

ICICI Bank Ltd. v. Kulkarni Engineering Associates Ltd. & Ors.

ICICI Bank Ltd.

...Appellant

Kulkarni Engineering Associates Ltd. & Ors.

...Respondent

Case No: Appeal No. 171/2016

Date of Judgement: 01/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Ankita Doke, i/b M/s. Divekar Bhagwat & Co., Advocate.

For Respondent: None.

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Facts:

ICICI Bank Ltd. (Appellant) filed an appeal against the order of the Debts Recovery Tribunal, Pune (D.R.T.) in I.A. No. 463/2016 in Original Application (O.A.) No. 148/2003, dated 23/03/2016. The original O.A. No. 148/2003 was filed by the Sangli Bank Ltd. against Kulkarni Engineering Associates Ltd. (Respondent No. 1), which had availed an Inland Bill Discounting facility from Sangli Bank to the tune of ₹65 lakhs, later enhanced. Respondents Nos. 2 and 3 were directors of Respondent No. 1 and stood as guarantors for the facility. The 4th Respondent was the acceptor of bills of exchange drawn by Respondent No. 1. Respondents Nos. 5 to 8 were holding pari-passu charges over the collateral securities. Respondent No. 1 failed to repay the debt, and the account was classified as a Non-Performing

Asset (NPA). Sangli Bank issued a loan recall notice to Respondent No. 1, its directors, and the 4th Respondent, calling upon them to pay ₹1,20,45,475/- due as of 31/03/2003. The 4th Respondent filed a civil suit No. 483/2003 before the Civil Court at Kanpur for a declaration and injunction against Sangli Bank and obtained an injunction. Sangli Bank then filed the aforesaid O.A. for the realization of the amount due. The 4th Respondent filed an application for a stay of the proceedings concerning it, as Exhibit 36, contending that the civil suit was filed prior to the O.A., and hence the proceedings were to be stayed before the D.R.T. On 04/03/2004, the D.R.T. rejected the application filed by the 4th Respondent. The 4th Respondent challenged the order of the D.R.T. in appeal before the D.R.A.T. as Misc. Appeal No. 150/2004. The appeal was allowed vide order dated 16th March 2005, and the proceedings before the D.R.T. in the O.A. were stayed. Sangli Bank challenged the order of the D.R.A.T. before the Hon'ble High Court of Bombay in Writ Petition No. 7226 of 2005. Sangli Bank was amalgamated with ICICI Bank. On 17/03/2015, the Ld. Presiding Officer observed that the stay granted by the D.R.A.T. vide order dated 16/03/2005 was only in terms of prayer clause 6 (a) and hence operated with regard to the 4th Respondent alone. On 07/07/2015, Sangli Bank filed I.A. No. 62/2015 for amendment and substitution of the Applicant in view of the amalgamation. Vide order dated 09/03/2016, the D.R.T. rejected I.A. No. 62/2015, stating that since Sangli Bank was no longer in existence as a consequence of its amalgamation to ICICI Bank, it could not have applied for substitution. Thereafter, ICICI Bank filed a fresh application as I.A. No. 463/2016 for substitution, which was also rejected vide order dated 23/03/2016 on the ground that no explanation regarding the belated filing of the application was forthcoming, and there were no sufficient reasons for condoning the delay.

Court's Elaborate Opinions:

The Ld. Presiding Officer erred in observing that there was no explanation forthcoming explaining the reasons for the delay in applying for substitution. The finding that the earlier application filed by Sangli Bank as I.A. No. 62/2015 was rejected also on the

grounds of delay, amongst other grounds, is erroneous. That application was rejected solely on the ground that the Applicant Bank did not have the locus because it was no longer in existence because of the amalgamation. The reasons for the delay in applying for substitution were already explained in I.A. No. 62/2015. The Ld. Presiding Officer was not justified in dismissing the application for substitution on the ground of limitation. Although the provisions of the Code of Civil Procedure (CPC) do not apply to the proceedings before the D.R.T., the principles do apply. Under Order 1 Rule 10 of the CPC, the court has the power to add any party at any stage of the proceedings, either upon or without the application of either party, and exercising that power, a plaintiff could be substituted. The proceedings before the D.R.T. in the O.A. were considered as stayed consequent to the order of the D.R.A.T. in Misc. Appeal No. 150/2004. It was only subsequently that the Presiding Officer realized that the stay operated only against the fourth Defendant and not against the rest of the Defendants. Only when the O.A. was taken up for consideration did the Applicant realize the necessity of substituting Sangli Bank with ICICI Bank. There is absolutely no embargo for the D.R.T. to substitute the Applicant whose presence before the Tribunal was necessary to enable the Tribunal to effectually and completely adjudicate upon and settle all the questions involved in the proceedings. The Tribunal should not be pedantic in its approach, and substantial justice is what should be intended to be imparted.

Arguments by Parties:

Appellant (ICICI Bank Ltd.):

The Ld. Presiding Officer erred in observing that there was no explanation forthcoming explaining the reasons for the delay in applying for substitution. The finding that the earlier application filed by Sangli Bank as I.A. No. 62/2015 was rejected also on the grounds of delay, amongst other grounds, is erroneous. The reasons for the delay in applying for substitution were already explained in I.A. No. 62/2015. The impugned order dated 23/03/2016 in I.A. No. 463/2016 may be quashed and set aside. The claim against Respondent Nos. 2 and 3 has already been settled, and a 'No dues Certificate' has also been

issued to them. The 1st Respondent company went into liquidation.

Respondents:

The Respondents were served but did not appear to contest the appeal.

Cases Cited:

Order 1 Rule 10 of the Code of Civil Procedure (CPC) was referred to regarding the power of the court to add any party at any stage of the proceedings, either upon or without the application of either party, and exercising that power, a plaintiff could be substituted.

Sections and Laws Referred:

The provisions of the Code of Civil Procedure (CPC) were referred to in relation to their applicability to the proceedings before the D.R.T.

Order 1 Rule 10 of the CPC was specifically referred to regarding the power of the court to add or substitute parties.