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Court : DRAT Allahabad

Decided On : Nov-09-2005

Reported in : II(2006)BC215

Judge : P Deb

Appellant : Maya Spinners Ltd. and ors.

Respondent : State Bank of Indore and ors.

Judgement :

1. This appeal has been preferred against the order dated 1st October, 2001 passed by the D.R.T., Jabalpur in Original Application No.380/2000, whereby and whereunder, the appellants for permitting them to cross-examine the witnesses of the Bank and allowing them liberty to file their counter-affidavit in evidence after cross-examination is over, has been rejected.

2. Such order dated 1st October, 2001 was challenged by the appellants before the Hon'ble Madhya Pradesh High Court in writ petition No.5044/01. Various other writ petitions were also filed wherein moot question involved was as to the right of appeal against interlocutory order. The matter was referred to a Full Bench and ultimately Full Bench decided that the appeal may be maintainable against interlocutory orders also under the RDDBFI Act. Regarding merit a legal question with respect to the right of cross-examination of the borrowers of the Bank officials have also been considered while deciding that writ petition and it was categorically observed that such right of cross-examination cannot be a matter of right as per

the Evidence Act, rather such right is restricted of showing sufficient and proper grounds as to manipulation/forgery with respect to the accounts and claims of the Bank. In concluding part of the disposal of the writ petition, it was held that if the appeal is filed against the interlocutory order as challenged within six weeks, then the limitation shall not come in the way and in that way, the present appeal has been filed and the limitation has also been condoned in view of the observation made by the Hon'ble High Court and the further proceeding had also been stayed in the Original Application No. 380/2000.

3. In the present appeal, it is the contention of the learned Counsel for the appellants that the present appeal is guided regarding evidence, cross-examination by non-amended provisions of Rule 12(6) of the D.R.T. (Procedure) Rules. The Original Application filed was before the amendment came into force and accordingly, it is submitted that under the unamended provision practically cross-examination was not a directory provision but a mandatory provision. I do not subscribe the same view. Even before the amendment also, the evidence was entitled to be accepted by way of affidavit and cross-examination provisions were there which might not be as stringent as per the amended provision but such cross-examination would be permitted to the satisfaction of the Presiding Officer alone. Now such satisfaction must be on the subjective value and not on objective procedure alone. The question of provisions of Sections 60, 137, 138 of Evidence Act could not be attracted and for such satisfaction of the Tribunal grounds must be shown which are proper and justifiable for the purpose of cross-examination and those provisions and the satisfaction of the Tribunal have been considered by the Madhya Pradesh High Court and also by the Supreme Court in various judgments and also the judgment on the basis of which the present appeal has been filed only on point of law, which can come up on the materials on record cannot be a ground for cross-examination. If some ambiguity is there on factual aspect and on the documents filed, then and then only the question of cross-examination comes in, In the present case, it is submitted that there were cash credit facility and U.B.D. facility granted to the appellants but those have been clubbed together and single account has been filed. On such contention of the appellants in the replication, it has been clarified that U.B.D. facility had always been operated by the appellants through cash credit account. This is a matter of

acceptance of contention of either of the parties by the Tribunal on the basis of documents filed and the rival contentions made by the parties. For that reason, cross-examination is not only way out for the purpose of coming to a just decision. Other grievances of the appellants were that the Original Application is barred by limitation i.e. a totally point of law based on the factual aspect as provided by the documents from the side of the Bank. For that reason, the cross-examination is not necessary. Regarding the blank documents being signed by the appellants, primary burden remains with the appellants and if they can show it, then only burden would shift to the Bank. Those matters have been considered by the learned Tribunal in the impugned order elaborately and the right of cross-examination had also been considered on the basis of the judgment being delivered by the M.P. High Court in various judgments, reference of which have been given in the impugned order itself.

4. On close scrutiny of the impugned order and on hearing the learned Counsel of both the parties, I do not find that any error has been committed by the learned Tribunal wherein this Appellate Tribunal can interfere or transgress, Sufficient reasons have been given for not allowing the permission as sought for. Hence, I am not inclined to interfere with the impugned order passed, One fact remains that by the impugned order itself, the right of filing counter-affidavit by way of evidence from the side of the appellants had also been rejected which ought not to have been done. Although it appears that the appellants themselves wanted to delay it with a prayer of liberty of filing counter-affidavit after cross-examination of the witnesses of the Bank, When cross-examination of the Bank's witnesses are disallowed, then at least appellants ought to have been given a further chance to give their evidence by way of counter affidavit. The appeal is thus rejected with modification to the effect that a single chance should be given to the appellants to file their evidence by way of counter-affidavit, if they desire so and then proceed for finalization of the Original Application according to law.

5. In the result, the appeal is rejected with the observation as made above. No order as to cost. Stay order passed earlier is hereby vacated.