

Decora Carpet and ors. Vs. State Bank of India and ors.

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Court : DRAT Allahabad

Decided On : Jul-31-2006

Reported in : 2(2007)BC29

Judge : P Deb

Appellant : Decora Carpet and ors.

Respondent : State Bank of India and ors.

Judgement :

1. This appeal has been preferred against the order dated 28th January, 2005 passed by the learned Presiding Officer, D.R.T., Allahabad in case No. M.A. No. 97 of 2003, whereby and whereunder the restoration application filed by the appellants under Section 22(2)(g) of the Recovery of Debts Due to Banks and Financial Institutions Act (henceforth shall be referred to as "RDDBFI Act") for setting aside of the ex parte judgment passed in T.A. No. 160 of 2000 has been dismissed. The appellants were defendant Nos. 1 to 6 in the original case.

2. The admitted position is that the respondent Bank had filed an original suit being original suit No. 92 of 1991 before the Civil Judge, Mirzapur for recovery of Rs. 28,75,273.58 together with future and pendente lite interest and other usual reliefs. In the original suit the appellant-defendants had put in appearance and filed their written statement and contested the case on day-to-day basis. After coming into force of the Act, the original suit was transferred to the D.R.T., Jabalpur and therein the case was further registered as T.A.No. 629 of 1998.

Before the Jabalpur Tribunal, the appellants, it appeared, had made an attempt to put in appearance through one Advocate but the appearance could not be accepted as the lawyer concerned had not filed Vakalatnama in their favour. Subsequently, on establishment of D.R.T., Allahabad the case was again transferred and was renumbered as T.A. No. 160 of 2000. On receipt of the records from D.R.T., Jabalpur notices were sent through registered post by the Registrar of the Tribunal but when the notices did not return after service then publication was made in a Hindi Daily which had wide circulation in the District of Mirzapur, where the defendant-appellants reside. After such publication defendant No. 6 who happened to be the guarantor appeared and contested the case. It must be mentioned here that the defendant No. 6 is also of the same area of Mirzapur where the appellants reside.

After due contest by defendant No. 6 the original case was decreed and recovery certificate was asked to be issued by the ex parte judgment against the appellants on 21st April, 2003. Soon after the ex parte judgment was passed the appellants as per their assertion came to know of the ex parte judgment on 23rd April, 2003 and thus they filed the restoration petition, which was registered as M.A. No. 97 of 2003.

3. The contentions of the appellants petitioners were that they have knowledge about the transfer of the original suit from Mirzapur to Jabalpur, although such transfer was made behind their back. They made search in the Civil Court, Jabalpur but could not trace out the case.

They had no knowledge of the further transfer of the case from Jabalpur to D.R.T., Allahabad and they did not receive any notice from D.R.T., Allahabad and that during publication the appellants were residing at Delhi and as such they could not get any knowledge of such publication in the daily having circulation at Mirzapur.

4. All the contentions of the appellant-petitioners were objected vehemently by the respondent Bank. Their contention was that the appellants have the knowledge of transfer of the case from Mirzapur Civil Court to D.R.T., Jabalpur and as such there was no reason for the appellants to search the case in the Civil Court at Jabalpur. Their further contention is that the appellants made attempt to appear

before the D.R.T., Jabalpur through an Advocate but such appearance was not accepted as the lawyer had no valid Vakalatnama. After transfer to D.R.T., Allahabad notices were sent through registered post in proper and correct addresses but still the appellants did not appear, although, after publication the defendant No. 6 had appeared in the original case. The other contentions about the knowledge of the ex parte judgment, soon after i.e. 21st April, 2003 is only a concocted and manufactured story.

5. On consideration of cases of both the parties and on hearing them the learned Presiding Officer, D.R.T., Allahabad had rejected the restoration petition by the impugned judgment holding that the appellants have knowledge about the case and they wilfully neglected to appear and contest the original case with the intention to file restoration petition immediately after the ex parte judgment as a dilatory tactics as is being taken by almost all the borrowers of the financial institutions.

6. In the present appeal also the appellants have taken the same plea as they have taken before the D.R.T., Allahabad in M.A. No. 97 of 2003.

It is the submission of the learned Advocate for the appellants that they have no knowledge about the transfer of the case from Civil Court and that they had no notice about the case either from D.R.T., Jabalpur or from D.R.T., Allahabad. It is the contention of the learned Counsel that when the case was transferred to a Distinct Court then the appellants are entitled to get notices and if no notice has been served then the ex parte judgment passed against them is illegal and inoperative in the eye of law.

7. The learned Counsel for the respondent Bank has reverted the contentions of the appellants by referring to the proviso of Order 9 Rule 13 of the CPC which is para materia the same as Section 22(2)(g) of RDDBFI Act.

8. In the light of the submissions made by the learned Counsel for both the parties, I have perused the records of the Tribunal and of the original suit before the Civil Court. Admitted position is that the appellants who were defendant Nos. 1 to 5 in the original suit have appeared before the Civil Court and contested the case by

filing written statement but from the different orders passed in the Civil Court, it is clear that the appellants were negligent and were buying time as dilatory tactics. Ultimately, in the presence of both the parties Civil Judge, Mirzapur have passed order on 28th July, 1998 transferring the case from Civil Court to D.R.T., Jabalpur and the parties were specifically asked to appear before D.R.T., Jabalpur on 23rd October, 1998. Thus, the appellants have knowledge about the proceedings and of its transfer to D.R.T., Jabalpur. It has also been found that the appellants had attempted to appear and contest the case callously through an Advocate without giving Vakalatnama. After transfer of the case, to D.R.T., Allahabad registered notices were sent in the proper and correct addresses of the appellants but the A.D.receipts did not return even after lapse of 30 days. By the operation and presumption of law such notices were held to be deemed served but still for further precautions notices were published in the newspaper having wide circulation in the locality where the appellants reside.

The plea of the appellants that they have shifted from Mirzapur to Delhi had rightly not been accepted by the learned Presiding Officer in the impugned order as the case of shifting is a concocted one, as such shifting were never reported either to the Bank or to the Tribunal or to the Civil Court at any point of time. Thus, even if, there is any technical flaw in the service of the notice by the Tribunals the ex parte judgment cannot be set aside when the appellants had full knowledge about the proceeding. I do not find that the learned Tribunal had committed any error in rejecting the restoration petition by the impugned order. Several rulings submitted on behalf of the appellants are discussed below, 9. M.P. Narayan v. Smt. Sadhana , has got no bearing with facts of the present case. Krishnaji Mahadeo Bapat v. Wamanrao Balwant Rao Shinde , also stands on different footing.

In that case it was held that when the case had been transferred to other District, Court then the authority of the Advocate in the Original Court comes to an end and then the ex parte judgment passed without the knowledge of the party cannot be sustained. In the present case order dated 28th July, 1998 passed in Original Suit No. 92 of 1991 shows that the order was passed in presence of both the parties and both the parties have been asked to appear before the transferring Court. Thus the Bombay judgment is not applicable. Similarly, Koruprolu Atchaya v.

Bideshi Raghuram Singh , has also got no application as the facts and legal position are totally different, Smt.

Anjula v. Milan Kumar , is based on Allahabad High Court Rules under the Hindu Marriage Act, which has got no application as per the D.R.T., Procedural Rules.

10. Thus, I find that the present appeal has got no merit and the finding of the D.R.T., Allahabad being proper and justified makes no room for interference by this Appellate Tribunal.

11. In the result the appeal is dismissed and in the circumstances no order as to

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