

Ashok B Jiwrajka & Ors. v. Punjab National Bank

Ashok B Jiwrajka & Ors.

...Appellant

Punjab National Bank

...Respondent

Case No: Misc. Appeal No. 65/2019

Date of Judgement: 02/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Dinesh Purandare, i/b Mr Jash J Dalia along with Mr. Keval Buddhdev & Zahra Lokhandwala, Advocate.

For Respondent: Mrs Rathina Maravarman, Advocate.

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Facts:

Ashok B Jiwrajka & Ors. (Appellants) filed four separate Miscellaneous Appeals (Misc. Appeal Nos. 65/2019, 66/2019, 67/2019, and 71/2019) against orders dismissing their applications for amendment of written statements in various Original Applications (O.A.) filed by different creditor banks against them.

The Appellants are defendants in the following O.A.s:

- Misc. Appeal No. 65/2019: O.A. 1518/2018 filed by Oriental Bank of Commerce (now Punjab National Bank) against defendants 1 to 3 and 5.
- Misc. Appeal No. 66/2019: O.A. 132/2019 filed by Assets Care and Reconstruction Enterprise Ltd. against

defendants 1 to 3 and 6.

- Misc. Appeal No. 67/2019: O.A. 139/2019 filed by IDBI Bank against defendants 1 to 4.
- Misc. Appeal No. 71/2019: O.A. 998/2018 filed by Corporation Bank (now Union Bank of India) against defendants 1 to 3 and 5.

The Appellants had filed written statements in the respective O.A.s and subsequently filed applications (I.A. Nos. 1484, 1797, 942, and 943 of 2019) seeking amendment of their written statements. The amendment sought was to incorporate facts regarding a resolution plan sanctioned and approved by the National Company Law Tribunal (NCLT) on 08/03/2019, which would affect their liability and defense. The applications for amendment were opposed by the creditor banks on the grounds of delay and that the NCLT proceedings and resolution plan pertained only to the corporate borrower, while the Appellants were guarantors.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal (DRAT) held that the Presiding Officer was not justified in dismissing the amendment applications at the threshold. The DRAT stated that neither the SARFAESI Act nor the RDB Act prohibits the amendment of pleadings, and the D.R.T. is governed by Order 6 Rule 17 of the Code of Civil Procedure in matters concerning the amendment of pleadings. The DRAT observed that the power to allow an amendment is vested in the D.R.T. to ensure that the real questions in controversy between the parties are appropriately determined. The DRAT found that a delay in filing the application for amendment is not a ground for rejecting it outright at the threshold, and the merits of the pleadings sought to be incorporated by way of amendment cannot be decided before it is made part of the defense. The DRAT held that even though granting reliefs to the corporate debtor under insolvency proceedings will not have a bearing on the claim against the guarantors, if there are certain directions made in the resolution plan for the corporate debtor to clear the debts, the guarantors can bring that fact to the notice of the D.R.T. while considering their liability to the creditor.

Arguments by Parties:

Appellants:

Sought to amend their written statements to incorporate facts regarding the resolution plan sanctioned and approved by the NCLT on 08/03/2019, which would affect their liability and defense.

Respondent Banks:

Opposed the applications for amendment on the grounds of delay, as the applications were filed much later than the NCLT's approval of the resolution plan on 08/03/2019. Argued that the intention behind the applications for amendment was to delay the adjudication in the O.A.s. Contended that a written statement is required to be filed within 30 days, which can be extended by the D.R.T. for a further period of 15 days only, with reasons recorded. Stated that the NCLT proceedings and the approval of the resolution plan pertained only to the corporate borrower, and the Appellants, being guarantors, cannot obstruct the realization of debt from them on the ground of insolvency proceedings against the principal borrower.

Cases Cited:

State Bank of India vs. V. Ramakrishnan, Civil Appeal No. 3595 of 2018 (Supreme Court)

Veena Prabhakumar vs. Dhanlaxmi Bank, 2019 SCC OnLine Ker 1640

Sections and Laws Referred:

Insolvency and Bankruptcy Code, 2016 (I.B.C.)

Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)

Code of Civil Procedure, 1908

- Order 6 Rule 17 (Amendment of Pleadings)