

Manjit Kumar Vs. Oriental Bank of Commerce and ors.

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Court : DRAT Delhi

Decided On : Feb-06-2003

Reported in : III(2004)BC84

Judge : K Kumaran

Appellant : Manjit Kumar

Respondent : Oriental Bank of Commerce and ors.

Judgement :

1. This is an application under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the Act') for waiver of the deposit to be made in terms of this section.
2. Final order dated 7.1.2002 was passed by the learned Presiding Officer of Debts Recovery Tribunal, Delhi-I (hereinafter referred to as 'the DRT') ordering the appellants/defendants to pay a sum of Rs. 9,19,01,443/- to the respondent/plaintiff-Bank with costs, pendente lite and future 'interest at 18.36% per annum with quarterly rests.
3. The application of the appellants/defendants for recalling/reviewing the abovesaid order, and for granting them time to file written statement was also dismissed by the learned Presiding Officer of the DRT by his order dated 16.1.2002. Aggrieved by both the orders, the appellants/defendants have filed the appeal. They had also filed Miscellaneous Application 82/2002 under Section 21 of

the Act for waiver of the deposit. The appellants/defendants among other pleas urged that the amount claimed by the respondent/plaintiff-Bank is not a debt within the meaning of Section 2(g) of the Act, and that there was also no Bank-customer relationship between the respondent plaintiff and the appellants/defendants. After considering the points raised by both the sides, that application was disposed of by this Tribunal by order dated 25.7.2002 directing the appellants/defendants to deposit 50% of the amount as determined by the DRT as due from, and payable by the appellants/defendants to the respondent Bank.

4. Aggrieved by the above said order, the appellants/defendants filed CWP 5742/2002 before the Hon'ble High Court of Delhi, and the Hon'ble High Court of Delhi found by the order dated 10.9.2002 that the appellants/defendants had not set up any worthwhile ground to warrant waiver of pre-deposit. The appellants/defendants, therefore, prayed for withdrawal of the CWP for seeking reconsideration of their plea for waiver of pre-deposit by this Tribunal on some new grounds. The Hon'ble High Court of Delhi was also pleased to dismiss the said CWP as withdrawn with liberty as prayed for by the appellants/defendants.

5. The appellants/defendants have now filed this Miscellaneous Application 487/2002 seeking waiver of the pre-deposit. The respondent-Bank has filed a suitable reply opposing this application.

The appellants/defendants have also filed a rejoinder.

6. I have heard the Counsels for both the sides, and perused the records.

7. The case of the respondent-Bank in the O.A. is that the 1st appellant, as the proprietor of the 2nd appellant, doing business in jewellery, encashed 140 demand drafts from the respondent-Bank, but it was found later that all these demand drafts were forged. Therefore, the respondent-Bank claimed that the appellants have to repay the amount covered by these forged demand drafts with interest.

8. Though the appellants/defendants did not file the written statement, they had filed certain Miscellaneous Applications which were also dismissed by the DRT. The appeals filed against them were also dismissed. The CWP filed by the

appellants/defendants before the Hon'ble High Court of Delhi was also dismissed.

9. The learned Presiding Officer of the DRT has pointed out in his final order that the appellants/defendants had entered appearance through Counsel on 15.9.2000, but in spite of opportunities given to show cause, the appellants/defendants had not filed the written statement. He, therefore, found that the appellants/defendants had failed to show any sufficient cause as to why the relief prayed for by the respondent-Bank should not be granted, and, therefore, he passed the final order dated 7.1.2002. The application filed by the appellants/defendants to recall/review the final order, and grant time for filing written statement was also dismissed on 16.1.2002, It is in these circumstances that the appellants/ defendants filed the appeal.

10. The appellants/defendants who have not filed the written statement before the DRT, have mentioned in the memorandum of appeal that they got these demand drafts from their customers against materials supplied by them (appellants/defendants) to their customers from 19.4.1999 to 20.10.1999, that they had encashed the demand drafts through their Bankers, that there was no Bank-customer relationship between the respondent-Bank and themselves, and that the amount claimed by the respondent-Bank was not a debt within the meaning of the Act. The appellants/defendants also claimed that they were not aware of the Bank's case that there was some defect in the demand drafts or there was any fraud, till the CBI came to investigate.

11. As pointed out already, the appellants/defendants have taken the permission of Hon'ble High Court of Delhi to seek a reconsideration of their plea for waiver of the pre-deposit on some new grounds. In these circumstances, the learned Counsel for the appellants/defendants Mr.

Rajeeve Mehra stated that the only new ground that will be put forward and argued on behalf of the appellants/defendants will be the 'financial hardship'. The appellants/defendants have stated in this Miscellaneous Application 487/2002 that they have no money to make the deposit, that the 1st appellant has a family consisting of his wife and four children to be supported, and that the appellants/defendants have no movable properties which could be sold or fixed

deposits or shares or stocks, securities or cash. The appellants/defendants have stated in their rejoinder that they are not possessed of any movable or immovable property and that the 1st appellant is a small time jeweller having a small shop, which is being PW1 in the premises taken on rent.

12. The learned Counsel for the appellants/defendants contends that though it has been stated in the O.A. that the appellants/defendants had received Rs. 7,98,08,000/- under 140 demand drafts, it is not as if the appellants/defendants have amassed a huge profit since, according to him, the appellants/defendants purchase gold, manufacture them into jewels and sell them, and in this process, get a small amount only by way of profit. In support of this contention, the appellants/defendants have also filed the photocopies of the income-tax returns filed by the appellants/defendants for the Assessment Years 1998-99 to 2001-2002.

13. The learned Counsel for the appellants/defendants points out from the return submitted for the Assessment Year 1998-99 that the appellants/defendants had received a net profit of Rs. 89,672/- only.

He also points out from the copy of the Profit and Loss Account relating to that period that the purchases during that period were for Rs. 8,64,989/- while the sales amounted to Rs. 10,04,779.40, and the gross profit was Rs. 1,70,812.72.

14. He further points out that for the Assessment Year 1999-2000, the purchases were for Rs. 10,94,601.40 while by sales, Rs. 5,07,774.56 were realized, that the gross profit for this period from jewellery was Rs. 69,470.56 (and by labour, Rs. 1,01,345/-) whereas the net profit was Rs. 95,834.23.

15. The learned Counsel for the appellants/defendants points out that for the Assessment Year 2001 -2002, the purchases amounted to Rs. 4,72,165/-, the sales stood at Rs. 6,32,918.88, that a sum of Rs. 1,45,232.88 was the gross profit, whereas the net profit was Rs. 1,04,397.88.

16. For the Assessment Year 2000-2001, the learned Counsel for the appellants/defendants points out that while the purchases were made for Rs. 7,93,16,015.48,

the sales amounted to Rs. 8,03,01,174,43, that the gross profit was Rs. 5,21,578.95 and the net profit was Rs. 1,38,627.86.

17. Pointing out these factors, the fact that the final order has been passed for Rs. 9,19,01,443/-, and that the appellants/defendants have no other property except the income realized from the business run by them, the learned Counsel for the appellants/defendants contends that the waiver as prayed for should be granted to them.

18. The learned Counsel for the respondent-Bank first of all contends that 'financial hardship' is not a ground at all for granting waiver, as contemplated under Section 21 of the Act. But, a reading of the proviso to Section 21 leaves us with no doubt that 'financial hardship' could also be a ground for waiving the pre-deposit. The proviso reads as follows: "Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section." 19. This proviso does not prescribe any ground on which this Tribunal can grant the waiver. That means that the section has not placed any restrictions on the powers/discretion of this Tribunal to grant this relief on any ground which is reasonable. As per this proviso, the Tribunal has only to record the reasons for allowing the waiver.

Therefore, I am of the view that in the absence of any specific provision that the waiver could be granted on certain specified ground/grounds only, this Tribunal will be entitled to take into consideration all the relevant circumstances and reasonable grounds for the purpose of deciding whether the waiver has to be allowed or not.

But, this Tribunal has only to give the reasons in writing for granting the waiver. Therefore, I am of the view that this contention of the learned Counsel for the respondent-Bank that this Tribunal cannot take into consideration the financial hardship of the appellants/defendants for deciding the question whether they should be granted the relief of waiver, cannot be accepted, and, accordingly, the same is rejected.

20. However, the learned Counsel for the respondent-Bank contends that by merely producing the income-tax returns, the appellants/defendants cannot contend that they have established that they do not have the necessary wherewithal to make the deposit. He contends that deductions allowed for the purposes of income-tax, like depreciation have also been claimed in the income-tax returns filed by the appellants/defendants. He also contends that no reliance can be placed upon the income-tax returns for the purpose of considering the present request of the appellants/defendants. In this regard, the learned Counsel for the respondent-Bank points out one salient feature in support of his contention that no reliance can be placed upon the income-tax returns to conclude that the appellants/defendants had received only that much of profit during these years.

21. The learned Counsel for the respondent-Bank points out from the Profit and Loss Account for the Assessment Year 1998-99 that though the purchases were for Rs. 3,64,989/- and the sales were for Rs. 10,04,779.40, the gross profit was shown at Rs. 1,70,812.72, and the net profit at Rs. 89,672.19 i.e., nearly 10% of the amount realised by way of sales. Similarly for the Assessment Year 1999-2000, the purchases were Rs. 10,94,601.40 whereas the sales amounted to Rs. 5,07,774.56, and while the gross profit stood at Rs. 69,470.56 from jewellery (Rs. 1,01,345/- from labour), the net profit was Rs. 95,834.23 i.e., nearly 20% of the amount realised by way of sales. For the Assessment Year 2001-2002, the purchases were shown at Rs. 4,72,165/- while the sales were shown to be to the extent of Rs. 6,32,918.83, and the gross profit was shown at Rs. 1,45,232.88 whereas the net profit was shown at Rs. 1,04,397.88 i.e., nearly 16% of the sales. He also points out that for the Assessment Year 2000-2001, the purchases were to the tune of Rs. 7,93,16,015.48 whereas the sales amounted to Rs. 8,03,01,174.43. He also points out that in spite of the fact that sales being to the extent of Rs. 8 crores and odd, the gross profit was shown as Rs. 5,21,578.95, and the net profit as Rs. 1,38,627.86.

22. The learned Counsel for the respondent-Bank contends that in spite of the fact that the sales amounted to Rs. 8 crores and odd, the gross profit has been shown at a very low amount of Rs. 5 lakhs and odd only, whereas, in the Assessment Year 1998-99 when the sale was to the tune of Rs. 10 lakhs and odd, the gross

profit was Rs. 1,70,000/- and odd; for the Assessment Year 1999-2000, when the sales were for Rs. 5 lakhs and odd, the gross profit was shown at Rs. 69,470/-, and that for the Assessment Year 2001 -2002 when the sales were for Rs. 6 lakhs and odd, the gross profit was Rs. 1.45 lakhs and odd. He, therefore, contends that these returns have been filed to suit the appellants/defendants, and, therefore, no reliance can be placed upon the self-serving documents. I Agree with the learned Counsel for the respondent-Bank in this respect. There is a large disparity between the sales and the gross profit and net profit as pointed out by the learned Counsel for the respondent-Bank. The gross profit in other years ranged nearly between 10% to 20% of the sales whereas for the Assessment Year 2000-2001, gross profit has been shown at Rs. 5 lakhs and odd while the sales stood at Rs. 8 crores and odd. Even at 10% of the sales, the gross profit should have been Rs. 80 lakhs and odd and at 20%, it will be Rs. 1.60-crores. This itself is indicative of the fact that no reliance can be placed upon the income-tax returns to come to a conclusion that the appellants/defendants received that much of profit only as mentioned in the returns and have no funds for making the deposit. It has been conceded by the learned Counsel for the appellants/defendants that the appellants/defendants are still carrying on the business. Apart from the amounts realized from the sale of gold jewels, and by way of labour charges, they have the stock in trade also. Simply by relying up on the income-tax returns, the appellants/defendants cannot say that they have no means to make the pre-deposit.

23. In the circumstances, I find that the appellants/defendants have not made out any ground for waiving the deposit completely or for coming to a different conclusion than that was arrived at by order dated 25.7.2002. Therefore, the appellants/defendants have to deposit 50% of the amount determined by the DRT as due from, and payable by the appellants/defendants.

24. This application is disposed of accordingly directing the appellants/defendants to deposit 50% of the amount determined by the DRT. The appellants/defendants are given six weeks' time from today to make the deposit.