

Habib Ahamad and Others Vs Central Bank of India and Another

Court: Allahabad High Court

Date of Decision: May 27, 2011

Acts Referred: Bankers Books Evidence Act, 1891 " Section 4

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 " Section 19, 20, 22

Hon'ble Judges: Dilip Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Dilip Gupta, J.

This petition seeks the quashing of the order dated 11th June, 2009 passed by the Debt Recovery Tribunal, Allahabad on

the application filed by the Petitioner for production of documents in the pending Original Application No. 61 of 2003 filed by the Bank u/s 19 of

the Recovery of Debts Due to Banks and Other Institutions Act, 1993 (hereinafter referred to as the "Act"). The Petitioners have also sought the

quashing of the order dated 15th February, 2011 passed by the Debt Recovery Appellate Tribunal by which the appeal filed by the Petitioners for

setting aside the aforesaid order was dismissed.

2. It transpires from the record of the writ petition that the Central Bank of India filed Original Application No. 61 of 2003 before the Debts

Recovery Tribunal u/s 19 of the Act for recovery of Rs. 52,23,949/- from the Defendant-Petitioner. On 16th February, 2004, the Petitioners filed

an application for abatement of the Original Application against Defendant No. 2-Aijaz Habib as he had expired on 22nd August, 1998 prior to

the institution of the Original Application. The Petitioners thereafter also filed written statement on 19th September, 2006 and apart from many

other grounds, the Petitioners also challenged the entries contained in the statement of account filed by the Bank. In particular, the Petitioners

pointed out that entry dated 29th June, 2001 in the statement of account for Rs. 3,38,825/- in respect of Cash Credit Limit was an unauthorised

entry and the said amount was debited without their permission and consent. It was also pointed out that the entry dated 26th August, 2000 in the

statement of account of Rs. 5,00,000/- in respect of Packing Credit Advance Limit was also an unauthorised entry and the amount was debited

without their permission or consent. The Petitioners, therefore, moved an application dated 19th September, 2006 before the Debt Recovery

Tribunal for production of the entries/instruments in respect of the aforesaid entries made in the statement of account. On 19th September, 2006,

the Debt Recovery Tribunal permitted the Bank to file its objections to the said application but it was not filed. Subsequently, time was repeatedly

granted by the Tribunal to the Bank to file the objections but still the Bank did not file any objection. This application was, however, disposed of

by the Debts Recovery Tribunal on 11th June, 2009 with the observation that it shall be decided at the time of disposal of the Original Application.

3. This order was assailed by the Petitioners before the Debts Recovery Appellate Tribunal as according to the Petitioners it was necessary for the

Bank to produce the instruments/vouchers by which the amount had been withdrawn so that the disputed entries in the statement of account can be

verified. This appeal has been dismissed by the Debt Recovery Appellate Tribunal by the order dated 15th February, 2011 which has been

assailed in this petition.

4. The order dated 15th February, 2011 passed by the Debt Recovery Appellate Tribunal is as follows:

1. This is an appeal preferred u/s 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 challenging the order dated

11.06.2009 passed by the Debts Recovery Tribunal, Allahabad. By the said order, the DRT has decided two applications, firstly the application in

relation to the abatement on the ground of death of Aijaz Habib, who was arrayed as Defendant No. 2, and secondly, the application filed by the

present Appellants for production and inspection of the documents.

2. The Tribunal by impugned order dated 11.06.2009 held that since the objectors have failed to prove the death of Defendant No. 2, who died

on 22.08.1998, therefore, the request for abatement of the proceedings against him was rejected. With regard to the production of documents, the

Tribunal held that the maintenance of books of accounts by the Bank can be decided at the time of disposal of recovery proceedings on merits.

3. The learned Counsel appearing for the Appellants did not argue anything with regard to the first aspect, which was in relation to the abatement

of the case due to alleged death of the Defendant No. 2-Aijaz Habib, but pressed the appeal in relation to the order passed by the DRT, wherein

the Tribunal has directed that the maintenance of books of accounts by the Bank can be decided at the time of disposal of the recovery

proceedings on merits.

4. Learned Counsel appearing for the Appellant read over the application filed by the Appellant before the Tribunal for production of the

documents. It was stated in the application that until the vouchers with relevant documents are produced, it will be very difficult for the

Appellants/Defendants to prove that there had been unauthorised entry in respect of Cash Credit Limit of Rs. 3,38,825/-, as according to the

present Appellants, the said entry is without permission and consent of the Defendants. In this reference this is to be seen that it is for the bank to

prove the statement of accounts i.e. maintenance of books of accounts to substantiate and prove the case, the bank has to suffer for the same.

5. This is also to be seen that the Defendants, if make out an exceptional case for cross examination of the bank's witness, who has filed the

affidavit, then on making out the exceptional case, the Appellants have the further opportunity to move an application seeking permission from the

Tribunal for cross examination of the bank's witness. The same view has been taken in *Veer Singh Kothari v. State Bank of India and Ors.* AIR

2009 Ori 29. The proceedings before the Tribunal are guided by Section 22 of the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 and the provisions of CPC have no application.

6. In view of the aforesaid discussions, the Tribunal was justified in directing that at the time of final hearing the maintenance of books of accounts

by the bank shall be considered. Thus, I do not find any substance in the present appeal. Accordingly, the appeal is without any merit hence, it is

dismissed.

7. A copy of the judgment be supplied to the parties as well as the DRT concerned as per law.

5. Sri V.D. Chauhan, learned Counsel appearing for the Petitioners has submitted that the Debt Recovery Tribunal has not passed final order on

the application filed by the Petitioners for summoning the documents. According to him, the Bank filed the statement of account which has a

presumption of correctness u/s 4 of the Bankers Books of Evidence Act, 1891 and so unless an order is passed for production of the documents,

no adverse inference can be drawn in law. Thus, the presumption of correctness of the statement of account furnished by the Bank will cause

prejudice to the Petitioners in Defending themselves. In this connection he has placed reliance upon the judgment of this Court rendered in Civil

Misc. Writ Petition No. 34971 of 2004 (M/s. Bhatia Surgicals (P) Ltd. and Ors. v. State Bank of India and Ors.) decided on 27th August, 2004.

6. Sri G.P. Srivastava, learned Counsel appearing for the Respondent-Bank states that it will not be necessary to file any counter affidavit and the

petition may be disposed of at this stage. It is his submission that there is no infirmity in the order passed by the Debt Recovery Appellate Tribunal

in view of what is contained in paragraphs 4 and 5 of the judgment passed by the Debts Recovery Appellate Tribunal.

7. I have considered the submissions advanced by the learned Counsel for the parties.

8. The Petitioners have disputed the two entries contained in the statement of account filed by the Respondent-Bank namely the entry dated 29th

June, 2001 for Rs. 3,38,825/- and the entry dated 26th August, 2000 for Rs. 5,00,000/- as is clear from the written statement filed by the

Petitioners in response to the Original Application filed by the Bank. It is for this reason that the Petitioners moved an application for production of

the vouchers/instruments on the basis of which the entries were made.

9. The Debt Recovery Tribunal repeatedly granted time to the Respondent-Bank to file its objections but no objections were filed and ultimately

on 18th May, 2009 the Debt Recovery Tribunal passed an order that final order on the application shall be passed when the Original Application

filed by the Bank is decided. Feeling aggrieved, the Petitioners filed an appeal which has been dismissed with certain observations.

10. In M/s. Bhatia Surgicals (P) Ltd. (supra) the Court observed as follows:

I find substance in the contention of the counsel that the adverse inference can be drawn only if the Court/Tribunal has considered and decided the

application and has summoned the documents. In the present case the Tribunal by the order dated 4.4.2003 directed the bank to furnish

vouchers/instruments for the entries shown in the accounts or to submit parawise reply by filing affidavit by the next date. The order of summoning

documents was thus conditional on the cause to be shown by the Bank. In the facts and circumstances, I find that the order of the Appellate

Tribunal that a presumption can be drawn against the bank, is not by way of correct application of law, and has been made without appreciating

the provisions of Section 114(g) of the Act. The presumption u/s 114 can be drawn only when the Court/Tribunal summons the documents and

that the party to whom directions are issued refuses to produce them. In the present case the order of production of documents was a conditional

order, to which the bank has shown cause by filing affidavit. These objections have not been decided so far and thus the order summoning the

documents has not become final to draw any presumption.

In the facts and circumstances of the case, this writ petition is disposed of with the direction to the Debt Recovery Tribunal shall consider and pass

final order on the application of summoning documents dated 22.10.2002, before final hearing the matter. The Tribunal shall consider the objection

of the bank before passing any final order in the matter.

11. In view of the aforesaid decision of this Court, there is substance in the submissions advanced by the learned Counsel for the Petitioner that the

presumption u/s 114 of the Act can be drawn only when the party to whom directions are issued refuses to produce them. In the present case no

such direction for production of the documents has been issued by the Debts Recovery Tribunal. Therefore, no presumption can be drawn and the

Debts Recovery Tribunal should decide the application filed by the Petitioners at this stage.

12. In such circumstances, the order dated 11th June, 2009 passed by the Debt Recovery Tribunal, Allahabad and the order dated 15th February,

2011 passed by the Debt Recovery Appellate Tribunal are quashed. The Debts Recovery Tribunal shall pass an order on the application filed by

the Petitioners for production of the documents expeditiously.

13. The writ petition is allowed to the extent indicated above.