

ICICI Bank Ltd. v. Siddharth Polymers

ICICI Bank Ltd.

...Appellant

Siddharth Polymers

...Respondent

Case No: Appeal No. 02/2020

Date of Judgement: 16/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Aayush Kothari, i/b M/s. H & M Legal Associates, Advocate

For Respondent: None.

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Facts:

This case pertains to an appeal (Appeal No. 02/2020) filed by ICICI Bank Ltd. (Appellant) against the dismissal of its Original Application (O.A.) No. 509 of 2017 by the Debts Recovery Tribunal, Pune (D.R.T.), vide judgment dated 15.10.2018. On 07.03.2007, the Respondent, Siddharth Polymers, a sole proprietorship owned by Sanjay Mehrotra, had availed an overdraft facility (OD facility) of ₹25 lakhs from the Appellant Bank. Several documents concerning the loan were executed by the proprietor, including a Master Facility Agreement of the same date (07.03.2007). The Respondent had requested for an automatic renewal of the OD facility, and the Bank conceded to the request vide letter dated 18.09.2007, as a result of which the OD facility was getting renewed every year since 2007. The Respondent was making payments towards the dues

until the last payment on 11.05.2016, as evidenced by the summary of accounts produced by the Appellant. Due to the default of further payment, the Appellant issued a demand notice on 16.12.2016, calling upon the Respondent to repay the entire outstanding dues. As there was no response from the Respondent, the Appellant filed the O.A. for the recovery of ₹17,00,644.92 due as of 31.03.2017, together with future interest under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act). The Respondent remained ex-parte in the proceedings before the D.R.T. and before the Debts Recovery Appellate Tribunal.

Arguments by the Appellant (ICICI Bank Ltd.):

The Appellant contended that the statement of accounts for the period 01.03.2007 to 01.04.2014 was inadvertently not produced and left out from the account statements for the period until 31.03.2017. To correct this omission, the Appellant had filed an application on 16.08.2018 before the D.R.T. with a prayer to receive the left-out account statements in evidence, which was, however, declined for the reason that there were no specific pleadings in the O.A. An amendment application filed as I.A. No. 983 of 2018 for inserting specific pleadings in the O.A. was also declined, and ultimately, the O.A. was dismissed on the grounds of limitation. The Appellant submitted that the D.R.T. erred in concluding that the O.A. was barred by limitation, as it failed to notice the amendment to the Master Facility Agreement agreeing to renew the OD facility yearly. The inadvertent omission sought to be incorporated by way of an amendment was also declined for no valid reasons. The fact that the last payment by the Respondent was on 11.05.2016 was also not considered in the impugned judgment, which would have the effect of an acknowledgment of liability by the Respondent under the provisions of Section 19 of the Limitation Act, 1963.

Arguments by the Respondent (Siddharth Polymers):

The Respondent remained ex-parte in the proceedings before the D.R.T. and before the Debts Recovery Appellate Tribunal.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal observed that the finding of the Presiding Officer that there was no pleading regarding the Respondent/Defendant agreeing to automatically renew the OD facility does not appear to be correct. In paragraph 4 of the O.A., it was specifically stated that the Defendant availed of the loan facility on 07.03.2007 by executing a Master Facility Agreement, and the same was extended vide letter of amendment dated 18.09.2007, agreeing for automatic yearly renewal, and thereafter, the facility was renewed yearly. It was also stated that the Defendant had made the last payment on 11.05.2016, thus acknowledging the debt and liability, and the Applicant pleaded that the application was within the limitation. Since the Defendant/Respondent did not appear to contest the O.A., the fact regarding the automatic renewal pleaded by the Applicant stood uncontroverted. Section 19 of the Limitation Act states that where payment on account of a debt or interest is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. The proviso to Section 19 states that an acknowledgment of the payment should appear in the handwriting of or in writing signed by the person making the payment. The amendment to the Master Facility Agreement, granting the liberty to the Bank to renew or extend the OD facility by a signed letter issued by the Respondent to the Appellant Bank, would serve the purpose of acknowledgment under Section 19 of the Limitation Act. The payments made regularly by the Respondent towards the OD account would amount to an acknowledgment of the debt. The Presiding Officer, therefore, erred in dismissing the O.A. on the ground of limitation, and the O.A. should have been allowed as prayed.

Cases Cited:

Sant Lal Mahton vs. Kamla Prasad AIR 1951 SC 477

Sections and Laws Referred:

Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993
(RDB Act)

Section 19 of the Limitation Act, 1963

In summary, the Debts Recovery Appellate Tribunal allowed the appeal, set aside the impugned judgment and order dated 15.10.2018, and allowed the Original Application No. 509 of 2017, directing the Respondent to pay the Appellant a sum of ₹17,00,644.92, together with future interest at the contractual rate and further interest until realization. The Tribunal held that the Presiding Officer had erred in dismissing the Original Application on the ground of limitation, as the amendment to the Master Facility Agreement and the regular payments made by the Respondent towards the OD account amounted to an acknowledgment of the debt under Section 19 of the Limitation Act, 1963.