

(2013) 09 CAL CK 0079

Calcutta High Court

Case No: C.O. No. 1632 of 2013

M/s. Rahul Industries and Others

APPELLANT

Vs

M/s. Kotak Mahindra Bank Ltd.
and Others

RESPONDENT

Date of Decision: Sept. 11, 2013

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Kamalesh Jha, for the Appellant; Saptangshu Basu, Jishnu Saha, Sourav Mukherjee and Mr. Pratik Ghosh for the Opposite Party No. 1, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the debtors and is directed against the judgment and order dated March 12, 2012 passed by the Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 73 of 2010 thereby rejecting the appeal preferred by the debtors. The defendant Nos. 2 to 6 of the application before the Debts Recovery Tribunal ♦ 3, Kolkata being T.A. No. 133 of 2002 availed different kinds of credit facilities from the State Bank of India upon certain terms and conditions and there the credit amount of the State Bank of India had been assigned to the respondent M/s. Kotak Mahindra Bank Ltd. The defendant Nos. 2 to 7 stood as guarantors for the transaction and executed different documents. The re-payment of loan was not satisfactory and as such the concerned Bank filed the application before the Debts Recovery Tribunal - 1, Kolkata and the said application had been transferred to the Debts Recovery Tribunal ♦ 3, Kolkata.

2. Upon consideration of the materials on record on behalf of both the parties, the Debts Recovery Tribunal directed the defendants/petitioners herein to pay a sum of Rs. 57,83,831.58/- together with interests and then being dissatisfied with the said award, preferred an appeal being Appeal No. 73 of 2010 which was dismissed by the impugned judgment and order thereby affirming the order dated August 20, 2010 passed by the Debts Recover Tribunal ♦ 3, Kolkata. Being aggrieved, this application

has been preferred.

3. Now, the question is whether the impugned judgment and order should be sustained.

4. Having heard the learned Counsel for the parties and on going through the materials on record, I find that only the question urged in the matter before this Bench on behalf of the petitioners is with regard to one time settlement scheme as sought for by the petitioners and the N.P.A. amount having not been disclosed by the opposite parties in spite of repeated requests.

5. So far as one time settlement is concerned, Mr. Kamalesh Jha, learned Advocate appearing for the petitioners has contended that it is the scheme for payment of certain amount by lowering the rate of interest and thus, to consider the situation so that the matter could be solved completely. It is also contended that though the petitioners are paying interests, yet it has not been disclosed what is the principal amount due, but, interests are being added to the principal from time to time. There is no step taken on behalf of the Bank/opposite party herein to lower the interest. The Appellate Tribunal should have considered the steps taken by the petitioners to pay up the dues and the inaction of the creditor in this respect resulting in increase of the figure of the debts. So the impugned judgment and order should be set aside.

6. Per contra, Mr. Saptangshu Basu, learned Senior Advocate appearing for the opposite party has contended that so far as one time settlement and the lowering of the interest are concerned, such matters had been dealt with by the Bank/opposite party herein earlier and interests had been lowered for one time settlement and further deduction of interest is not possible for the Bank.

7. In exercising the revisional jurisdiction, this Court is to see whether the judgment and order passed by the Appellate Tribunal is within the bounds of its authority and if there is any illegality or material irregularity in the impugned judgment and order.

8. Mr. Jha has not submitted anything that the Bank/opposite party herein has exceeded its jurisdiction or that it acted contrary to the law. Since as per submission of Mr. Basu, the Bank is not in a position to lower the quantum of interests, I think in exercise of the revisional jurisdiction, there is no scope of directing the creditor for settlement at a lower amount or to award interest at a lower rate from the end of this Court. So far as Non-Performing Assets (N.P.A.), the Hon"ble Appellate Tribunal has observed that it was a matter of January 2003, but, no settlement has yet been achieved by the parties. This being the position, this Court in exercising the revisional jurisdiction is not in a position to decide anything in this respect. Nor is it possible for the Court now to direct the settlement of the dispute at the N.P.A. figure as disclosed in 2003. There is no illegality or material irregularity in the impugned judgment and order. The Hon"ble Appellate Tribunal is within its jurisdiction to pass the said judgment and order. So, the controversy as pointed out by the petitioners in respect of the N.P.A. cannot be a subject matter of this revision at all. Accordingly,

the concurrent findings of the learned Tribunal and the Hon"ble Appellate Tribunal, in my view, should not be disturbed.

9. Accordingly, in my view, this application is bereft of merits and there is no scope to alter or vary the award passed by the Tribunal and affirmed by the Appellate Tribunal. The question is, thus, answered.

10. Accordingly, the application is dismissed.

11. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.