

Credit Agricole Corporate and Investment Bank v. Saf Yeast Company Ltd.

Credit Agricole Corporate and Investment Bank

...Appellant

Saf Yeast Company Ltd.

...Respondent

Case No: Appeal No. 318/2004

Date of Judgement: 31/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Ismail Nasikwala along with Mr Farid Karachiwala, Ms Sneh Parikh and Ms Rudhdi Walawalkar, i/b M/s. J. Sagar Associates, Advocate.

For Respondent: Mr Denzil D'mello along with Mr Austin Fernandes, Advocate.

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Facts:

The case involves an appeal filed by Credit Agricole Corporate and Investment Bank (formerly known as Calyon Bank) (hereinafter referred to as "the Appellant") against the judgment and order dated 01.04.2004 of the Debts Recovery Tribunal No. II, Mumbai (DRT) in Original Application (O.A.) No. 2111 of 2000 (initially filed as High Court Summary Suit No. 1758 of 1999). The Appellant had advanced a sum of ₹1,98,26,227.13 to the Respondent, Saf Yeast Company Ltd. (hereinafter referred to as "the Respondent"), against a letter of credit dated 04.02.1997 credited to the Respondent's current account. The

Respondent intended to export Indian cane molasses to an importer in Amsterdam named M/s. Schuurmans En Van Ginneken B.V. The Appellant agreed to act as the advising bank and notified sight of LC No. 11R1708411 dated 04.02.1997 for \$7,02,000 issued by Mespiron N.V. Amsterdam on behalf of the importer. The Appellant was appointed by the Respondent to negotiate the documents on its behalf under the terms of the LC. The Respondent forwarded the original LC, invoice, sight draft, and other relevant documents to the Appellant, requesting the release of proceeds under reserve in case of any discrepancies. The LC contained a clause that demurrage at the charter party rate and dead freight incurred at loading was deductible from the value of the commercial invoice. After making deductions towards fees/charges, the Appellant paid ₹1,98,26,227.13 under reserve to the Respondent on 24.01.1997, relying on the information provided by the Respondent that there was no demurrage deductible from the invoice. On 03.03.1997, the Appellant was informed by the issuing Bank that a sum of \$1,01,531.25 had been deducted from the invoice amount towards demurrage, and a further sum of \$50 was deducted towards payment of bank charges. The Appellant received a sum of \$4,58,040.67. The Appellant informed the Respondent about the deductions and asked them to remit the deficit amount. The Respondent did not pay the amount, claiming that NCS Estates Pvt. Ltd. and Ganesh Benzoplasts Ltd. were liable for demurrage. The Appellant issued a lawyer notice on 14.10.1998 demanding the amount due, but the Respondent contended that the amount was payable by M/s NCS Estates Pvt. Ltd. After repeated demands, the Appellant filed a Summary Suit, which got transferred and refiled as O.A.

Arguments by the Parties:

Appellant's Arguments:

The Ld. Counsel for the Appellant submitted that the Ld. Presiding Officer exceeded his jurisdiction by directing a refund to the Respondent erroneously. The counter-claim of the Respondent was dismissed by the DRT on 13.03.2003 due to non-payment of court fees. A Recovery Certificate could not have been issued in favor of the Respondent in an O.A. filed by the Appellant after dismissing the

counter-claim. The affidavit dated 10.03.2004 and the miscellaneous application filed by the Appellant seeking leave to file additional calculations were never considered. Tendering a cheque for ₹64,48,983.63 by the Respondent without considering the counter-claim made would establish that the Respondent did not intend to pursue the counter-claim. The submission of a cheque by the Respondent to clear the dues of the Appellant is an acknowledgment of liability. The Appellant seeks a reversal of the order passed by the Ld. Presiding Officer.

Respondent's Arguments:

The Ld. Counsel for the Respondent pointed out that the Appellant Bank took two years to amend their claim only after filing criminal proceedings against the Bank at Hardoi. The Bank had retained ₹1,78,488.73 as interest at 13% on the value of the bill negotiated, representing the waiting period until reimbursement from the overseas Bank/buyer. The sum of ₹98,681.34 was not reduced by the Bank from its claim of demurrage, and this amount is due to the Respondent. The DRT rightly allowed the Respondent to claim this amount as the Bank had wrongly calculated the amount. The Ld. Counsel relied on the decisions of the Hon'ble High Court of Gujarat in Pankaj B. Mangroliya vs. Andhra Bank MANU/GJ/0826/2022 and the Hon'ble High Court of Bombay in Anil Nandakishore Tibrewala & Ors. vs. Jammu and Kashmir Bank Ltd. & Ors MANU/MH/0734/2006. The Ld. Counsel sought the dismissal of the appeal.

Court's Elaborate Opinions:

The court noted that the DRT had allowed the Respondent's Exhibit 36 application and the Appellant's amendment application vide order dated 13.03.2003. The Respondent submitted a cheque for ₹64,14,983, the full amount claimed under the O.A., on 20.02.2003. On the same date, the counter-claim preferred by the Respondent stood dismissed due to the DRT's order. The court found that since the counter-claim was dismissed, the Ld. Presiding Officer was not justified in directing a refund to be made by the Appellant to the Respondent. The argument that the court fee required for the counter-claim was paid was not

sufficient when there was a specific order dismissing the counter-claim, which remained unchallenged. The court disagreed with the argument that exercising jurisdiction under section 19(25) of the RDDB&FI Act, the DRT has powers to direct a refund in the interest of justice, as there was a specific counter-claim made by the Respondent, which remained dismissed. The decision of the Hon'ble Bombay High Court in Anil Nandakishore Tibrewala (supra) was not helpful to the Respondent, as it mainly dealt with the right of a third party claiming interest over the attached/secured asset and not being made a party to the proceedings before the DRT. The Appellant admitted that the actual amount of refund payable by the Appellant to the Respondent was ₹20,58,265.69 out of the amount of ₹64,48,983/- submitted by the Respondent by way of a cheque towards clearing the entire dues. The court allowed the appeal and made it clear that the Appellant is liable to refund a sum of ₹20,58,265.69 alone, and since that amount has been paid, the same shall be recorded in the Recovery Certificate issued in favor of the Respondent.

Cases Cited:

Pankaj B. Mangroliya vs. Andhra Bank MANU/GJ/0826/2022 (cited by the Respondent)

Anil Nandakishore Tibrewala & Ors. vs. Jammu and Kashmir Bank Ltd. & Ors MANU/MH/0734/2006 (cited by the Respondent)

Sections and Laws Referred:

Recovery of Debts Due to Bank & Financial Institutions Act, 1993 (RDDB&FI Act)

Section 19(25) of the RDDB&FI Act (referred to by the Respondent)