

ICICI Bank Ltd. v. Raipur Manufacturing Company & Ors.

ICICI Bank Ltd.

...Appellant

Raipur Manufacturing Company & Ors.

...Respondent

Case No: Appeal No. 132/2016

Date of Judgement: 10/03/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Ms Gargi Bhagwat, Advocate.

For Respondent: None.

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Facts:

The case involves an appeal filed by ICICI Bank Ltd. (Appellant) against the dismissal of its Original Application (O.A.) No. 69 of 2009 by the Debts Recovery Tribunal-I, Ahmedabad (DRT). The Respondents include the borrower company, Raipur Manufacturing Company (In Liquidation), and the holders of privately placed debentures (first and second series) issued by the borrower company. Respondents 9 to 11 have an interest in the mortgaged/charged properties. The borrower company, a public company, was wound up by the order of the Hon'ble High Court of Gujarat dated 15.10.2001, pursuant to the recommendation of the Board for Industrial and Financial Reconstruction (BIFR), which declared the company 'sick' on 13.02.1996. On the request of the borrower company, a series of Debentures were issued with the Appellant's predecessor company, Industrial Credit and Investment Corporation of India Ltd., as the

Debenture Trustee, vide an agreement dated 28.02.1986. As per the agreement terms, the company agreed to repay the principal amount secured by the debentures on 31.07.1992, i.e., seven years from the date of allotment, or on an earlier date if the principal became due and payable under the agreement provisions, along with accrued interest. Similar provisions were incorporated for all debentures pertaining to the other Respondents. The Debenture Trust Deed was modified by a Supplemental Trust Deed on 09.07.1986. The borrower company created a mortgage on 18.06.1988 concerning the properties described in Schedule-I of the O.A. The borrower company failed to pay the principal amount, agreed interest rates, and trusteeship remuneration for the debentures within the stipulated time. The Appellant, as the Debenture Trustee, issued a notice on 25.02.2009 calling upon the Official Liquidator to pay the amount. Upon receiving no response, the Appellant filed the O.A. for recovery of ₹40,29,46,274.13, being the amount due to the Debenture holders and remuneration due to the Trustee, together with interest as of 11.07.2009 until recovery. The DRT dismissed the O.A. on the ground that the claim was barred by limitation, as the Applicant did not approach the DRT within three years from executing the security documents or within 12 years from the creation of the equitable mortgage on 18.06.1988.

Arguments by the Appellant:

The Appellant's counsel, Ms. Gargi Bhagwat, relied on the decision Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & An (2021) 6 SCC 366 regarding the application of Section 18 of the Limitation Act concerning a corporate debtor admitting liability to pay the debt in the company's balance sheet. The counsel argued that the acknowledgment made under Section 18 of the Limitation Act, along with the borrower company's letter dated 09/07/1992 requesting deferment of debenture redemption, would extend the limitation period. The borrower company was declared sick on 13/02/1996, and IDBI was appointed as an operating agency to form a viable proposal for the company's rehabilitation, further extending the limitation period.

Court's Elaborate Opinions:

The court agreed with the DRT's finding that the O.A. being barred by limitation is no reason to entertain an application, and the crucial question is whether the DRT was correct in finding the Application barred by limitation. The court noted that the borrower company's Annual Report for 1997-98 acknowledged the outstanding dues to the Debenture holders of the first and second series, amounting to an acknowledgment of liability under Section 18 of the Limitation Act. The court referred to the decision in Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Ano (2021) 6 SCC 366, which held that entries in books of accounts would amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act, extending the period of limitation for discharging the liability as debt. The court cited the Calcutta High Court's decision in Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff AIR 1962 Cal 115, which held that if the balance sheet contains an admission of liability, the agent who makes and signs it intends to make those admissions, and they do not seem to be acknowledgments merely on the ground of being made in the discharge of statutory duty. The court noted that under Section 19 of the Limitation Act, an acknowledgment of debt need not be made to the creditor nor amount to a promise to pay the debt. Since the balance sheet acknowledging the debt is dated 31.03.1998, the court held that the time would begin to run from there, and the O.A. needed to be filed within 12 years from that date. As the O.A. was filed on 24/07/2009, within the 12-year period, the DRT committed an error by dismissing the O.A. on the ground of limitation. The court found that the Appellant had proved its claim, which was not challenged by the Respondents before the DRT or the Appellate Tribunal.

Order:

The appeal was allowed, and the impugned judgment of the DRT dated 23/11/2015, dismissing the O.A. on the ground of limitation, was set aside. The O.A. was allowed as prayed, and a recovery certificate was issued in favor of the Applicant/Appellant as trustees for the Debenture holders and against the borrower company acting through the Official Liquidator, High Court of Gujarat. The Official Liquidator

was directed to pay a sum of ₹40,29,46,274.13, being the amount due to the Debenture holders in respect of the first and second series of debentures and remuneration due to the trustees, together with interest at 6% per annum from the date of filing the O.A. until realization and costs. The amount was to be recovered from the borrower company through the Official Liquidator from the movable and immovable assets belonging to the borrower company, as described in Schedules I and II of the application.

Cases Cited:

Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal & Ano (2021) 6 SCC 366

Relied upon by the Appellant's counsel regarding the application of Section 18 of the Limitation Act concerning a corporate debtor admitting liability to pay the debt in the company's balance sheet.

Mahabir Cold Storage vs. CIT 1991 Supp (1) SCC 402

Referred to in the Asset Reconstruction Company case, holding that entries in books of accounts would amount to an acknowledgment of liability under Section 18 of the Limitation Act.

A.V. Murthy vs. B.S. Nagabasavanna (2002) 2 SCC 642

Referred to in the Asset Reconstruction Company case, holding a similar view as Mahabir Cold Storage.

Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff AIR 1962 Cal 115

Held that if the balance sheet contains an admission of liability, the agent who makes and signs it intends to make those admissions, and they do not seem to be acknowledgments merely on the ground of being made in the discharge of statutory duty.

Sections and Laws Referred:

Limitation Act, 1963

Section 18: Acknowledgment of debt extends the period of limitation.

Section 19: An acknowledgment of debt need not be made to the creditor nor amount to a promise to pay the debt.

Article 62: Suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property must be filed within 12 years of when the money sued for becomes due.