

M/s Prag Computer Services v. The Federal Bank Ltd.

M/s Prag Computer Services

...Appellant

The Federal Bank Ltd.

...Respondent

Case No: Appeal No. 137/2012

Date of Judgement: 30/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Vivek M Prani.

For Respondent: Mr. O.A. Das along with Ms Pallavi Chari, i/b M/s O.A. Das & Co., Advocate.

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Facts:

M/s Prag Computer Services (Appellant No. 1) and the deceased wife of its proprietor, Mr. Vivek M. Prani, were the Defendants Nos. 1 and 2 in Original Application (O.A.) No. 153 of 2005 filed by the Ganesh Bank of Kurundwad Ltd. (later merged with the Federal Bank Ltd. and substituted as the Respondent Bank) before the Debts Recovery Tribunal, Pune (DRT). The Respondent Bank had filed the O.A. for the recovery of ₹25,01,590/- along with interest at 18.36% per annum from the date of application until realization, from Defendants Nos. 1 and 2, secured by a mortgage on a flat belonging to the second Defendant. The claim against the third Defendant, the legal representative of a deceased guarantor, was dismissed by the DRT. Appellant No. 1, a proprietary concern engaged in data processing, data entry, and software development, had approached the Respondent Bank for financial

assistance to expand its business. The Bank had sanctioned a term loan of ₹4 lakhs and a cash credit of ₹10 lakhs to Appellant No. 1, with the second Defendant (Appellant's wife) and the deceased Vasant D. Khare (the predecessor of the third Defendant) as sureties/guarantors. Appellant No. 1 defaulted in payment, and the loan was recalled by the Bank through a notice. The second Defendant had died on 19.12.2005, before the O.A. was allowed by the DRT on 01.08.2008. Another O.A. (No. 178 of 2005) had been filed against the same Defendants, wherein the third Defendant had informed the DRT about the second Defendant's demise. The Bank had filed applications before the DRT seeking time to obtain details regarding the second Defendant's demise and stating that summons could not be served at the Defendants' address as they had left, and their recent address was unknown. On 02.06.2006, the Bank's branch manager had written a letter to the general manager, informing about the second Defendant's demise and requesting service of notice by publication as summons could not be served on Defendants Nos. 1 and 2 due to insufficient address. On 15.02.2005, the Appellants had informed the Bank's branch manager that they had temporarily moved out of their residence since January 2005, as the second Defendant had fallen and fractured her hand and had been detected with breast cancer since June 2003, and they had moved to Mumbai for her treatment. The Appellant contended that the Bank was aware of the Defendants' Mumbai address and their temporary relocation but did not take steps to serve them there. The Appellant filed an appeal against the DRT's judgment with a delay of 636 days and sought waiver of the mandatory pre-deposit under Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDDB & FI Act), citing impecunious conditions and lack of livelihood.

Arguments by the Parties:

Appellant's Arguments:

The decree against the deceased second Defendant is ab initio void. The Bank was aware that the Defendants had moved to Mumbai for the second Defendant's cancer treatment but failed to serve them at their Mumbai address. The Appellant is in an impecunious condition and has little income, and substantial amounts are due from the Government for

work done by him. The Appellant pleaded for a waiver of the mandatory pre-deposit under Section 21 of the RDDB & FI Act.

Respondent Bank's Arguments:

The Bank vehemently opposed the application for waiver of pre-deposit. The Bank insisted on the deposit of the entire amount of pre-deposit before entertaining the appeal.

Court's Elaborate Opinions:

The Court noted that since the appeal was filed before the amendment to the RDDB & FI Act, which came into effect on 01.09.2016, the pre-amended provisions would apply. The Court referred to Section 21 of the pre-amended RDDB & FI Act, which provided discretion to the Appellate Tribunal to waive the entire pre-deposit amount for reasons to be recorded in writing. The Court cited the Supreme Court's decision in Motiram vs. Suraj Bhan & Ors AIR 1960 SC 655, which held that where an amendment affects vested rights, it would operate prospectively unless specifically made retrospective or its retrospective operation follows as a matter of necessary implication. The Court found that the Appellant had prima facie established that there was no proper service of summons, as the Bank officials knew the Defendants were residing in Mumbai but did not take steps to serve them at their Mumbai address. The Court observed that the summons issued at the Defendants' Pune address was returned with an endorsement that the addressee had left, and substituted service was effected in Pune, not Mumbai. The Court noted that the death of the second Defendant was known to the Bank officials, but they did not take steps to implead the legal representatives of the deceased second Defendant. The Court found that the financial strain undergone by the first Appellant was also established. Considering the circumstances, the Court held that the Appellant was entitled to a total waiver of the mandatory pre-deposit under Section 21 of the RDDB & FI Act.

Sections and Laws Referred:

Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act) – Deposit of an amount of debt

due on filing appeal.

Motiram vs. Suraj Bhan & Ors AIR 1960 SC 655 – Supreme Court decision on the prospective operation of amendments affecting vested rights.

Cases Cited:

Motiram vs. Suraj Bhan & Ors AIR 1960 SC 655