

(2021) 09 DRT CK 0004

Debts Recovery Tribunal-II Ahmedabad

Case No: Original Application No. 1140 Of 2018

Bank Of India

APPELLANT

Vs

Ramuben Hakabhi Makwana
(Borrower) And Ors.

RESPONDENT

Date of Decision: Sept. 30, 2021

Acts Referred:

- Recovery of Debts Due to Banks and Financial Institution Act, 1993 - Section 19, 19(20) Code Of Civil Procedure, 1976 - Section 34
- Debts Recovery Tribunal (Procedure) Rules, 1993 - Rule 16

Hon'ble Judges: Laxman Madhani, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. The present Original Application has been filed by the Applicant Bank under Section 19 of The Recovery of Debts Due to Banks and Financial

Institutions Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993, against the defendants for recovery of Rs.17,02,954.25

(Rupees Seventeen Lacs Two Thousand Nine Hundred Fifty Four and Paisa Twenty Five Only) together with further interest @ 9.45% p.a. with half

yearly rests for K.C.C. Loan and @ 13.70% p.a. with half yearly rests for Term Loan from the date of filing of the application till realization thereof

from the Defendants.

2. The brief facts of the case as placed before this Tribunal at the time of hearing in the light of pleadings are that the Defendant Nos.1 & 2 had

approached to the Applicant Bank for availing various Credit facilities and after considering their proposal, the Applicant Bank sanctioned Credit

Facilities vide separate sanction letters dated 03.02.2012.

3. The Applicant Bank submits that in order to enjoy the aforesaid credit facilities, Defendants executed, submitted and delivered necessary documents. The following documents were executed, submitted and delivered amongst others.

For Term Loan:

- a) D P Note for Rs.5 Lacs dated 07.02.2012
- b) Term Loan Agreement for Rs.5 Lacs dated 07.02.2012
- c) Form No.L-55 dated 07.02.2012
- d) Form No.L-516 dated 07.02.2012
- e) Letter of Authority (For Agriculture Land) dated 07.02.2012
- f) Letter of Confirmation dated 07.02.2012
- g) Letter of Declaration Undertaking and Authority dated 07.02.2012
- h) Deed of Guarantee for Term Loan dated 07.02.2012

For Kisan Cash Credit Loan:

- a) DP Note for Rs.3 Lacs dated 07.02.2012
- b) Hypothecation-curn-Loan Agreement dated 07.02.2012
- c) Form No.L-55 dated 07.02.2012
- d) Form No.L-516 dated 07.02.2012
- e) Form No.L-435 dated 07.02.2012
- f) Letter of Confirmation dated 07.02.2012
- g) Letter of Authority (For Agriculture 07.02.2012 Land) dated 07.02.2012
- h) Letter of Declaration Undertaking and Authority dated 07.02.2012

4. The Applicant Bank submits that for availing the above mentioned Credit Facility from the Applicant Bank, the Defendants have created Hypothecation on Standing Crop which is more particularly described in the Schedule-I.

5. The Applicant bank submits that for availing the above mentioned facilities from the Applicant Bank, Defendant Nos.1 & 2 have also created

charge on their agriculture land situated at Village: Fulzar, Taluka: Chotila, District: Surendranagar which is more particularly described in Schedule-II.

The Defendants have signed and acknowledged their debt in favour of the Applicant on 13.1.2014 and 10.11.2017.

6. That the defendants availed the credit facility but failed to repay the dues of the Bank as per agreed terms, they failed to adhere to the financial

discipline of the applicant bank and the account of the defendants became irregular and sticky. Hence, the accounts of the defendants were classified

as NPA on 30.09.2014. The applicant bank has also issued legal notice dated 31.05.2018. The applicant bank requested the defendants from time to

time to regularize the said account but defendants did not pay any heed to the said request letters. It is further submitted that the defendants have no

bona-fide intention to repay the dues. All these acts and conduct on the part of the defendants were contrary to the terms and conditions of the

documents signed and executed by them. Accordingly the Applicant Bank has moved this O.A. to recover public money.

7. Soon after the registration of the case the defendants were summoned through registered post with A/D on 24.09.2018. As per record notices sent

to defendants were un-served. Thereafter, defendants were served through public notice in Divya Bhaskar, Ahmedabad edition on 12.09.2019.

Applicant bank had also filed Purshish at Exh. A/9 enclosing therewith copy of Postal Department's statement showing registration of article, track

report & paper publication respectively. None appeared on behalf of defendants despite service summons through paper publication. Thus, the case

was proceeded exparte against the defendants due to their non appearance vide order dated 20.11.2019.

I have heard the learned counsel for the applicant and have also gone through the case file properly. I have also gone through the law applicable to the

facts and circumstances of the present case.

8. From the perusal of the records, it is evident that defendants were provided with fair opportunity to contest the claim of the bank.

As the defendants opted not to contest the case, so only point of consideration before this Tribunal is whether the applicant Bank is legally entitled to

the amount as claimed in Original Application on the basis of documents and pleadings submitted by it before the Tribunal.

9. In support of Original Application, Applicant has filed affidavit in support of Suit Claim at Exh. A/ 10 sworn by Mr. P. D. Meena, Branch Manager

of Applicant Bank. The bank produced original documents.

10. The Learned counsel for the Applicant Bank has submitted that the Bank has duly filed copies of all the documents on file as required under ""The

Recovery of Debts and Bankruptcy Act, 1993"". He has further submitted that the defendants are willful defaulters, as they availed the aforesaid credit

facilities to their benefits but failed to maintain the financial discipline of the bank with a prayer that the Original Application may be allowed for the

reliefs claimed.

11. I have gone through the loan documents, averments made in the Original Application and also considered the submissions made by learned counsel

for the Applicant Bank. The copies of documents filed by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was

sanctioned on 03.02.2012 and the Defendants have signed and acknowledged their debt in favour of the Applicant on 13.11.2014 and 10.11.2017.

Present O. A. has been filed by the applicant bank on 25.08.2018 and hence it is within limitation period prescribed.

12. The applicant has also included certain amount on account of penal interest & other charges. I do not find any merit to grant penal interest & other

charges. The claim for penal interest of 2% is hereby declined. The applicant is only entitled to the outstanding amount and interest due in the credit

facilities loan account i.e. Rs.16,36,375.78 [Rs.6,90,631/- & Rs.3,98,521 /- (Outstanding Amt.) + Rs.4,03,999.34 & Rs.1,43,224.44 (interest) as per

page 13 of Original Application.].

13. In view of the aforesaid discussion, I deem it just and proper to allow the claim of the applicant Bank of the principal amount of Rs.16,36,375.78

(Rupees Sixteen Lacs Thirty Six Thousand Three Hundred Seventy Five and Paise Seventy Eight Only).

14. So far as rate of interest charged by applicant bank is concerned, applicant bank has charged rate of interest as per Terms and conditions of loan

documents executed by the defendants. However, as per the provision of Section 19(20) of the Recovery of Debts Due to Banks and Financial

Institution Act, 1993, now amended as The Recovery of Debts and Bankruptcy Act, 1993 which is analogous to Section 34 of Civil Procedure of

Code 1908, on filing of the suit/claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same

depending upon the facts and circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank

of India Vs. Ravindra & Others. Looking to the facts and circumstances of the case, I am of the opinion that it would be just and proper in the interest

of justice to award the simple interest@ 6% per annum.

15. The Original Application is allowed in view of above.

ORDER

1) I hereby allow this O.A. of the Applicant Bank and direct the defendants to pay jointly and severally to the applicant bank within 60 days from

today, a sum of Rs.16,36,375.78 (Rupees Sixteen Lacs Thirty Six Thousand Three Hundred Seventy Five and Paise Seventy Eight Only) alongwith

simple interest@ 6% per annum and cost & expenses from the date of filing of this O.A. till the date of realization.

2) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from the hypothecated assets and charged

properties of defendants as described in Schedule-I & II annexed to the Original Application.

3) If there is any shortfall, the same shall be recovered from the sale of other personal movable and immovable properties of the defendants.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-II, Ahmedabad.

5) The registry of this Tribunal is hereby directed to issue the free copy of the order and be sent to the both parties in compliance of Rule 16 of the

Debt Recovery Tribunal Procedure Rule 1993.

6) File be consigned to records.

Pronounced in Open Court on this 30th day of September, 2021 at Ahmedabad.