Applitech Solution Ltd. and anr. Vs. Citi Bank N.A. and anr.

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SooperKanoon Citation : sooperkanoon.com/56452

Court : DRAT Mumbai

Decided On : Apr-19-2005

Reported in : IV(2005)BC175

Judge : P Upasani

Appellant : Applitech Solution Ltd. and anr.

Respondent : Citi Bank N.A. and anr.

Judgement :
1. This misc. appeal is filed by the appellants/original defendant Nos.

1 and 2 being aggrieved by the order dated 1.11.2004 passed by the In-charge, learned Presiding Officer of the Debts Recovery Tribunal, Ahmedabad on Exhibit No. A/17 in Original Application No. 258 of 2003.

By the impugned order, the learned Presiding Officer allowed the application made by the applicant Bank to discharge respondent No.2/original defendant No. 3 Jayesh Parekh from his personal guarantee.

2. I have heard Mr. K.I. Shah for the appellants, Mr. Jagose for the respondent No. 1 Bank and Mr. D'souza for the respondent No. 2. I have also gone through the proceedings including the discharge application made by the applicant Bank in the Debts Recovery Tribunal, Ahmedabad, reply filed by the appellants, the impugned order, so also the guarantee letter dated 6.12.2000 and in my view, the learned Presiding Officer has not committed any error in passing the impugned order.

3. Original Application being O.A. No. 258 of 2003 is filed by the applicant Bank against three defendants for recovery of Rs. 8 crore and odd amount. Working capital facilities amounting to Rs. 8 crore were sanctioned and availed by the appellant No. 1 Applitech Solutions Ltd. Appellant No. 2 Ankil Patel and respondent No. 2 Jayesh Parekh were the personal guarantors, who had guaranteed repayment of the aforesaid amount and all other dues relating thereto, in case the principal borrower company failed to make payments. The said company did default in making necessary payments to the applicant-Bank. The applicant Bank therefore sent notices to the said company, so also to the defendant Nos. 2 and 3, invoked their personal guarantees and filed the original application in Debts Recovery Tribunal, Ahmedabad claiming a sum of Rs. 8,19,99,180.00 being the principal amount plus interest.

It is also revealed that thereafter the defendant No. 3/respondent No.2 herein Jayesh Parekh approached the applicant Bank to settle the matter, wherein it was agreed by the applicant Bank that if the respondent No. 3 made payment of sum of Rs. 2,25,00,000/- to the applicant Bank, the Bank would discharge him from his personal guarantee Accordingly, the settlement agreement dated 19.2.2004 was entered into by the respondent No. 2 herein, which was subsequently amended by a mendatory settlement agreement dated 25.3.2004 and payments, as per the agreement, were to be made by the respondent No. 2 herein to the applicant Bank. In accordance with the said settlement agreement and in full and final settlement under his personal guarantee, the defendant No. 3 / respondent No. 2 herein paid a sum of Rs. 2,25,00,000/- being initial payment. The Bank thereafter made an application to the Debts Recovery Tribunal, Ahmedabad to discharge the defendant No. 3 Jayesh Parekh from his personal guarantee stating that the applicant Bank had no further claim against him in his personal capacity as a guarantor. It was this application on which the impugned order came to be passed by the learned Presiding Officer of Debts Recovery Tribunal, Ahmedabad, allowing prayer of the Bank to discharge the defendant No. 3 Jayesh Parekh. The principal borrower company and the other guarantor Ankil Patel felt aggrieved by this discharge of the defendant No. 3/ respondent No. 2 herein and have filed the present appeal.

4. First of all, it has to be stated that the creditor Bank who has filed the original application is dominus litis and it is for the Bank to decide against whom they want to proceed. If the applicant Bank is satisfied on receiving amount of Rs. 2,25,00,000/- from the defendant No. 3/respondcnt No. 2 herein and intends to discharge him and application to that effect has been made by the creditor Banks, there is no question of not allowing the said application.

5. It is certainly a choice of the creditor to recover amount either from the principal debtor after his default, or from the surety. The creditor has liberty to file suit against both the principal debtor and the surety, or at his option, only against the surety. Thus, the legal position is quite clear that a creditor has got independent right of action against principal debtor so also against guarantor. He may file suit against the principal debtor only without making the guarantor a party or he may file suit independently against only the guarantor.

6. In view of this clear and unambiguous legal position, if the Bank settles with one of the guarantors on receiving an amount of Rs. 2,25,00,000/-, the principal debtor namely the appellant No. 1 Applitech Solutions Ltd., so also the other guarantor, the appellant No. 2 Ankil Patel cannot make any grievance. In fact, it has to be other way round. If a creditor settles with principal borrower and without consent of guarantor, then the guarantor is discharged.

However, in the present case at hand, when the applicant Bank settles with one of the guarantors the principal debtor is not discharged nor the other guarantor is discharged.

I, therefore, find nothing wrong in the impugned order. The appeal is absolutely meritless considering the legal position on this aspect. The impugned order, therefore, will have to be upheld and the appeal will have to be dismissed. Hence, following order is passed: