

Standard Chartered Bank Vs. Applitech Solution Ltd. and ors.

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Court : Gujarat

Decided On : Nov-28-2008

Reported in : AIR2009Guj54; (2009)2GLR1276

Judge : K.S. Radhakrishnan, C.J. and; Akil Kureshi, J.

Acts : Recovery of Debts Due to the Banks and Financial Institutions Act, 1993; [Banking Regulation Act, 1949](#) - Sections 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 16

Appeal No. : L.P.A. No. 1126 of 2008 in Spl. Civ. Appln. No. 8991 of 2008

Appellant : Standard Chartered Bank

Respondent : Applitech Solution Ltd. and ors.

Advocate for Def. : Vishwas K. Shah, Adv.

Advocate for Pet/Ap. : Percy Kavina, Sr. Counsel and; Singhi and Co.

Disposition : Appeal allowed

Judgement :

K.S. Radhakrishnan, C.J.

1. Letters Patent Appeal No. 1126 of 2008 arises out of Interim order passed by the learned single Judge on 16-3-2008. When the appeal came up for hearing,

with the consent of parties we called for the main writ petition and heard the appeal as well as the writ petition finally.

2. Appeal has been preferred by Standard Chartered Bank, a banking company within the meaning of definition 2(e) of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, first respondent in the application. Respondents Nos. 1 to 3 herein preferred Special Civil Application challenging an order passed by the Presiding Officer of DRT, Ahmedabad, on 9-5-2008, allowing an application preferred by Standard Chartered Bank, for substituting itself in place in ICICI Bank in the recovery certificate No. 1941 issued in O.A. No. 62/2003.

3. ICICI Bank Limited had filed O.A. No. 62/2003 in the Debt Recovery Tribunal, Ahmedabad for recovery of an amount of Rs. 4,38,67,473/- from respondents herein. During the pendency of the application, parties entered into certain terms and conditions to settle the dispute. It was agreed that ICICI Bank would receive an amount of Rs. 2 crores to be paid in four installments, the first being Rs. 30 lakhs to be paid by 15-11-2003, and the remaining amount of Rs. 1,70,00,000/- to be paid in three monthly equal installments, starting from January 31, 2004 and ending on March 31, 2004. It was agreed that in case of failure of the respondents herein to pay the amount, the settlement would stand revoked and the obligation and liability of the respondents would be to pay the full amount of Rs. 4,38,67,473/-. Parties agreed that the consent terms would be placed before the Debt Recovery Tribunal for passing a consent decree thereon, on the terms entered into by the parties. Consent terms were incorporated and made part of the order dated 8-12-2003 passed by Debt Recovery Tribunal, however, respondents failed to honour their commitments. Out of Rs. 2 crores agreed to be paid, a sum of only Rs. 25 lakhs was paid and the balance amount was not paid. Under such circumstances, ICICI Bank issued a notice to the respondents and also filed an application before the Recovery Officer of Debt Recovery Tribunal, praying for issuing demand notice No. 1941 in O.A. No. 62/03, against respondents, and also praying for execution of recovery certificate dated 9-12-2003 for the entire amount of Rs. 4,38,57,473/-.

4. The Recovery Officer of Debt Recovery Tribunal issued a notice of demand dated 18-5-2008 to the respondents claiming a total sum of Rs. 5,92,05,619/-, inclusive of interest. However, the amount was not paid by the respondents. ICICI Bank later, through a deed of assignment dated 18-6-2006 with the Standard Chartered Bank had assigned the rights and liabilities of the first respondent. Applitech Solution Limited, along with various other companies. Pursuant to the deed of assignment, Standard Chartered Bank filed a Civil Misc. Application, being CMA No. 30/06 in O.A. No. 62/03 before Debt Recovery Tribunal, Ahmedabad, seeking substitution of Standard Chartered Bank, in place of ICICI Bank Limited, at nine places in the recovery certificate dated 9-12-2003 issued in O.A. No. 62/03. It was pointed out before Debt Recovery Tribunal that ICICI Bank had assigned the debt and securities to Standard Chartered Bank by deed of assignment dated 18-2-2006 and they should be allowed to proceed with the recovery proceedings against respondents.

5. Application was opposed by the respondents stating that once recovery certificate was issued, the same could not be rectified or corrected. It was also pointed out that the deed of assignment did not specifically refer to the consent decree, and the recovery certificate obtained by ICICI Bank Ltd. Further, it was also pointed out that in Entry 13 of Schedule annexed to the deed of assignment, it was mentioned that no immovable properties were secured and therefore, assigned Bank could not have taken any steps to recover the amount in execution of the recovery certificate. Various other objections were also raised before Debt Recovery Tribunal.

6. Recovery Officer of Debt Recovery Tribunal however, allowed the application and recovery certificate No. 1941 issued in O.A. No. 62/03 was corrected by substituting Standard Chartered Bank in place of ICICI Bank. Aggrieved by the same, respondents Nos. 1 to 3 approached this Court and filed the present writ petition.

7. Learned single Judge passed an interim order on 16-9-2008, expressing prima facie view that there is no express assignment in the deed of assignment for assigning the rights under the decree/recovery certificate held by the assignor.

Learned single Judge opined that in the absence of specific assignment, the order passed by the Tribunal could not be said to be perverse. Learned single Judge also prima facie opined that the Tribunal had exceeded in its jurisdiction by altering certificate by way of amendment.

8. Mr. Percy Kavina, Senior Counsel appearing for the Bank submitted that learned single Judge has not properly understood the terms and conditions of the assignment deed and has committed an error in holding that there was no express assignment in the deed of assignment with regard to rights and liabilities of ICICI Bank in favour of Standard Chartered Bank. Learned Counsel submitted that after the execution of assignment deed, ICICI Bank lost its interest in pursuing O.A. No. 62/03, and unless and until Standard Chartered Bank is substituted, it would not be able to recover the amount from the respondents on the basis of consent decree obtained in favour of ICICI Bank. Learned Counsel also referred to various provisions of the deed of assignment as well as the terms and conditions agreed upon by ICICI Bank as well as respondents.

9. Mr. Vishwas K. Shah, learned Counsel appearing for the respondents on the other hand submitted that Debt Recovery Tribunal has committed an error in substituting Standard Chartered Bank in the place of ICICI Bank in the recovery certificate issued by Debt Recovery Tribunal. Learned Counsel submitted that there was no specific assignment of the consent order in favour of Standard Chartered Bank and therefore, there was no question of execution of that order. Learned Counsel further submitted that Tribunal had exceeded its jurisdiction in altering the certificate by way of amendment.

10. Application No. 30/06 was preferred by Standard Chartered Bank, evidently with the consent of ICICI Bank. ICICI Bank has naturally lost its interest in further prosecuting O.A. No. 62/03 after execution of the assignment deed dated 18-2-2006. ICICI Bank is not seen to have objected the request of Standard Chartered Bank in prosecuting the O.A. and the execution petition filed by it before the Debt Recovery Tribunal. We have examined the terms and conditions of the deed of assignment. Clause 3 of the body of assignment deed states that names of the borrowers to whom the loans were granted together with a description of the

immovable properties over which such borrowers granted a secured interest in favour of the seller are set out in the Schedule. Name of first respondent figures at serial No. 13 in the Schedule. Clause 4 of the body of assignment states that assignee will have the right to enforce its claim, title and interest over all immovable properties over which the borrowers have granted security interest in favour of the seller for the loans, whether or not such immovable properties have been described in the Schedule. Therefore, though as against serial No. 13 in the Schedule, it is stated that no immovable properties secured, even then as per Clause 4, the assignee will have the right to enforce the claim, title and interest over all immovable properties, whether or not such immovable properties have been described' in the Schedule. It is seen from the Schedule that total purchase price stipulated therein is Rs. 13,01,36,400.08 paise. Clause 2.1 of Article 2 of the Assignment reads as follows:

2.1 Assignment--In consideration of the Assignee having paid to the seller the purchase price in accordance with the terms of the SPA, the seller doth hereby irrevocably assigns, transfers and releases unto the Assignee and the Assignee hereby acquires and takes over from the Seller, the Loans and the Seller's right, title and interest in and to the Loans, the Secured Properties, the Receipts, the Asset Files and the Asset Documents (save and except the rights that are personal in nature), free from all encumbrances or other impediments, absolutely and forever to the end and intent that the Assignee shall hereafter be deemed to be the full and absolute legal and beneficial owner thereof and legally and beneficially entitled to demand, receive and recover the same in its own name and right.

Clause 2.3 deals with Receipts of Receivables by the seller, which reads as follows:

23. The Seller hereby agrees that in the event that the Seller receive, subsequent to the date of execution of this Deed, any monies or Receipts representing repayment of the Loans or any part thereof or repossession of the Secured Properties, the Seller shall transfer such monies to the Assignee.

The Parties hereby agree and confirm that the Seller is not a trustee for the Assignee and neither this nor any action taken by the Seller hereunder shall constitute between the Seller and the Assignee a partnership, association, Joint venture or other common enterprise.

The relationship between the parties is that of the parties to a privately negotiated arms' length sale of the Receivable.

Clause 24 deals with Assignee's Rights, which reads as follows:

On and from the date hereof, the Assignee shall:

(a) have all the Seller's rights, titles and interest in the Loans as per the Asset Files and the Asset' Documents;

(b) have the right over all the documents and data pertaining to the loans and may retain such documents with itself or with its duly authorized agent;

(c) have the sole and absolute right of collecting all monies under the Loans or the Secured Properties in such manner as the Assignee in its absolute discretion determines;

11. Above mentioned Clauses coupled with the Schedule would clearly indicate that the assignee Standard Chartered Bank has sole and absolute right of collecting all monies under the loans or the secured properties in such manner as the assignee in its absolute discretion determines. We are of the view that in the absence of any objection raised by ICICI Bank against the terms and conditions of assignment, the Standard Chartered Bank, assignee can always prosecute the proceedings pending before the Debt Recovery Tribunal. Both ICICI Bank Limited as well as Standard Chartered Bank fall within the definition of 'banking company' under definition 2(e) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and shall have the meaning assigned to it in Clause (c) of Section 5 of the [Banking Regulation Act, 1949](#).

12. Order 21, Rule 16 of the Civil Procedure Code deals with Application for execution by transferee of decree, which says that if a decree has been passed

jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject, to the same conditions as if the application were made by such decree-holder. The above provision as such may not apply to Debt Recovery Tribunal, but the principle could be applied. In our view, the attempt of the respondent is only to see that the money be not recovered by Standard Chartered Bank. If the respondents' arguments are accepted, then Standard Chartered Bank has to initiate a fresh proceedings against respondents for recovery of money. Respondents are not disputing the consent order and the consent decree executed between them and ICICI Bank Ltd., nor they have any objection in ICICI Bank proceeding against them. Though there is no specific stipulation in the deed of assignment or specific reference to O.A. No. 62/03 in that deed, if we read various terms of deed of assignment, it would be clear that whatever rights ICICI Bank had, were also transferred, to Standard Chartered Bank and therefore, they are legally entitled to proceed with the recovery of loan and continue with the proceeding which was initiated by ICICI Bank as against the respondents. We are not prepared to say that in the absence of any specific stipulation in the deed of assignment of the pendency of proceedings-before the Debt Recovery Tribunal, that would not debar Standard Chartered Bank in proceeding further with the application filed by ICICI Bank in the Debt Recovery Tribunal. The finding of the learned single Judge that, the Tribunal has exceeded its powers to substitute Standard Chartered Bank in the place of ICICI Bank, in our view cannot be sustained. In our view, whatever rights which flow to ICICI Bank as per the consent decree stood transferred to Standard Chartered Bank, in view of the deed of assignment. We are, therefore, inclined to dismiss writ petition and set aside order passed by the learned single Judge. Order accordingly.

Appeal stands allowed. Consequently, Civil Application stands disposed of.