

(2021) 10 DRT CK 0007

Debts Recovery Tribunal-I Ahmedabad

Case No: Original Application No. 258 Of 2019

ICICI Bank Limited

APPELLANT

Vs

Chandrashekhar Balkrishna
Panchal And Anr.

RESPONDENT

Date of Decision: Oct. 1, 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 defendants for recovery of Rs. 3,15,97,754/-

(Rupees Three Crores Fifteen Lakhs Ninety Seven Thousand Seven Hundred Fifty Four Only) together with future interest@ 9.20% per annum with

monthly rests in respect of outstanding in the Home Loan Account from 09.01.2019 till realization of the en tire dues of the bank.

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 Defendants No. 1 & 2 had

approached the Applicant Bank for granting Home Loan. The Applicant Bank, at the request and application of the Defendants sanctioned the Home

Loan under Loan Account NO. LBABD00002191159 of Rs. 2,99,00,000/- Lakhs vide its sanction letter dated 19.09.2014.

3. The Applicant Bank submits that Defendants No. 1 and 2 as Borrowers and co-borrowers accepted all the terms and conditions of the sanction

unconditionally and executed the following documents:

- a. Loan Application for Home Loan
- b. Sanctioned Letter dated 27.09.2014
- c. Facility Agreement dated 19.09.2014

4. In consideration of the same, the Defendants created equitable mortgage by depositing the original title deeds of the property in question on

19.09.2014 and 22.12.2014, more particularly mentioned in Schedule of the Original Application. The Defendants as Borrowers and Co-Borrower in

the account, inter alia, undertaken to repay the recoverable dues to the Applicant Bank in the event of default committed by them in repayment of the

loan. Accordingly, both the Defendants are jointly and severally liable to repay the dues recoverable by the Applicant.

5. 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 account of the defendants were classified

as NPA on 31.01.2018. 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. The applicant bank also issued demand notice u/s SARFAESI Act, 2002, dated 21.04.2018 upon the defendants,

which though received, remained non complied. It is further submitted that the defendants have no bonafide 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.

6. On the date of filing of Original Application applicant bank claimed of 3,15,97,754/- (Rupees Three Crores Fifteen Lakhs Ninety Seven Thousand

Seven Hundred Fifty Four Only) together with future interest @ 9.20% per annum with monthly rests in respect of outstanding in the Home Loan

Account from 09.01.2019 till realization of the entire dues of the bank.

7. Soon after the registration of the case the defendants were summoned through registered post with A/D on 20.04.2019. As per record, notices

were duly served upon Defendants Applicant bank also filed affidavit in service at Exh. A/5 enclosing therewith Original Postal Receipt & track

report & paper publication. Despite service of summons none appeared on behalf of defendants. Thus, the case was proceeded ex parte against the

defendant due to their non appearance vide order dated 03.07.2019. 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/6, sworn by Ms. Nilam Parmar, Authorized 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 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 documents produced by the Bank remains un-rebutted. There is no reason to disbelieve the same. The loan was

sanctioned on 19.09.2014 and the last payment was received by the applicant bank on 31.08.2017. Present O.A. has been filed by the applicant bank

on 01.03.2019 and hence it is within limitation period prescribed.

12. In this case, the amount mentioned in the body of the Original Application differs from that mentioned in the sanction letter but it is clearly

mentioned that Applicant has sanctioned an amount of Rs.2,99,00,000/- in the statements of accounts and disbursed only Rs. 2,73,00,000/- only.

13. 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 or charge of bouncing cheque. The applicant is only entitled to the principal outstanding and pending instalments due in the Term loan account i.e. Rs. 2,99,53,753/- [Rs.2,73,00,000/- (Principal Amt.) + Rs.26,53,753/- (pending installments] as per page 103 of list of documents.

14. 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.

2,99,53,753 (Rupees Two Crore Ninety Nine Lakhs Fifty Three Thousand Seven Hundred Fifty Three only).

15. 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@ 9% per annum.

16. 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 defendants to pay jointly and severally to the applicant bank within 60 days from today, a sum of Rs. 2,99,53,753 (Rupees Two Crore Ninety Nine Lakhs Fifty Three Thousand Seven Hundred Fifty Three only) alongwith

simple interest @ 9% 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 mortgaged property of defendants

as described in Schedule 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-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 1st day of October, 2021 at Ahmedabad.