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Court : DRAT Allahabad

Decided On : Dec-23-2004

Judge : P Deb

Appellant : State Bank of India

Respondent : Vidya Foundry and Engineering

Judgement :

1. This appeal has been preferred against the part of the judgment and order passed by the then Presiding Officer, D.R.T., Jabalpur in Original Application No. 48/1998. This appeal has been filed against the dismissal of the part of the claims of the appellant-bank towards the interest portion. The brief facts of the case are as follows: 1. The defendant-respondent No.1 is a partnership firm, of which defendant Nos. 2 and 3 are the partners and is engaged in the business of foundry and engineering works. Defendant No.4 was also a partnership firm, but since 1991 it became a proprietary firm of defendant No.5. On request being made by the defendant No.1 through its partners, appellant bank sanctioned term loan limit of Rs. 9 lacs, cash credit limit of Rs. 10.50 lacs and bank guarantee limit of Rs. 75,000/ -. In consideration of such sanction of loan, the defendant No.1 through its partners executed requisite banking documents, on which terms and conditions were also incorporated as per the interest. Defendant Nos. 2 and 3 and the defendant No.4 through defendant No.5 executed guarantee document to secure the credit facility granted to the defendant No.1. For further security defendant No.1 had also executed documents creating equitable mortgage over its

immovable properties as detailed in the Original Application. According to the appellant, applicant-bank, revival letters and balance confirmation letters were executed time to time and finally on 13th April, 1996. When the defendants failed to liquidate their accounts, then legal notice was sent on 24th December, 1997 and then the Original Application was filed for recovery of Rs.61,38,044/-.

2. The defendants have contested the suit and never denied the availing of the credit facilities or executing the loaning documents. Their main contention was that the two loans granted separately have been amalgamated into a single account which is contrary to the Banking Regulation. Their further contention was that on an approach being made by the defendant Nos. 1 to 3 for identifying the defendant No.1 Unit as a viable sick S.S.I. Unit and allow them to avail the rehabilitation programme as per the directions and guidelines of the Reserve Bank of India, a High Power Committee meeting was held by a committee consisting of the Branch Manager of the appellant bank and the officers of the Industry Department of the M.P. State and it was found in their report dated 26th March, 1993 which was marked as D-3/ 1 that the defendant No.1 Unit was a viable sick Unit and recommendation was made regarding its prayer for rehabilitation. But the matter regarding rehabilitation remained pending with the bank for a long time and as per request of the defendants, the bank went on giving assurance vide their letters dated 1st November, 1994, 27th March, 1995 and 1st November, 1996 that the matter of rehabilitation was pending with the superior authority of the applicant-bank for final disposal, but ultimately on 9th March, 1998, the bank refused to rehabilitate the defendant No.1 Unit holding that the economic viability of Unit has become lost. In that way, although the defendants were entitled to get rehabilitation and remission on the interest, but they could not get it because of non-decision of the applicant-bank for long five years and the invariable consequences of economic viability have been lost.

3. In rejoinder to such plea, the appellant bank had stated that although the defendant No.1 was identified as sick Unit by the applicantbank, but as it was fO'und that there was lack of entrepreneurial skills on the part of the promoters of defendant No.1 and non-deposit of margin money under the rehabilitation package, the rehabilitation programme could not be implemented and it was

further stated that no concessional rate of interest over the existing outstanding could be claimed as a matter of right by a sick unit on the circular of the Reserve Bank of India.

4. On the basis of the pleadings and the evidence adduced both documentary and evidence in affidavit, learned D.RT. held that the R.B.I. circulars are binding on the bank and when the bank did not allow the rehabilitation of the defendant No.1 Unit and kept the matter pending for long five years, the appellant bank cannot claim interest on the outstanding after 1st April, 1990 and it was also held that the appellant bank can only get interest @ 6% per annum from the date of filing of the recovery application i.e. 1st May, 1998 till the date of realization of the outstanding dues. It was further ordered that the recovery should be made within a period of two months from the date of the order and if the defendants fail to deposit the outstanding dues, then the applicant bank can recover the debt by sale of hypothecated property. Recovery certificate was also asked to be made as per statement of accounts as on 31st March, 1990 after the same is filed by the applicant-bank.

5. This portion of the judgment and order by which the whole claim of the appellant bank had not been allowed and the part of the same being allowed, the present appeal has been preferred.

6. The short point involved in this appeal is; as to whether learned Tribunal committed error in minimizing the claims of the appellant-bank towards the interest portion restricting it up to 1st April, 1999 which is alleged to be arbitrary date or not.

7. Mr. V.D. Chauhan, advocate appearing for and on behalf of the appellant-bank submitted that the learned Tribunal committed error in construing R.B.I. guidelines as statutory right in flavour of the borrowers. His submission is that guidelines are issued under the Banking Regulation Act time to time as per the Financial Policy of the government, but the same cannot have any statutory right. In reality his submission is that the rehabilitation programme as per the R.B.I.guidelines cannot create a right on the sick unit to have been rehabilitated on concessional interest and further monetary relief being granted. He has referred to unreported judgment

of Allahabad High Court in CMWP No. 7098/2000 (Maha Laxmi Flour Mills Put. Ltd. v. State of UP.), wherein at para 13 it has been held in the following manner: No one has right to get rehabilitation. When a person takes a loan, he has to repay the same in accordance with the loan agreement. Re scheduling of the loan is in the sole discretion of the financial corporation or bank which has granted the loan, and no one can compel the financial institution/bank to re-schedule a loan. The matter regarding loan from a financial corporation/bank is purely contractual, and a party has to abide by the terms of the contract which he has entered into.

9. It has further been held that a Court of law cannot compel the financial institution to rehabilitate a defaulting party. On the other hand, the learned Counsel for the respondent has referred to (Central Bank of India v. Ravindra), wherein it has been held that the R.B.I. directions have the statutory flavour and under Section 46(4) of the Banking Regulation Act, 1949, the contraventions of such directive are punishable. It is the contention of the learned advocate of the respondent that R.B.I. guidelines are always being issued under the Banking Regulation Act depending on the existing Government policy. When a policy of the government was to rehabilitate the sick unit on some terms and conditions, the bank cannot refuse the same on flimsy grounds. His further contention is that the bank itself had admitted the defendant No.1 Unit as sick S.S.I. Unit running in loss since 1st April, 1990 and for that matter taken it for consideration to rehabilitate it, but such consideration continued for long five years i.e. from 26th March, 1993 to 9th March, 1998, as a result of which the economic viability of the unit naturally being decayed and now the bank cannot claim the agreed terms of interest when the fault was with the bank. If the bank would have refused rehabilitation within a reasonable time, then the unit could have been able to pay up the dues of the bank as was due at that relevant period of time. His further submission is that the cut off date as mentioned in the impugned judgment as 1st April, 1990 cannot be called as arbitrary one as in the report dated 26th March, 1993, the bank had admitted that the unit was running in loss since 1st April, 1990.

10. On the rival argument being placed regarding legal position of the R.B.I. guidelines, I could find that the facts of the case as that of the Allahabad High Court's judgment (Sic) are different from that of the present case, rather the same

is more or less akin to the reported judgment of the Apex Court (Sic). When the R.B.I. guidelines are being issued as per the provisions of the Banking Regulation Act, then the same has got definitely some binding effect on the financial institutions and when such binding effect is there on the financial institution, the same gives some sort of right to the adverse party i.e. borrower/loanee. It is true that rehabilitation programme as per R.B.I. Guidelines depends upon various factors, such as potential viability, economic viability and entrepreneurial skills of the management. But for considering those terms and conditions, the applicant bank cannot sit over the rehabilitation programme for an indefinite period keeping the borrower in expectation and that too at the cost of the economic viability of the sick unit. It might be that all terms and conditions regarding the rehabilitation programme as per R.B.I. Guidelines were not totally fit in with the defendant No.1 Unit, but the same must have been acknowledged to the Unit without losing time. Her bank has taken an unforgiving time of five years to decide on the rehabilitation programme would have been promulgated within a short time, then the economic viability of the Unit must not have come as barrier. Regarding the deposit of margin money in advance does not mean that the rehabilitation shall be considered only on such deposit; rather such margin money is required to be deposited when rehabilitation programme has been sanctioned, but here the rehabilitation programme has been refused. In that way question of deposit of margin money does not arise at all. Thus I do not find that the learned Presiding Officer, D.R.T. has committed any error in minimizing the interest portion of the claims of the appellant-bank restricting the same to a part debt, because in the present case, the bank must suffer for their inordinate delay in deciding the negative aspect of the rehabilitation programme. Now about the cut-off date i.e.

1st April, 1990 1 find that the same may not be arbitrary as claimed from the side of the appellant bank, but such cut-off date should not be construed for the purpose of inc1usioJ1 of interest in the present circumstances of the case. It was a remark in the report dated 26th March, 1993 when it was said that since 1st April, 1990 the unit was running in loss, but the consideration of rehabilitation programme only started on 26th March, 1993. In that way for bank's fault, the cut-off date shall be 26th March, 1993 and not 1st April, 1990.

11. As per the discussions made above, the appeal is allowed in part and the impugned judgment is modified to the extent that the bank's dues shall be calculated as per agreed rate of interest up to 26th March, 1993 and after that the interest shall be payable @ 6% per annum as ordered since the date of filing of the suit till the date of realization and other orders regarding submission of bank accounts afresh as per the order made above shall remain intact as has been determined and fixed by the learned Presiding Officer, D.R.T. in the order portion of the impugned judgment. The appeal is partly allowed without cost.