

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

**C.O. No. 3486 of 2011**

With  
**CAN 2 of 2024**  
with  
**CAN 6 of 2022**

**Central Bank of India**

**-Versus-**

**M/s. Premimer Feed Meals (P) Ltd. & Ors**

For the Petitioner : **Mr. Gautam Chakraborty.**

For the Opposite Party No. 6 : **Mr. Sagar Bandyopadhyay,  
Ms. Soma Kar Ghosh,  
Mr. Arabinda Pathak.**

For the Opposite Party : **Mr. Soumya Roy,  
Mr. Sayan Sarkar.**

Hearing concluded on : **01.02.2024**

Judgment On : **19-02-2024**

**Prasenjit Biswas, J:-**

1. The instant application is filed at the behest of the petitioner under Article 227 of the Constitution of India challenging the impugned judgment and order dated 20<sup>th</sup>

May, 2011 passed by the Debts Recovery Appellate Tribunal, Kolkata, in connection with Appeal No. 11 of 2006.

**2.** The moot question is that whether the High Court arrogates to itself the powers of the court of appeal and over strapped its jurisdiction under Article 227 of the Constitution of India.

**3.** At the very outset, learned Counsel appearing on behalf of the opposite party draws attention of this Court about the observations rendered by the Hon'ble Apex Court in case of **Bathutmal Raichand Oswal Vs. Laxmibat R. Tarta And Another** reported in **(1975) 1 Supreme Court Cases 858** wherein Hon'ble Apex Court observed interalia that the jurisdiction of the High Court under Article 227 is limited only to see that the subordinate Court functions within limits of its authority and does not extend to correction of mere error of fact by examining the evidence and re-appreciating it. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final on facts. In view of observations of the Hon'ble Apex Court the High Court cannot in exercise the jurisdiction under Article 227 interferes with finding of fact recorded by both the Tribunals.

**4.** Learned Counsel appearing on behalf of the petitioner/Bank submitted that on request and representation the bank sanctioned the loan facilities under Term Loan of Rs. 26.85 lakhs, Cash Credit Hypothecation within the limit of Rs. 5.04 lakhs and overdraft against stock within the limit of Rs. 2.63 lakhs against the interest @ 17.75% and under other terms and conditions as stipulated in the letter of sanction dated 10.11.1995. The opposite party executed various loan documents and opposite party

no. 2 to 5 executed the guarantee documents in favour of the petitioner Bank. After sanctioning of the loan facilities, petitioner Bank found that as per credit facility of the Bank, the ratio for the net worth to the bank credit of the borrower was exceeded the normal ratio i.e. 1:4 and as such the exposure exceeds to the extent of Rs. 9.28 lakhs over the normal limit prescribed in the guideline of the bank. The opposite party no. 1 could not provide further securities to the bank and the opposite party no.1 represented by opposite party no.2 agreed to the reduction of limit in Term Loan Account. It is stated by the learned Counsel that the opposite party no. 1 informed his satisfaction to the bank by letter dated 02.04.1996 and thereafter, Bank issued a letter dated 16.05.1996 to the opposite party for the reduction of the limit of Rs. 9.28 lakhs from the sanctioned limit dated 10.11.1995 and the said reduction was agreed by the opposite party no. 1. The opposite party no. 1 was also agreed to reduction of Rs. 5 Lakh in Term Loan Rs. 1.65 lakh in cash credit account and Rs. 2.63 lakhs in overdraft account by letter dated 31.05.1996.

**5.** It is further submitted by the learned Counsel appearing for the Bank that after getting letter from the opposite party it disbursed the said loan amount and it was enjoyed by the opposite party. According to the learned Counsel for the Bank that on failure of the opposite party to repay the loan as per the agreement no option/choice was left to the bank other than filing of an application before the learned Tribunal seeking recovery of Rs. 68,97,248.09/-. Learned Tribunal after consideration of materials placed before it allowed the application of the Bank in part and it was for an amount of Rs. 19,11,437.75/- with proportionate cost i.e. fee prescribed on such amount. Being aggrieved and dissatisfied with the said order of Tribunal, Bank

preferred the appeal before the Debts Recovery Appellate Tribunal at Kolkata which was dismissed on contest.

**6.** Learned Counsel appearing on behalf of the opposite party submitted that during pendency of the appeal before the Debts Recover Tribunal, the opposite party no. 2 deposited a sum of Rs. 19,11,437.75/- with the registrar of Debts Recovery Tribunal and the said amount was transferred into FDR, so that the amount can fetch the usual bank interest.

**7.** The Appellate Tribunal observed in the impugned judgment that without prior notice and in unilateral manner the Bank reduced the original sanctioned limit which it cannot do as per agreement entered in between the Bank with the opposite party. It is the specific stand point of the opposite party that that the Bank arbitrarily restricted the term loan of Rs.18.45 lakhs thereby reducing the original term loan facility and also did not disburse the full limit in the cash credit and permit overdraft. Much emphasis was led on behalf of the appellant Bank on the acknowledgment letters filed by the Bank dated 31.03.1998, 31.05.2000 and 30.03.2003. It is submitted on behalf of the bank that there is no scope to interpret those acknowledgments in other way and the respondents cannot escape from the liability.

**8.** It is not disputed that initially bank sanctioned cash credit for an amount of Rs. 4.04 lakhs against hypothecation in favour of respondent no. 1 on 10.11.1995. A term loan of Rs. 26.85 Lakhs was also sanctioned on the same date on execution of necessary documents by opposite party no. 2 to 5 who stood as guarantors. The said loan amount was secured by mortgage of the factory and building and plot no. 736, under Mouja- Binaguri and plot no. 1071 under Mouja 388 A.P. Pargana- Baikunthapur. After sanctioning of the said loan facilities it was noticed by the Bank

that as per the credit policy of the Bank the ratio for the net worth of the Bank credit of the borrower was exceeded normal ratio i.e. 1:4 and as such the exposure exceeded the extent of Rs. 9.28 lakhs over the normal limit prescribed in the guideline of the Bank and as such petitioner/Bank restricted the Term Loan of Rs. 18.45 Lakhs thereby reducing the original Term Loan facility. The Bank did not disburse the full limit in the cash credit and did not also permit overdraft. The point was taken on behalf of the Bank that the factum of 'reduce loan amount' was acknowledged by the opposite party. According to the learned Counsel for the opposite party the said letter of acknowledgment was never submitted by the Bank before the Tribunals. The limits were reduced on the ground that those have been found excessive on scrutiny by the regional office of the bank and as such the opposite parties were asked to arrange the amount so reduced from his own source in order to protect the interest of the bank. Learned Tribunal placed its reliance on the judgment rendered by the Hon'ble Apex Court in case of **Central Bank of India Vs. Rabindra & Others** reported in **AIR 2001, Supreme Court 3095** wherein it is held by the Apex Court that the creditor cannot be allowed to take benefits of its own wrong and cannot take advantage of the adverse financial situation of the borrower. It is a settled principle of law that a contract cannot be amended unilaterally. That being a case a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Such course of conduct would be contrary to fundamental principles of justice as followed in this country.

**9.** The attention of the Court is drawn by the learned Counsel appearing on behalf of the opposite party about a decision of a judgment rendered by the High Court at

Allahabad in case of **Allahabad Jal Sansthan Vs. State of UP And Others** reported in **AIR 2004 ALL 366** wherein it was held by the Court that a contract when entered into by the parties cannot be unilaterally changed or cancelled by one of the parties. There has to be mutual consent of the parties for altering it. Since the rate of premium is fixed in the L.I.C. policy the same can only be changed by the mutual consent of the parties and not unilaterally by the Life Insurance Corporation. So, the petitioner Bank cannot restrict the term loan of Rs. 18.45 Lakhs thereby reducing the original Term Loan facility.

**10.** It is admitted position that initially the petitioner Bank sanctioned loan facility under the Term Loan of Rs. 26.85 Lakhs, Cash Credit Hypothecation within the limit of Rs. 5.04 Lakhs and overdraft against stock within the limit of Rs. 2.63 Lakhs by issuing a letter of sanction dated 10.11.1995. Thereafter it reduced the original Term Loan facility unilaterally which he cannot do as per agreement in between the bank and the opposite party. After reducing the loan amount the bank did not disburse the full limit in the cash credit and did not also permit overdraft. As it appears from the impugned judgment that the witness on behalf of the bank namely, Dipankar Chakraborty stated that there is breach of contract on the part of the Bank. The said witness at the time of evidence taking process made statement that in the year 2000 it was found on inspection that the unit was closed and the hypothecated properties were found available but the bank did not take such possession of such hypothecated property. The Bank as the creditor cannot be allowed to take benefits of its own wrong and cannot unilaterally change or amend the agreement entered in between the Bank and the opposite party. Learned Tribunal held that the Bank did not make any averments in the application that on reduction of original limits sanctioned, fresh

document for the reduced limits were obtained from the company or fresh deed of guarantee was executed and the Bank failed to give any plausible explanation for such unilateral action.

**11.** Moreover, in view of observations of the Hon'ble Apex Court in case of **Bathutmal Raichand Oswal (supra)** the High Court cannot while exercising jurisdiction under Article 227 interfere with the finding of fact recorded by the subordinate Court or Tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

**12.** In **Boorugu Mahadeb & Sons Vs. Sirigiri Narasing Rao, (2016) 3 SCC 343** it was held that High Court while disposing such application should have confined its enquiry to examine as to whether any jurisdictional error was committed by the court below and if it was not done, interference is uncalled for.

**13.** In **Boorugu Mahadev (supra)** Hon'ble Apex Court observed at paragraph 17 interalia that –

*17. The Constitution Bench of this Court settled the law relating to exercise of jurisdiction of the High Court while deciding revision in rent matters under the Rent Control Act in Hindustan Petroleum Corpn. Ltd. [Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] Justice R.M. Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus : (SCC pp. 101-02)*

*“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is*

*according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”*

**14.** In **Jai Singh v. Municipal Corporation of Delhi, (2010) 9 SCC 385** it was held by the Apex Court that exercise of this power and interfering with the orders of the court or tribunal is restricted to the cases of serious dereliction of the duty and flagrant violation of fundamental principles of law or justice and if the High Court does not interfere, a grave injustice would remain uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an Appellate court or substitute its own judgment in place of that of the subordinate court/Tribunal to correct an error which is not apparent on the face of the record.

**15.** In **Jai Singh (supra)** the Hon'ble Apex Court observed at paragraph 15 inter alia that-

*“We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice”.*

**16.** It is settled position of law that such discretion should not be exercised unless it is established that the order impugned in such application was passed without jurisdiction or against the principles of natural justice or is manifestly illegal which requires no elaborate argument. So, in view of the above observations of the Apex Court an error of fact even though apparent on the face of record cannot be corrected

in entertaining the application filed under Article 227 of the Constitution of India as the jurisdiction of an High Court under Article 227 cannot be converted itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final of facts.

**17.** Since there is nothing to say that the findings of both the Tribunal are perverse or illegal or that no reasonable person can possibly come to such a conclusion which the tribunals have arrived at, I find nothing to interfere with the order impugned only on the ground of mere possibility of arriving at a different view on facts and circumstances of the case.

**18.** In view of above discussions, I find that there is no illegality or material irregularity in the judgment and order dated 20<sup>th</sup> May, 2011 passed by the Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 11 of 2006 and there is nothing to interfere in it.

**19.** Accordingly, CO being No. 3486 of 2011 is hereby dismissed on context but without any order as to costs.

**20.** The judgment and order dated 28 May, 2011 passed by the Debts Recovery Appellate Tribunal, Kolkata, in connection with Appeal No. 11 of 2006 is hereby affirmed.

**21.** Connected applications being CAN 2 of 2024 and CAN 6 of 2022 filed in connection with CO being no. 3486 of 2011 are hereby disposed of and closed.

Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

**(Prasenjit Biswas, J.)**