

(2018) 07 PAT CK 0051

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 4141 Of 2010

Shree Maha Laxmi  
General Store

APPELLANT

Vs

Union Of India  
Through Secretary  
And Ors

RESPONDENT

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Date of Decision: July 12, 2018

Acts Referred:

- Recovery Of Debts And Bankruptcy Act, 1993 - Section 2(g), 19(1), 31, 31(A)

Citation: (2018) 3 PLJR 664

Hon'ble Judges: Vikash Jain, J

Bench: Single Bench

Advocate: Alok Kr. Choudhary, Kulanand Jha, Nagendra Kumar, Kanak Verma, Ajay Kumar Sinha

Final Decision: Disposed Of

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### Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. The present writ petition questions the validity of the order dated 08.09.2009 passed by the Debts Recovery Tribunal, Patna (hereinafter referred to as "the DRT"™) under Section 31-A of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the "RDB Act"™) in relation to a decree of the Civil Court, the latter having been passed after commencement of the said RDB Act.
3. The short facts of the case are that a cash credit limit of Rs. 2,00,000/- was sanctioned by the respondent-Bank which was later enhanced to Rs.

3,60,000/- in favour of the petitioner. The petitioner along with guarantors executed the necessary documents such as Deed of Hypothecation, Deed of Guarantee, Demand Promissory Notes etc. in order to secure the due repayment of the cash credit. The petitioner's business suffered considerable loss leading to default in repayment of the loan. The respondent-Bank filed Title Mortgage Suit No. 276 of 2003 for realization of dues of Rs. 5,89,439.62 which was allowed in terms of judgment dated 28.11.2005 together with interest pendente lite and future till realization mentioned in D.P. note, within three months. Accordingly, a preliminary decree was drawn up. In order to realize and recover the decretal amount, the respondent-Bank filed an Original Application (Execution) Case No. 02 of 2009 for realization of an amount of Rs. 17,19,682.47 inclusive of the accrued interest. The original application was allowed upon rejection of the contentions raised on behalf of the petitioner and a recovery certificate for Rs. 17,19,682.47 was issued by the DRT.

4. Learned counsel for the petitioner submits that the impugned order dated 08.09.2009 passed by the DRT is wholly without jurisdiction and unsustainable in law. A bare reading of the said order discloses that the DRT has proceeded to entertain the Bank's Original Application (Execution) with reference to Section 31-A of the RDB Act which is in terms not applicable in the instant case. The said provision permits filing of an application before the DRT only in cases where a decree or order was passed by the Court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 (hereinafter referred to as the "Amendment Act") and had remained to be executed. It is a matter of record that the judgment and decree on the basis of which recovery is sought to be made was passed on 28.11.2005 in Title Mortgage Suit No. 276 of 2003 i.e. much after coming into effect of the Amendment Act. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Raghunath Rai Bareja and another vs. Punjab National Bank and others, (2007) 2 SCC 230 rendered in the context of Section 31 of the RDB Act, wherein the basic rule of literal interpretation has been reiterated. It is further submitted that the DRT has proceeded to straightway issue a

certificate for recovery of the amount mentioned in the original application, namely Rs. 17,19,682.47, without appreciating that the judgment and decree of the Court did not specify the rate of interest to be charged on the decretal amount and was to be applied as per D.P. note. In the instant case, the petitioner and guarantors had executed a demand promissory note on 19.09.1995 for Rs. 2,00,000/- with interest @ 14% per annum. Later on, they executed a second demand promissory note on 27.03.1997 for Rs. 3,60,000/- together with interest @ 19.75% per annum. It is submitted that the DRT therefore ought to have considered the validity and correctness of the calculation of interest sought to be recovered by the Bank against the petitioner.

5. Learned counsel for the respondent-Bank, on the other hand, opposes the writ petition and submits that the DRT has acted within its jurisdiction and rightly issued the recovery certificate. It is submitted that in the instant case, it is immaterial that the judgment and decree was passed by the Court after commencement of the Amendment Act, as the decretal amount of Rs. 5,89,439.62 was below the minimum pecuniary limit of Rs. 10,00,000/- for vesting jurisdiction in the DRT. In view of the judgment and decree, the amount claimed to be recoverable from the petitioner together with interest on the date of filing of the application before the DRT, however, came to Rs. 17,19,682.47 which thus constituted the value of the "debt" to be recovered from the petitioner. Accordingly, the Original Application was filed before the DRT as the value of the "debt" exceeded the minimum pecuniary limit of Rs. 10,00,000/- on the date of application. No fault can therefore be found with the order passed by the DRT and the petitioner is liable for recovery of the amount of Rs. 17,19,682.47 as ordered by it.

6. I have heard the parties and have given my careful consideration to the materials on record. Before considering the contentions raised by the rival parties, it would be appropriate to refer to the relevant provisions of the RDB Act, which are extracted below for ready reference "Recovery of Debts and Bankruptcy Act, 1993

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1(4) Save as otherwise provided, the provisions of this Code shall not apply where the amount of debt due to any bank or financial

institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one

lakh rupees, as the Central Government may, by notification, specify.

2(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by

a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution

or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether

payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and

legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part

after notice or ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is

created for the benefit of holders of debt securities or.

19. Application to the Tribunal-(1) Where a bank or a financial institution has to recover any debt from any person, it may make an

application to the Tribunal within the local limits of whose jurisdiction.

19(5)(i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence

including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be

accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence.

19(5-A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the

Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings and also for

continuation or vacation of the interim order passed under sub-section (4).

19(20) The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set-off or

counter-claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order

as it deems fit which may include order for payment of interest from the date on which payment of the amount is found due up to the date of realization or actual payment.

19(22) The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt

with interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate.

31. Transfer of pending cases.-(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of

a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen

after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

31-A. Power of Tribunal to issue certificate of recovery in case of decree or order.- (1) Where a decree or order was passed by any Court

before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been

executed, then, the decree- holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in

respect of a debt recoverable under this Act.â€

7. On a perusal of the provisions of the RDB Act, it is evident that the jurisdiction to entertain an application for recovery of a â€~debtâ€™™ would lie

before the DRT only if the value of such debt is of an amount not less than Rs. 10,00,000/-. The term â€œdebtâ€ includes any liability inclusive of

interest payable under a decree or order of any Civil Court. By dint of Section 31 of the RDB Act, suits or proceedings pending before any Court

immediately before the date of establishment of the DRT over which the DRT would have jurisdiction, would stand transferred to the Tribunal on that

date. In the instant case, however, the Court had jurisdiction in respect of Title Mortgage Suit No. 276 of 2003 filed in 2003 which was decreed in the

year 2005 as the amount recoverable was less than Rs. 10,00,000/- and hence the DRT had no jurisdiction in the matter. The moot question is whether

the DRT had the jurisdiction to entertain the original application filed by the Bank relating to a decree passed after the commencement of the

Amendment Act where the amount sought to be recovered under the decree exceeded Rs. 10,00,000/- on the date of application.

8. On a plain reading of Section 31-A of the RDB Act, it is abundantly clear that its very applicability abides by the date when the decree or order

was passed by the Court. The language of Section 31-A of the RDB Act is very plain and unambiguous which does not admit of two meanings. In the

present case, it is not in dispute that the original application was filed by the Bank after commencement of the Amendment Act and therefore, Section

31-A of the RDB Act in terms cannot apply. The Original Application (Execution) Case No. 02 of 2009 was filed on 07.02.2009 before the DRT

specifically under Section 31-A of the RDB Act for recovery of Rs. 17,19,682.47 inclusive of rate @ 19.75% per annum with quarterly rests, which

fact is not in dispute. The impugned order of the Tribunal dated 08.09.2009 has also been passed with reference to Section 31-A of the RDB Act

alone. I am therefore of the view that the DRT has acted without jurisdiction in entertaining the original application filed by the Bank under Section 31-

A of the RDB Act and accordingly the same is quashed.

9. The question then remains whether the Bank is entitled to have its dues recovered through the DRT. In this regard, it is seen that the total amount

claimed by the Bank on the basis of the judgment and decree dated 28.11.2005 was Rs. 17,19,682.47. In view of the definition of the term "debt"

under Section 2(g) of the RDB Act, there is no gainsaying that such amount thus comes within its ambit. The amount being in excess of Rs.

10,00,000/- on the date when the original application was filed, I am of the view that the Bank would be entitled for recovery of the said debt through

the DRT, though not under the provisions of Section 31-A of the RDB Act. The DRT shall therefore treat the application filed by the respondent-

Bank as having been filed under Section 19(1) of the RDB Act, and proceed further in the matter for passing orders afresh after hearing the parties in

accordance with law.

10. The writ petition stands disposed of with the aforesaid observations and directions.