(2024) 07 DRAT CK 0018

Debts Recovery Appellate Tribunal, Mumbai Bench

Case No: Review Application No. 01 Of 2022

M/s Design Deal & Ors	APPELLANT
Vs	
Bank of Baroda	RESPONDENT

Date of Decision: July 3, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Order 47 Rule 1

Hon'ble Judges: Ashok Menon, Chairperson

Bench: Single Bench

Advocate: Pooja G. Joshi, A.R. Bamne

Final Decision: Dismissed

Judgement

Ashok Menon, Chairperson

1. The applicants are the appellants in Appeal No. 337 of 2007 and seek to review the common order dated 05.02.2019 of this Tribunal allowing the aforesaid appeal in part.

2. The applicants had filed the appeal challenging the judgment and order dated 30.11.2006 of the Debts Recovery Tribunal-II, Mumbai (D.R.T.) in Original Application (O.A.) No. 874 of 2001 which was filed by the Vijaya Bank (presently Bank of Baroda) for recovery of the amount allegedly due from the applicants. A counter-claim was filed by the applicants as the defendants in the O.A. which was allowed only in part. Aggrieved by that, they filed the aforesaid Appeal No. 337 of 2007. Given the order allowing the counter-claim in part, the bank also challenged the impugned judgment by filing Appeal No. 49 of 2007.

This Tribunal dismissed the bank's appeal No. 49 of 2007 but allowed Appeal No. 337 of 2007 in part directing the bank to pay ₹11,63,004.72 together with interest at the rate

of 12% per annum with effect from 14.02.2000 till the date of payment.

3. The appellants in Appeal No. 337 of 2007 are aggrieved and dissatisfied with the order of this Tribunal and hence, have filed this review petition raising the following grounds:

"(A) The order dated 05.02.2019 suffers from non-consideration of the of the position of the law and has been passed perfunctorily;

(B) The order dated 05.02.2019 is passed without giving due consideration to the complete facts of the case;

(C) That there is an error which is apparent on the record as the Hon'ble Appellant Tribunal failed to consider the fact that the pleadings regarding claim of Applicants in respect of F.D.Rs. which were given as margin money for a specific performance, were part and parcel of proceedings before the Ld. Presiding Officer;

(D) The Hon'ble Appellant Tribunal has erred in concluding that the Rs.15.85 lakhs said to be due under F.D.R. and the interests accrued is nowhere referred and claimed. The claim of the Applicants regarding F.D.Rs., was brought in Written Statement -cum-Counter Claim by way of Amendment. The Applicants had filed Application before the Ld. Presiding Officer which was numbered as I.A. No. 355/2006 and Exhibit No. 125 in the Original Application;

(E) This Hon'ble Appellate Tribunal erred is not appreciating that the Ld. Presiding Officer has mentioned and recorded the pleadings of Applicants regarding claim of FDRs at paragraph no. 6 of the Judgment dated 30.11.2006;

(F) This Hon'ble Appellate Tribunal further failed to consider the fact that in paragraph no. 6 of the Judgment dated 30.11.2006 the Ld. Presiding Officer has recorded that the Applicants have added Paragraph Nos. 21A to 21E in Written Statement-cum-Counter Claim which pleadings contained pleadings regarding FDR;

(G) This Hon'ble Appellate Tribunal had erred in concluding that "...the entire argument of defendants with regard to money under F.D.Rs is without any pleadings and evidence and the same cannot be entertained, particularly at this stage of Appeal". The Applicants claim as not raised first time in the appeal. The claim of the Applicants was part and parcel of the proceeding before the D.R.T. -II, Mumbai. It is also wrongly concluded that the claim regarding FDR is without any pleadings. This Hon'ble failed to look into the facts and proceedings of the matter before D.R.T.-II, Mumbai;

(H) The Hon'ble Appellate Tribunal has erred to refer to the written submissions of the Applicants filed before the Hon'ble Tribunal, whereby the facts of the FDRs are well explained along with details of Exhibit 125 which was filed before Hon'ble Tribunal in

the Counter Claim.

(I) This Hon'ble Tribunal wrongly concluded that the Applicants have raised the claim of FDR at the stage in Appeal."

4. The respondent bank has objected to the review application on various grounds. It was contended that the application is barred by limitation. The delay of 85 days in filing the review application was condoned by this Tribunal and therefore, this plea can no longer be sustained.

5. It is further contended that this Tribunal had passed a well-considered and reasoned order and that there is no infirmity to call for interference in review. The allegation is that the FDRs were given to the bank as margin money which was appropriated by the bank while filing the O.A. towards the outstanding amount. The case of the review petitioners is that the amount furnished as margin money by them in the form of the FDRs could not have been appropriated towards the debt and should have been refunded together with interest. The claim of the review petitioners that the FDRs were produced as margin money and therefore, could not have been appropriated was rejected by this Tribunal since there was no pleading in that regard.

6. It is further contended for the bank that the bank has already filed Writ Petition (L) No. 1612 of 2019 before the Hon'ble High Court of Bombay challenging the order of the D.R.T. dated 30.11.2006 in O.A. No. 874 of 2001 as also the order passed by this Tribunal dismissing Appeal No. 49 of 2007 which is pending consideration. The applicants could have agitated their claim in the writ petition. A review application is not maintainable.

7. As per the provisions of Sec. 22 (2)(e) of the Recovery of the Debt Due to Banks and Financial Institutions Act, 1993 ("RDDB & FI Act: for short), the Tribunal and the Appellate Tribunal shall have, for the purpose of discharging their functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of reviewing its decisions. Hence, the provisions of Sec. 114 and Order 47 Rule 1 C.P.C. would be applicable to decide an application for reviewing the order passed by this Tribunal.

8. The power and scope of the review were considered by the Hon'ble Supreme Court in the decision of **Lily Thomas vs. Union of India (2000) 6 SCC 224** wherein it was observed that the review is not an appeal in disguise. The error pointed out in the review petition must be a mistake on an erroneous assumption which in fact, did not exist. The Court may reopen its judgment if a manifest wrong has been done and it is found necessary to pass an order to do full and effective justice.

9. Order 47 Rule 1 states thus:

“1. Application for review of judgment—(1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decreed or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

10. Paragraph 13 of this Tribunal’s order discusses in detail the claim put forth by the defendants concerning the two FDRs and an SFD as well as the submission that the FDRs were not given to the bank as margin money deposit which could not be appropriated towards claim due to the bank and had observed that the argument of the defendants is without any pleadings and evidence and the same cannot be entertained, particularly at this stage in appeal.

11. The power of review can be exercised for the correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. I do not find any mistake in the judgment of this Tribunal which is apparent on the face of record. The error must be an error of inadvertence and not an error which has to be fished out and searched. The Hon’ble Supreme Court has in **Kamlesh Verma vs. Mayawati and Ors AIR 1913 SC 3301** held that repetition of the old contentions/arguments is not enough to reopen a concluded matter unless the court is satisfied a material error manifest on the face of the order undermines its soundness or results in miscarriage of justice.

12. The Hon’ble Supreme Court has repeatedly held in various judgments that the jurisdiction and scope of the review are not that of an appeal and that it can be entertained only if there is an error on the face of the record.

The grounds raised by the review petitioners for a review would require a reappreciation of the appeal on its merits which is not permissible in review. In case the appellants were aggrieved, they should have preferred a writ petition before the Hon’ble High Court.

The review petition is without any merits and hence, stands dismissed.