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Court : DRAT Madras

Decided On : Oct-12-2004

Reported in : I(2005)BC139

Judge : P Upasani

Appellant : Canara Bank

Respondent : Computer Data Application Pvt.

Judgement :

1. This Regular Appeal is filed by the appellant/original applicant being aggrieved by the Judgment and Order dated 30.9.1999 passed by the learned Presiding Officer of DRT, Bangalore, in OA-778/1995. By the impugned Judgment and Order, the learned PO has allowed the Bank's claim against original defendant Nos. 1, 2, 4 and 5, and disallowed the same as against original defendant No. 3. The Bank is aggrieved because the learned PO exonerated defendant No. 3 and hence the appeal.

2. I have heard Mr. S. Krishnamurthy, Advocate for the appellant Bank.

Respondent No. 3 (Defendant No. 3) is absent though duly served. Other respondents are also absent though duly served. I have also gone through the proceedings which reveal that in the Tribunal, only defendant No. 3 appeared and contested the matter and other defendants were absent though duly served.

3. Few facts which are required to be stated are as follows. The Bank filed OA against five defendants for recovery of their dues from the defendants. Defendant No. 1 is a Private Limited Company, while D2 to D5 were its Directors. The 1st defendant is the principal borrower who availed loan facilities from the applicant bank in the form of Term Loan of Rs. 4 lakhs agreeing to repay the same with interest at 14% p.a. compounded quarterly. The 1st defendant Company executed all the documents along with hypothecation of machineries and other collateral securities. The first defendant also obtained a Term Loan of Rs. 3,40,000/- repayable with 16.5% interest and 2% overdue interest and all the required documents were executed. Further, an Overdraft (OD) facility up to a limit of Rs. 50,000/- was sanctioned to the 1st defendant repayable with 15% interest p.a. compounded quarterly. Again, with respect to this transaction, documents were duly executed by the defendants. Thus, there was a renewal of enhanced Overdraft facility up to a limit of Rs. 1,50,000/- for which due security documents were executed. The defendant No. 1 obtained enhanced additional OD of Rs. 30,000/- and yet another enhanced OD of Rs. 20,000/-. Defendants 2 to 5 being the Directors, executed guarantee documents and as on the date of suit, the sum due and payable by the defendants was Rs. 37,40,582.57p.

with costs current and future interest.

4. Original suit being OS No. 2732/1992 was filed by the Canara Bank in the City Civil Court, Bangalore, for recovery of its dues from the defendants. Upon the constitution of the Debt Recovery Tribunal under the Recovery of Debts to Banks and Financial Institutions (RDDB & FI) Act, 1993, the matter from the Civil Court came to be transferred to DRT, Bangalore. Notice was served to all the five defendants. However, defendants 1, 2, 4 and 5 remained ex parte while defendant No. 3 alone appeared. He had filed written statement in the City Civil Court itself. His defence is that he was the Director of the 1st defendant Company, he retired from the company in the year 1983 and was not a Director at the time of filing of the suit. According to him, renewal of the enhanced Overdraft facility was not within his knowledge and even the Overdraft facility was not within his knowledge. He, however, admitted that defendants 3,4 and 5 executed guarantee letter and that he executed Bank guarantee for Rs. 4 lakhs. He, however, disputed about the

enhancement of the said facility submitting that it was not within his knowledge. It was his main defence that the suit was barred by limitation. Citing these reasons, it was prayed by D3 that the suit be dismissed.

5. The learned PO after hearing the applicant Bank and defendant No. 3 and after going through the entire material placed before him, came to the conclusion that the applicant Bank had successfully proved that the defendants were liable to pay the amount as claimed. However, the learned PO also gave a finding that D3 had proved that he had executed the bank guarantee only for Rs. 4 lakhs and the claim was barred by limitation. According to him, defendant No. 3 had successfully discharged his burden. Hence, finding was given in his favour by the learned PO. 6. Mr. Krishnamurthy, the learned Advocate for the appellant Bank strenuously tried to argue before me that the learned PO had committed error in exonerating D3 holding that the claim of the bank against him was time barred.

7. Finding is given by the learned PO that though there were acknowledgements by the defendants, there was no connection of these acknowledgements with the loans and the liability claimed by the bank and that bank had failed to establish such a nexus/connection.

According to him, the bank had failed to explain in the plaint as to in what connection the numbers ML.6/78, ML. 1/81 and OD A/c. without number came into existence and whether they had anything to do with the accounts of the defendants.

8. The plaint reveals that the bank had claimed Term Loan", (I) pertaining to LPD-17/ 89, the Term Loan (II) pertaining to LPD-19/89 and OD A/c. pertaining to LPD-18/89. There were acknowledgements as per the bank's contention which relate to ML 6/78, OBD A/c. (without number), ML1/81 and TL-6/78. In none of these acknowledgements LPD 17 or 18 or 19 are shown. Moreover, these LPDs 17, 18 and 19 were of the year 1989 under which the bank had claimed the liability.

9. This Appellate Tribunal also made query with the learned Advocate for appellant bank as to whether there was a pleading in the plaint about these new numbers given by the bank to the account number of the defendants after their accounts

became NPA, because that was the oral submission made by the Advocate for the appellant bank across the Bar.

Obviously, there is no such pleading. When there is no pleading, no proof can be tendered with respect to that which is not pleaded.

Therefore, the learned PO was right in coming to the conclusion that there was no nexus between the account number mentioned in the acknowledgement letter and the account numbers as mentioned in the plaint, under which liability was claimed by the bank from the defendants. There might be some administrative arrangement initiated by the bank, but that has to be explained and there should be a pleading to that effect and in the absence of pleading to that effect, the nexus is not established. Thus, the finding of the learned PO that Exs. A 32 to A 45 do not link to the account of the 3rd defendant and the further holding by the learned PO that the claim was barred by time against defendant No. 3 is a correct finding.

10. In view of the aforesaid discussion, I do not find any error in the impugned Judgment and Order passed by the learned PO of DRT, Bangalore.

The Appeal, therefore, will have to be dismissed. Accordingly, following order is passed.

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