Bank of India v. M/s. Nexus Minmet Merchandising Pvt. Ltd. & Ors.

Bank of India

…Appellant

M/s. Nexus Minmet Merchandising Pvt. Ltd. & Ors.

…Respondent

Case No: Appeal No. 165/2014

Date of Judgement: 07/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. O.A. Das, Advocate.

For Respondent: None.

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Facts:

Appeal No. 165/2014 was filed by Bank of India (Appellant) against the judgment and order dated 09.04.2014 in Original Application (O.A.) No. 32 of 2013 on the files of the Debts Recovery Tribunal, Nagpur (D.R.T.). The Respondents were M/s. Nexus Minmet Merchandising Pvt. Ltd. (1st Respondent) and its directors (remaining Respondents). The 1st Respondent company had various credit facilities with the Appellant bank since 2008, with the other Respondents as guarantors, and properties were mortgaged to secure the debts. In 2009, the company requested the bank to review/restructure/enhance the financial facilities, and a total facility of ₹121.1 crores was sanctioned with a specific term that the company and its promoters would infuse funds by way of unsecured loans. In 2010, the financial facilities were

further enhanced to ₹128.2 crores. On 30.09.2013, a sum of ₹1.70 crores was credited through RTGS into the account of the 1st Respondent by the Buldana Urban Co-operative Credit Society Ltd. (society), transferred from its account with Union Bank of India, Buldana. Despite knowing that the amount was mistakenly debited into its account, the 1st Respondent claimed and appropriated it. The Appellant received a letter from the society on 14.06.2011, informing that the transferred amount was not given credit to. Upon verification, it was revealed that the RTGS of ₹1.70 crores was wrongly credited to the account of the 1st Respondent company. The Appellant informed the 1st Respondent by letter dated 15.06.2011, stating that the amount would have to be refunded immediately. The 1st Respondent admitted the mistake and informed the Appellant that it had transferred ₹50 lakhs to the society and assured that the balance of ₹1.20 crores would be remitted within seven days. The Appellant informed the society that the balance amount would be refunded within 7 days. However, the 1st Respondent failed to fulfill the promise. On 12.07.2011, the Appellant Bank transferred the balance amount of ₹1.20 crores to the account of the society by debiting the amount in the account of the 1st Respondent. The Respondents did not repay the debt or the interest, and the account of the company was classified as a non-performing asset (NPA) on 30.08.2011. The demand notice was issued to the Respondents under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Respondents filed Securitisation Application (S.A.) No. 34 of 2012 before the D.R.T., raising contentions regarding fraudulent debit of the amount in their loan account. The D.R.T. dismissed the S.A. vide order dated 31.07.2012, which was challenged by the Respondents before the Hon’ble High Court of Judicature at Bombay, Nagpur Bench, through Writ Petition No. 4530 of 2012, which was dismissed on 15.10.2012. The Respondents undertook to settle the entire dues after selling some properties, but no appeal was preferred before the D.R.A.T. challenging the order dismissing the S.A., which became final. The mortgaged properties belonging to the Respondents at Nagpur and Kolkata were sold, and a substantial amount was realized, but a balance of ₹3.78 crores remained due, inclusive of interest, for which the O.A. was filed. In the impugned order, the Ld. Presiding

Officer observed that the Bank had unauthorizedly debited the amount of ₹1.20 crores from the loan account of the Respondents without their sanction, and therefore, no interest could have been claimed. The rate of interest was also found to be excessive. However, the O.A. was allowed, directing the Appellant Bank to calculate the dues afresh after reversing the entry of ₹1.20 crores with effect from 12.07.2011 and reversing the interest along with the penal interest. Upon submission of a fresh statement of account by the Appellant Bank, a Recovery Certificate was directed to be issued.

Arguments by the Appellant (Bank of India):

The Ld. Counsel appearing for the Appellant relied upon two decisions: a. Indian Bank vs. M/s Mocro Electronics & Ano. AIR 2005 AP 328, which held that the amount given credit to by mistake could be realized together with interest. b. Saseendrakumari, Sreepadmam, SEKT vs. State Bank of Travancore AIR 2011 (Ker) 58, which held that an amount wrongfully credited should be reimbursed with interest at the rate of 15.5%. The fact that the amount was wrongfully credited into the account of the 1st Respondent was admitted by the Respondents throughout. The Respondents had volunteered and reimbursed ₹50 lakhs and agreed to refund the balance of ₹1.20 crores within a week, but failed to fulfill the promise. Consequently, the Appellant Bank had to refund the amount to the society and debit the same into the loan account of the 1st Respondent. The very same D.R.T. had approved this act of the Appellant while determining the S.A., and the order of the S.A. was never challenged. A different view could not have been taken by the very same D.R.T. in the O.A., and the finding was erroneous and required to be set aside. The O.A. should be allowed as prayed for.

Arguments by the Respondents:

The arguments of the Respondents are not explicitly mentioned in the summary, as they remained ex-parte.

Court’s Elaborate Opinions:

The only question that arose for consideration in this appeal was whether the amount of ₹1.20 crores was debited into the account of the

Respondents without their knowledge or authority. The fact that the amount was wrongfully credited into the account of the 1st Respondent was admitted by the Respondents throughout. The Respondents had volunteered and reimbursed ₹50 lakhs and agreed to refund the balance of ₹1.20 crores within a week, but failed to fulfill the promise. Consequently, the Appellant Bank had to refund the amount to the society and debit the same into the loan account of the 1st Respondent. The very same D.R.T. had approved this act of the Appellant while determining the S.A., and the order of the S.A. was never challenged. A different view could not have been taken by the very same D.R.T. in the O.A., and the finding was erroneous and required to be set aside. The appeal was allowed, setting aside the impugned judgment and order and allowing the O.A. as prayed for against the Respondents jointly and severally. The Respondents were directed to pay a sum of ₹3.78 crores together with interest at the rate of 14.5% per annum with monthly rests with effect from the filing of the O.A. till 09.04.2014 and future interest at the rate of 6% per annum on the aforesaid principal amount adjudged from the date of the disposal of the O.A. till realization. A Recovery Certificate was directed to be issued in the aforesaid terms.

Cases Cited:

Indian Bank vs. M/s Mocro Electronics & Ano. AIR 2005 AP 328

Saseendrakumari, Sreepadmam, SEKT vs. State Bank of Travancore AIR 2011 (Ker) 58

Sections and Laws Referred:

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