannot be said to be not a proper or necessary party for recovery of the dues of the bank.



43. The contention advanced by learned counsel for the petitioner, that the money even otherwise was transferred in the account of Golden Harvest, and that the petitioner being the proprietor cannot be impleaded in his personal capacity is also unmerited. Admittedly, the Golden Harvest is a proprietary concern of which, the petitioner is a sole proprietor. A proprietary concern is only a business name in which the proprietor of the business carries on the business. A suit by or against a proprietor of the business is a suit by or against a proprietary concern. The real party who is being sued is the proprietor of the proprietary concern and the sole proprietary concern can be equated with the proprietor of the business [Ref: *Ashok Transport Agency v. Awadhesh Kumar* : (1998) 5 SCC 567].

44. In view of the above, we find no infirmity with the order passed by the learned DRAT.

45. The petition is, therefore, dismissed.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

AUGUST 1, 2023

SS/KDK/SK