

ICICI Bank Limited Vs Jay Bharatbhai Shah

Court: Debts Recovery Tribunal-I Ahmedabad

Date of Decision: Oct. 13, 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 Madnani, 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 defendant for recovery of Rs.20,01,124.02

(Rupees Twenty Lakhs One Thousand One Hundred Twenty Four and Two paise only) together with future interest @ 17% per annum with monthly

rests in respect of outstanding in the Personal Loan Account from the date of filing of the application till realization thereof from the Defendant.

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 had approached the

Applicant Bank for financial assistance for business purpose and accordingly, the Applicant Bank considering the request so made, had sanctioned

Personal Loan under Loan Account No.LBBRD00003270456 of Rs.20,00,000/- to the Defendant in June 2016. The said loan was repayable in 36

regular monthly installment of Rs.71,305/- each.

3. In order to avail the said loan , the Defendant signed and executed the standard documents in favour of the bank as under:

a. Preliminary Credit Application Form dated 27.06.2016.

b. Credit Facility Application form dated 27.06.2016.

c. Key Fact Statement and most important terms and conditions dated 27.06.2016.

4. The Applicant bank further submits that the Defendant has furnished the details about his properties and executed the necessary documents and

forms for availing the said personal loan from the bank.

5. The Applicant bank submits that the defendant availed the credit facility but failed to repay the dues of the Bank as per agreed terms, he failed to

adhere to the financial discipline of the applicant bank and the account of the defendant became irregular and sticky. Hence, the account of the

defendant was classified as NPA. The applicant bank requested the defendant from time to time to regularize the said account but defendant did not

pay any heed to the said request letters. The applicant bank also issued Recall notice dated 07.03.2018 upon the defendant, which though received,

remained non complied. It is further submitted that the defendant has no bonafide intention to repay the dues. All these acts and conduct on the part of

the defendant was contrary to the terms and conditions of the documents signed and executed by him. Accordingly the Applicant Bank has moved this

O.A. to recover public money.

6. On the date of filing of Original Application applicant bank claimed of Rs.20,01,124.02 (Rupees Twenty Lakhs One Thousand One Hundred

Twenty Four and Two paisa only) together with future interest@ 17% per annum with monthly rests in respect of outstanding in the Personal Loan

Account from the date of filing of the application till entire payment of dues.

7. Soon after the registration of the case the defendant was summoned through registered post with A/Don 12.03.2019. As per record, notices sent to

the defendant was duly served upon him. Applicant bank also filed affidavit in service at Exh. A/5 enclosing therewith Original Postal Receipt & track

report. Despite service of summons none appeared on behalf of defendant. Thus, the case was proceeded exparte against the defendant due to his

non appearance vide order dated 05.04.2019.

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 defendant 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/6, sworn by Ms. Nilam Pawar, Authorised Person

of Applicant Bank. The bank produced original documents.

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

Recovery of Debts and Bankruptcy Act, 1993". He has further submitted that the defendant is willful defaulter, as he availed the aforesaid credit

facility to his 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 evidence produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was sanctioned

in June, 2016 and the last payment was received by the applicant bank on 31.05.2017. Present O. A. has been filed by the applicant bank on

25.01.2019 and hence it is within limitation period prescribed.

12. The applicant has also included certain amount on account of late payment charges, charge of bouncing cheque and prepayment charges. I do not

find any merit to grant late payment charges, prepayment charges and charge of bouncing cheque. The applicant is only entitled to the principal

outstanding and pending installments due in the personal loan account i.e. Rs.18,98,054.1/- [Rs.15,90,593.60/- (Principal Amt.) + Rs.3,07,460.50/-

(pending installments)] as per page 37 of list of documents.

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

Rs.18,98,054.1/- (Rupees Eighteen Lakhs Ninety Eight Thousand Fifty Four and One paisa 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@ 11 % per annum.

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

ORDER

1) I hereby partly allow this O.A. of the Applicant Bank and direct the defendant to pay absolutely to the applicant bank within 60 days from today, a

sum of Rs.18,98,054.1/- (Rupees Eighteen Lakhs Ninety Eight Thousand Fifty Four and One paisa only) alongwith simple interest @ 11 % 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 immovable personal properties of

defendant as described in Schedule Annexed to the Original Application.

4) Recovery Certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-I, 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 13th October, 2021 at Ahmedabad.