

Dismissal of appeal against order rejecting permission to cross-examine bank witnesses in a debt recovery proceeding: DRAT KOLKATA

Mr. Bikash Biswas

...Appellant

Punjab National Bank

...Respondent

Case No: Appeal No. 18 of 2020

Date of Judgement: 19.09.2023

Judges:

Anil Kumar Srivastava, J- Chairperson

For Appellant: Mr. Prabhat Sil, Advocate.

For Respondent: Mr. Debasish Chakraborty, Ms. S. Pal, Advocates.

Facts:

Debt Recovery Tribunal (DRT), Guwahati passed an order dated 17.01.2019 dismissing appellant's application seeking permission to cross-examine bank witnesses in OA No. 188/2016 filed by United Bank of India against Tripura Bricks Company and others, including the appellant, for recovery of Rs. 2,01,61,028.58. The appellant was Defendant No. 4 and one of the guarantors of the loan taken by Defendant No. 1, Tripura Bricks Company. The bank filed evidence affidavit along with 50 documents. Appellant filed an application seeking permission to cross-examine bank witnesses to verify the disputed facts and documents. DRT rejected the application holding

that appellant has not denied his signatures on the guarantee documents in the written statement. Hence, cross-examination is not required.

Appellant's Arguments:

Appellant contended that Defendant No. 3 was allowed to cross-examine bank witnesses by DRT order dated 17.01.2019. Appellant was a director and guarantor of the company, which is a separate legal entity with limited liability. Appellant did not execute any fresh guarantee and cannot be saddled with fresh liability. Cross-examination is required to bring out the true facts on record regarding disputed facts and appellant's liability.

Respondent Bank's Arguments:

Proceedings under Section 19 of RDDB Act are summary in nature. Appellant has admitted to being a guarantor and has not denied his signatures on guarantee documents. Rule 12(9) of DRT Procedure Rules does not provide cross-examination as a matter of right. Reliance was placed on Supreme Court decision in Delhi HC Bar Association case to contend that DRT can decide cases on affidavit evidence without oral examination. Appellant has not provided any reasons to justify summoning witnesses for cross-examination.

DRT's Powers to Order Cross-Examination:

Rule 12(9) of DRT Procedure Rules empower Tribunal to order cross-examination of witnesses only after recording finding that it is necessary and sufficient reasons exist. Onus is on the party seeking cross-examination to demonstrate its necessity to meet ends of justice.

Supreme Court's Decision in Delhi HC Bar Association Case:

DRT has power to decide case merely based on documents and affidavits like HC and SC exercise writ jurisdiction under Articles 226 and 32. Oral evidence is rarely required in bank transactions which are largely documented. Cross-examination can be ordered only if affidavits are found insufficient and valid reasons exist to warrant oral examination.

Tribunal's Conclusions and Decision:

Appellant has not denied executing guarantee documents or his signatures thereon. No reasons demonstrated justifying summoning bank officials for cross-examination. Order rejecting permission to cross-examine witnesses does not suffer from any illegality. Appeal dismissed as devoid of merits. Concerned DRT directed to expeditiously dispose of pending recovery application.

Sections and Rules Referenced:

Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993

Rule 12(9) of Debts Recovery Tribunal (Procedure) Rules, 1993

Case Law Referenced:

Union of India v. Delhi High Court Bar Association, (2002) 4 SCC 275

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Full Text of Judgment:

1. Instant appeal has arisen against an order dated 17.01.2019 passed by learned DRT Guwahati dismissing the I.A. No. 152 of 2018 arising out of O.A. No. 188 of 2016 [United Bank of India Vs. Tripura Bricks Company & Ors.].

2. O.A. No. 188 of 2016 was filed by the respondent bank against the appellant u/s 19 of the Recovery of Debts & Bankruptcy Act, 1993 (hereinafter referred to as 'RDB Act') for recovery of Rs.2,01,61,028.58. Written statement was filed by the appellant who was defendant no.4 in the O.A. Pending O.A., respondent bank filed evidence on affidavit as well as documentary evidence. An application for permission to cross-examine witnesses was filed by the appellant on 20.02.2017 on the ground that there are disputed facts which warranted cross examination of bank witnesses, accordingly, appellant be permitted to cross-examine the bank witnesses. It appears that thereafter another application was filed by the appellant on 05.04.2018 seeking relief for cross-examining the bank witnesses on

the ground that the bank has filed evidence on affidavit wherein 50 number of documents were exhibited, hence, crossexamination is required to verify those documents. Further, there are disputed facts which warrant cross-examination of the witnesses. Application was disposed of by the learned DRT holding that in the written statement appellant has not denied the signature or the execution of the documents, hence, there is no necessity for cross examination of the bank witnesses. Accordingly, application was dismissed. Feeling aggrieved appellant preferred the appeal.

3. I have heard the learned counsel for the parties and perused the records.

4. Learned counsel for the appellant submits that other defendant no.3 also prayed for cross-examination of bank witnesses which was allowed by the learned DRT on the same date i.e. 17.01.2019. It is further submitted that appellant was Director of the Company as well as guarantor, it is a limited liability company. Appellant has no liability for executing fresh guarantee and no fresh guarantee was executed by him. It is further submitted that in order to bring the fact and evidence on record, it is necessary to cross-examine the bank witnesses by the appellant.

5. Learned counsel for the respondent bank submits that the proceedings of O.A. u/s 19 of the RDB Act are summary in nature. Admittedly, appellant is a guarantor of the loan. He is not denying his signature either on the guarantee document or fresh guarantee document. This fact is admitted by the appellant. Sub-rule (9) of Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993 nowhere provides for cross examination of the witnesses as of right. Reliance is placed upon the judgement of Union of India Vs. Delhi High Court Bar Association & Ors. reported in (2002) 4 SCC 275.

6. Rule 12(9) of the DRT (Procedure) Rules, 1993 empowers the DRT to call for any witness for cross-examination, but witness can only be called after recording specific finding by the Tribunal to the effect that it is necessary to do so and sufficient reason has to be recorded by the Tribunal. It shows that it is incumbent upon the party seeking

cross-examination of the witnesses to make out a case that cross-examination is necessary to meet the ends of justice.

7. In Delhi High Court Bar Association (supra) Hon'ble Supreme Court has held in Para 23 of the judgement as under :

"23. In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction, on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of

his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before it ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient."

8. Now burden lies upon the appellant to show reasons for calling

witnesses for cross-examination.

9. Now it is to be seen as to whether any ground is made out to summon bank witnesses for cross-examination? In the application u/s 19 of the RDB Act at Para 5 it is stated that defendant no. 2, 3 and 4, namely, Mr. Subir Choudhury, Mr. Pankaj Narayan Trivedi and Mr. Bikash Biswas, respectively, (appellant in the present case) stood personal guarantors of the loan availed by defendant no.1 by executing letter of guarantee on 08.09.2010. Written statement was filed by the appellant wherein it is nowhere denied that the appellant has not signed the document or did not stand as guarantor. Guarantee deed was executed by the appellant on 08.09.2010. Further, in the application for permitting cross-examination of the witnesses also it is not denied that the documents were not signed by the appellant. Only ground taken is that in order to bring out the truth of the record, appellant may be permitted to cross-examine the bank witnesses. Under Rule 12(9) of the DRT (Procedure) Rules sufficient cause has to be shown by the appellant for cross-examining the bank witnesses.

10. In view of the law laid down by the Hon'ble Apex Court as well as the ground taken by the appellant in the application for permission of cross-examination, I do not find any illegality in the impugned order dismissing the application for permitting cross-examination of witnesses. Accordingly, I am of the view that appeal lacks merit and liable to be dismissed.

11. Appeal is dismissed. It is an old O.A. of 2016. It is expected that learned DRT should dispose of the matter expeditiously. No costs. File be consigned to record room.

Copy of the order be supplied to the appellant and the respondent and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 19th of September, 2023.