

Bank of Baroda v. M/s Swastik Corporation & Ors.

Bank of Baroda

...Appellant

M/s Swastik Corporation & Ors.

...Respondent

Case No: Appeal No. 347/2006

Date of Judgement: 18/05/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr K. D. Shukla, Advocate.

For Respondent: Ms Jaishree Surati, i/b M/s Ashwini Kumar & LLP, Mr Rishabh Shah, i/b M/s. Raval-Shah & Co., Advocates.

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Facts:

Bank of Baroda (Appellant) filed an appeal (Appeal No. 347/2006) before the Debts Recovery Appellate Tribunal (D.R.A.T.), Mumbai, aggrieved by certain findings in the judgment dated 10.03.2006 passed by the Debts Recovery Tribunal No. II, Mumbai (D.R.T.) in Original Application (O.A.) No. 416 of 2001. The original Appellant, Dena Bank, had merged with the Bank of Baroda, and accordingly, the Appellant was substituted. The O.A. was filed by the Bank for the recovery of ₹8,71,12,041/- being dues under the cash credit (hypothecation of stocks and book debts) facility and ₹6,96,574/- being dues under the bill discount/demand loan facility, together with interest at 16.50% per annum and 19.09% per annum, respectively, with quarterly rests from the date of filing of the O.A. till realization. The first Respondent is a partnership firm, and Respondents Nos. 2 to 5 & 8 are

partners. Respondents Nos. 6 & 7 are mortgagors. In April 1996, the renewal of the debt was sanctioned, and enhanced amounts were advanced in continuation of the earlier mortgage. Promissory Notes from the acknowledgment of debts were executed. The D.R.T. allowed the application against Defendants Nos. 1 to 8, restricting the liability of Respondents Nos. 6 & 7 to the extent of the mortgaged property. The decree as prayed for was granted, but future interest from the date of filing of the O.A. till realization was reduced to 6% per annum. The Appellant is aggrieved by not being granted future interest at the contractual rate and by not allowing interest for the period 01.01.1999 till 24.05.2000 for the cash credit debt and from 01.01.1999 till 20.05.2000 in the other facility. The Appellant also prayed to be allowed to realize its dues against the entire mortgaged flat without excluding the share of the minor.

Arguments by Respondent No. 7:

Respondent No. 7 filed a reply on behalf of herself and her minor son, Krish Shah. It was pointed out that the Appellant could not satisfy the D.R.T. as to whether the sanctioned facility was used for the personal benefit of the minor Krish Shah and whether the Appellant had sought permission from any Civil Court permitting them to create a mortgage of the minor's share. The Appellant had failed to show that the mortgage regarding the minor's share would bind him; hence, it was prayed that the appeal may be dismissed.

Court's Elaborate Opinions:

Regarding the rate of interest, the D.R.A.T. observed that the Ld. Presiding Officer had granted the contractual rate of interest till the filing date of the O.A., but future interest was allowed only at 6% per annum. The D.R.A.T. held that future interest is at the discretion of the adjudicating authority and, therefore, cannot be interfered with.

Concerning the interest of ₹1,50,01,218/- for the period 01.01.1999 to 23.05.2000 for the cash credit facility and the interest for a period 01.01.1999 till 25.09.2000 being ₹3,69,900/- for the other facility,

the D.R.A.T. observed that these amounts were excluded and disallowed by the Ld. Presiding Officer for the reason that the outstanding amount is shown in the statement of account as of the dates 23.05.2000 and 25.09.2000 for the two facilities, and the interest has not been shown. Hence, it was decided that the outstanding amount includes interest until that date. The Appellant could not come out with a reasonable explanation, and therefore, the D.R.A.T. found no reason to interfere with the findings of the Ld. Presiding Officer.

Regarding the exclusion of the share of the minor Krish Shah from the mortgaged property, the D.R.A.T. opined that there should have been specific reasons mentioned for mortgaging the property belonging to a minor to the effect that it was in his interest that the mortgage was created. There was no such recital, and therefore, the Ld. Presiding Officer rightly excluded the share of the minor. The D.R.A.T. found no reason to interfere with the findings of the Ld. Presiding Officer on this point.

Arguments by the Appellant Bank:

The Appellant Bank's arguments were not explicitly stated in the order, but it can be inferred from the D.R.A.T.'s observations that the Appellant argued for: Grant of future interest at the contractual rate. Allowance of interest for the period 01.01.1999 till 24.05.2000 for the cash credit debt and from 01.01.1999 till 20.05.2000 in the other facility. Realization of its dues against the entire mortgaged flat without excluding the share of the minor.

Sections and Laws Referred:

None

Case Laws Referred:

No case laws were referred in the order.

Final Order:

The D.R.A.T. dismissed the appeal filed by the Bank of Baroda.