

Gammon India Ltd. Vs. Andhra Bank

Gammon India Ltd. Vs. Andhra Bank

SooperKanoon Citation : sooperkanoon.com/56521

Court : DRAT Mumbai

Decided On : Sep-20-2005

Reported in : II(2006)BC38

Judge : P Upasani

Appellant : Gammon India Ltd.

Respondent : Andhra Bank

Judgement :

1. This appeal is filed by the appellants/original defendants being aggrieved by the judgment and order dated 18th November, 2003 passed by the learned Presiding Officer of the DRT-I, Mumbai in Original Application No. 1277/2000. By the impugned judgment and order, the learned Presiding Officer partly allowed the original application in favour of the Bank with proportionate costs and ordered the defendants/present appellants to pay to the applicant Bank a sum of Rs. 75,43,053.28 with future interest at the rate of 17.5.% per annum from the date of original application till realization of the amount. The learned Presiding Officer directed issuance of recovery certificate in the above stated terms. Being aggrieved, the present appeal is filed by the defendants/present appellants.

The defendant was a constituent of the applicant Bank and had entered into divers agreements for construction with the State of Andhra Pradesh and in terms of the said agreements had to furnish Bank guarantees. Pursuant to the request of the defendant, the applicant Bank had during the period from 1976 to 1980 issued 42

Bank guarantees aggregating to Rs. 73,90,320/-. The defendant had in turn executed counter-guarantees in favour of the applicant Bank.

During the validity period of the said guarantees, the State of Andhra Pradesh invoked all the 42 guarantees, under a notice dated 27th May, 1985. The applicant Bank did not make the payment. On 14th June, 1984, the "defendant filed three suits under Section 20 of the Arbitration Act against the State of Andhra Pradesh for appointment of an Arbitrator and for referring the dispute to the Arbitrator.

Under the said suits, the defendant had prayed for an injunction restraining the State of Andhra Pradesh for enforcing the said 42 guarantees. On 29th June, 1985, the State of Andhra Pradesh filed four suits against the applicant Bank and defendants for recovery of diverse amounts aggregating to Rs, 73,90,320/- guaranteed by the applicant Bank under the said 42 guarantees. On 16th September, 1985, the Court allowed injunction applications filed by the defendant in the arbitration suits filed by it and restrained the State of Andhra Pradesh from invoking the said guarantees till the disposal of the said suits. The State of Andhra Pradesh had preferred an appeal against the said order in the High Court.

However, the said appeal was dismissed on 14th March, 1988. The State of Andhra Pradesh preferred special leave petition in the Hon'ble Supreme Court and on 17th March, 1994, the Hon'ble Supreme Court was pleased to set aside the orders passed by the Trial Court and High Court and vacated the injunction restraining the State of Andhra Pradesh from encashing the guarantees. In May, 1984, the defendant deposited the entire amount of Rs. 73,90,320/- in the Court where the suit filed by the State of Andhra Pradesh against the applicant Bank and the defendant for recovery of the said amount was pending. The applicant Bank thereafter filed an application in the said Court contending inter alia that since the entire amount was desposited by the defendant, all the suits were liable to be dismissed. The said application however, was opposed by the State of Andhra Pradesh on the ground that the applicant was liable to pay interest on the amount of Rs. 73,90,320/- from the date of filing of the said suits till 4h May, 1994, the date on which the amount was actually paid. This contention of the State of Andhra Pradesh was upheld and the applicant Bank was directed to pay interest at the

rate of 15% per annum from the date of the suit till 4th May, 1994.

In view of the said orders, the applicant Bank had to pay a sum of Rs. 81,01,122.80 to the State of Andhra Pradesh.

3. On this background, it was contended by the applicant Bank that they were entitled to receive the said amount along with future interest at the rate of 17.5% per annum plus costs. The defendant however, declined to pay the said amount on demand and hence, the original application was filed by the applicant Bank. The applicant Bank had quantified their claim at Rs. 96,03,270.80 and also claimed future interest at the rate of 17.5% per annum from 1st April, 2000 till realization of the amount.

4. The defendants/appellants herein opposed the said original application by filing their written statement. Various contentions were taken inter alia contending that the original application was barred by limitation etc. etc. It was contended that the amounts, which the applicant Bank was required to pay to the State of Andhra Pradesh in those four suits filed by the State of Andhra Pradesh were required to be paid on account of the applicant Bank's own wrongful actions. It was contended that the State of Andhra Pradesh had invoked the Bank guarantees under a notice dated 27th May, 1985 and the applicant Bank ought to have made the payments under the said guarantees but the applicant Bank without any justifiable reason had refused to pay the amounts under said guarantees requiring the State of Andhra Pradesh to file those suits. It was contended that had the applicant Bank paid the amount under Bank guarantees, the State of Andhra Pradesh would not have been required to file the suits at all. Therefore, the applicant Bank was liable to pay the interest on the sum of Rs. 73,90,320/- from the date of filing of the application till the amount was actually paid at the rate of 12% per annum. It was contended that as the cause of action for filing the said suits was wrongful refusal on the part of the applicant Bank to pay the amounts under Bank guarantees, the defendant was not liable to pay the said amount. It was also contended that competent Civil Court had already declared and held that the defendant was not liable to pay the interest and the costs. Therefore, the DRT could not sit in appeal over the orders passed by the competent Civil Court at Hyderabad. On this

ground, it was prayed that the original application be dismissed with exemplary costs.

5. The learned Presiding Officer after hearing both the sides and after going through the entire material placed before him allowed the original application of the Bank and ordered the defendant to pay the amount as narrated above.

6. Before me also, identical submissions were made by Advocates appearing for the respective parties. It was vehemently contended by Mr. Rustomjee, the learned Advocate appearing for the appellants that the defendant had deposited the entire amount in the Civil Court where the suit had been filed by the State of Andhra Pradesh against the applicant Bank and the defendant for recovery of the said amount. It was also contended that the applicant Bank could very well have paid the amount before the injunction order came into force. Making this submission, it was contended that the appellants ought not to be punished for the wrongful action of the applicant Bank.

On the other hand, Mr. Rishabh Shah, the learned Advocate appearing for the respondent Bank forcefully submitted that the applicant Bank could not pay because there was injunction order passed by the Civil Court on the application made by the defendants themselves. On the point of applicant Bank not making payment before the injunction order came into force, it was argued by Mr. Shah that exactly on this ground, the learned Presiding Officer in the impugned order has not awarded any interest to the applicant Bank. He also drew my attention to the indenture of guarantee given by the defendants to the applicant Bank.

Paragraph 3 of the same can be reproduced below for the sake of convenience :
To pay to you (applicant Bank) on demand all costs, charges and expenses (including the legal costs between attorney and client) paid or incurred by you in any way concerning the guarantee/s and your obligations and liability thereunder and this counter guarantee and your rights hereunder.

By virtue of this clause, the applicant Bank is entitled to claim the amount of interest during the period from 16th March, 1985 till 16th March, 1995 i.e. strictly during the period when the injunction order was running. However, since the State

of Andhra Pradesh was required to file the suits because of wrongful refusal on the part of the applicant Bank to pay the amounts under guarantee, the applicant Bank would not be entitled to recover the costs of suits or other legal charges, which the Bank might have incurred for the purpose of contesting the said suits.

The competent Civil Court has granted interest at the rate of 12% per annum. The total amount payable by the applicant Bank was Rs. 73,90,320/-. However, considering that the applicant Bank had not paid even before the injunction order came into force, the learned Presiding Officer held that the applicant Bank was entitled for the amount of interest from 16th September, 1985 till 17 March, 1994 i.e, for the period of 8 years 6 months and 2 days. The learned Presiding Officer in fact calculated the interest for that period, which came to Rs. 75,43,053.28. He accordingly granted to the applicant Bank only that much interest and nothing more.

7. As far as the contention of the appellant that the competent Civil Court had already rejected the claim of interest against the defendant and, therefore, the said question now cannot be gone into by DRT, has to be rejected. If one goes through the judgment of the City Civil Court, Hyderabad, it will be revealed that no order was passed against the defendant by the said Court because, arbitration proceedings between the defendant and the State of Andhra Pradesh were going on and the State had not made any claim against the defendant in that suit.

Therefore, it cannot be said that the competent Civil Court had already adjudicated the issue and had held that the defendant was not liable to make the said payment. Therefore, the bogey of resjudicata raised by the defendant/applicant has to be completely ignored.

8. In view of the aforesaid discussion, in my view, the learned Presiding Officer has very fairly and correctly passed the order, which warrants no interference. Accordingly, following order is passed :

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com