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Court : DRAT Allahabad

Decided On : May-25-2006

Reported in : I(2007)BC147

Judge : P Deb

Appellant : Holkar Enterprises and ors.

Respondent : Oriental Bank of Commerce

Judgement :

1. This appeal has been preferred against the final judgment and order passed by the then Presiding Officer, DRT, Jabalpur in T.A. No.1145/98, whereby and whereunder the recovery certificate has been ordered to be issued against the appellants and in favour of the respondent Bank for realisation of Rs. 72,06,252.22 with interest, future and pendente lite, and also with cost and other usual reliefs.

2. The respondent Bank had filed an original suit before the District Judge, Bhopal registered as original Suit No. 35-A of 1996 against the appellants for recovery of a sum as mentioned above stating various facts as to how the loan was taken by the appellants and the same remained unpaid. The appellant-defendants appeared in the suit and filed their written statement challenging the contentions of the Bank on 17th January, 1998. They had taken various pleas to thwart the claim of the Bank in their written statement while the suit was pending before the Tribunal, then the DRT, Jabalpur was set up under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter shall be referred to as "the

RDDBFI Act"), then under the provisions of Section 31 of the RDDBFI Act, the suit was transferred to the DRT, Jabalpur, where the same has been registered as T.A. No.1145/98. The learned Presiding Officer, DRT, Jabalpur as per provisions of Section 31-A of the RDDBFI Act and the regulation framed for practising procedure of DRT, proceeded with the case from the stage when it was transferred to the DRT. From the records of the DRT, it appears that on 10th December, 1998 the learned Presiding Officer asked the respondent Bank to file evidence in the form of affidavit in support of their claim. On 17th February, 1999 the respondent Bank filed evidence by way of affidavit of three witnesses, then on 17th February, 1999 itself, learned Presiding Officer asked for issuance of notices to the appellant-defendants for filing their reply to the claim of the applicant Bank and date was fixed on 26th March, 1999. On that date the appellants appeared through their Counsel and took adjournment. On 20th April, 1999, the defendant-appellants filed a petition to the effect that they had not been supplied the statement of accounts by the Bank and further that the present proceeding should not be proceeded as the appellants' suit being Civil Suit No. 501/1998 is pending before the Civil Court, but by the order dated 28th April, 1999, such petition of the appellants was rejected and then fixed 30th June, 1999 for filing of evidence by way of affidavit from the side of the defendant-appellants. On 30th June, 1999 the defendant-appellants did not file their evidence, rather filed three petitions, one being for stay of the proceedings under Section 10 of the CPC, another petition for giving direction to the respondent-Bank to produce documents namely statement of accounts, which were not supplied earlier to the appellants and another under Order 9 Rule 14 of the CPC, from the Bank's side oral objections were raised and on that very date at 1.00 p.m. all those three petitions were rejected by speaking order and the case was closed and 1st July, 1999 was fixed for judgment.

3. According to the appellants, when they have not been given a chance to argue the case or to file their evidence on affidavit, they should be given opportunity of being heard and to that effect, a petition was filed, but that petition was not given cognizance to by the learned Tribunal and on 1st July, 1999 the impugned judgment has been delivered. Against this impugned judgment the defendant-appellants went to the Hon'ble High Court of Madhya Pradesh in a writ petition being W.P. No. 3597/99, where the vires of the Act were challenged together with

further relief of setting aside the impugned judgment. Further proceeding in the matter was stayed by the Hon'ble High Court of Madhya Pradesh by an interim order in the writ petition on a pre-condition of deposit of an amount with the Bank. Ultimately the writ petition was dismissed but liberty was given to the appellants to move appropriate forum against the judgment. It appears that some more amount was also deposited by the appellants as per directions of the High Court. While filing this appeal before this Tribunal, the appellants had filed two petitions, one for condonation of delay as contemplated under Section 5 of the Limitation Act and another for waiver of deposit as per Section 21 of the RDDBFI Act. Both those petitions were heard and disposed of in favour of the appellant vide order dated 15th December, 2004.

4. In this appeal the appellants' main contention is that natural justice have been violated in the case, when the appellant had not been given an opportunity to place their case before the Tribunal. Even if it is found that there was negligence on part of the defendant-appellants in not submitting their evidence by way of affidavit, then also they cannot be denied of hearing of the case at the final stage. It is the submission of the learned Counsel for the appellant that from the order-sheet it is clear that no date was fixed for hearing of the case finally. The date 30th June, 1999 was fixed for filing of documents and affidavit of evidence from the side of the appellants and it was not the date fixed for final hearing and from the order passed on 30th June, 1999 it is clear that no hearing was made finally of the case in presence of both the parties, rather after rejecting the petitions filed by the appellant, the case was closed and fixed for judgment and thus there is total violation of the principles of natural justice.

5. On the other hand, it is the contention of the learned Counsel for the respondent Bank that the appellants were only buying time unnecessarily by filing petitions after petitions and when their case as revealed in the written statement was considered in the impugned judgment by the learned Tribunal, it cannot be said that there is violation of natural justice.

6. On the basis of the contention of both the parties, I have perused the records of the case and it appears that the learned Tribunal had hurriedly closed the case

without giving any opportunity of hearing to either of the parties and the learned Presiding Officer took all the burden on himself to decide the case without hearing the parties. This is definitely violation of natural justice. If the appellants were found to be buying time, then there were courses open to the learned Tribunal to proceed with the case stringently by putting pressure on the defendant-appellants, but they did not do so. It appears that there was a case filed by the appellant in a Civil Court on the same subject matter and as per the principle enunciated in the case of Dena Bank, then both the matters should be heard by the same Tribunal when there is scope/apprehension of contradictory finding by the Civil Court and the Tribunal. But it appears that the appellant instead of asking the Civil Court to transfer the case or asking the Tribunal to transfer his case and to be tried along with the present proceeding, the appellant took a wrong method by filing a petition for stay of the proceedings under Section 10 of the CPC, but the fact remains that the Tribunal ought to have applied its judicial mind when the matter had been brought to the notice of the Tribunal regarding pendency of another matter on the same subject-matter in the Civil Court. It was wrongly held by the learned Tribunal that it has no power or jurisdiction to consider any counter-claim or set-off claim. Such observation of the Tribunal was beyond the scope of the express and specific provision of the RDDBFI Act as provided under Sections 19(8) to 19(11). When parties are present before the Tribunal, then it was the bounden duty of the Tribunal to give them opportunity of being heard before final decision being arrived at, but as stated above, it appears that the learned Tribunal had violated the legal principle to the detriment of the principle of natural justice. Thus, I hold that this appeal has got much force and requires to be allowed.

7. In the result, the appeal is allowed and the impugned judgment and order is hereby set aside and the Presiding Officer, DRT, Jabalpur is hereby asked to reopen the T.A. No. 1145/98 and proceed to dispose it of according to law in the light of the observation made in the above paragraphs. The matter has already been delayed and as such the learned Tribunal should not give any indulgence to either of the parties to further delay the proceeding. A single chance may be given to the appellant to adduce their evidence and then proceed according to law.

If necessary the matter of the other suit pending before the Civil Court should also be reconsidered if still the same is pending.

8. In the circumstances, no order as to cost. Tribunal shall finally dispose of T.A. No. 1145/98 within a period of three months positively from the date of receipt of the records. The parties are hereby directed to appear through their Counsel before the DRT, Jabalpur on 15th June, 2006.

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