

Rate of interest in settlement of bank's recovery application: DRAT KOLKATA

Bank of Baroda

...Appellant

M/s. Vagishwari Educational Society,

...Respondent

Case No: Appeal No. 219 of 2018

Date of Judgement: 7th August, 2023

Judges:

Anil Kumar Srivastava, J- Chairperson

For Appellant: Mr. Nemani Srinivas, Advocate.

For Respondent: Mr. Samrat Mukherjee, Advocate.

Facts:

Bank of Baroda filed an original application (O.A.) before the Debts Recovery Tribunal (DRT), Visakhapatnam against the respondents for recovery of Rs. 4,01,49,439 along with interest at 14%. During pendency of the O.A., the parties entered into a one-time settlement (OTS) as per which the respondents were required to pay Rs. 3.25 crores by 30th June 2015. The respondents failed to pay the entire OTS amount by the due date. They paid only Rs. 2.72 crores out of Rs. 3.25 crores, leaving a balance of Rs. 53 lacs. The respondents were willing to pay the balance amount but the bank did not accept it. Hence, they filed an interim application (I.A.) before the DRT seeking directions to the bank to accept balance OTS amount with nominal interest and issue no objection certificate by cancelling the mortgage.

DRT's Decision:

The DRT allowed the I.A. and directed the respondents to pay balance OTS amount of Rs. 53 lacs along with interest at 4% p.a. from 7th April 2017 within two months. Aggrieved by low rate of interest, the bank filed the present appeal before the Debts Recovery Appellate Tribunal (DRAT).

Arguments by Bank:

The bank's only grievance in appeal was regarding low rate of interest fixed by the DRT. It was submitted that the contractual rate of interest was 14% and fixing interest at 4% was erroneous. The bank argued that the respondents themselves failed to comply with the OTS terms by not paying the amount by due date. Hence, they were not entitled to such low rate of interest. It was submitted that DRT has power to fix reasonable interest below contractual rate under Section 34 CPC but 4% p.a. was highly unreasonable and prejudicial to bank's interest.

Arguments by Respondents:

The respondents supported the DRT's order and submitted that the interest rate fixed was just and reasonable. It was argued that OTS amounts are always settled at concessional rates and nominal interest. The DRT applied its discretion rightly while fixing 4% interest. The respondents stated that they were always ready and willing to pay the balance amount and delay was not intentional. Hence, burdening them with high interest will be unfair.

DRAT's Decision and Reasons:

The DRAT partly allowed the bank's appeal and modified the interest rate to 9% p.a. instead of 4% p.a. as fixed by the DRT. It held that while DRT had powers to fix interest rate below contractual rate under OTS, the rate should be reasonable and not nominal. The DRAT observed that 14% was the original contractual interest while 4% was highly nominal. Hence, interest at 9% balanced the interest of both parties. It noted that the matter stemmed from the bank's recovery application where interest was at 14%. Thus, reducing it to 4% prejudiced the bank's interest. Accordingly, the DRAT confirmed the DRT's order regarding balance OTS payment but modified only the interest rate from 4% to 9% p.a.

Sections:

The judgment referred to Section 34 of Code of Civil Procedure which empowers the court to award interest at rate it deems reasonable.

Conclusion:

In disputes involving recovery of loan/debt by banks, while courts have discretion to reduce contractual interest rate in suitable cases, care must be taken to ensure that the modified rate balances interests of both parties and does not prejudice the dues & interest legitimately owed to banks. A reasonable via media needs to be arrived at depending on facts and justice of each case.

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Instant appeal has arisen against the order dated 6th October, 2017 passed by learned DRT Visakhapatnam in I.A. 1382 of 2017 arising out of O.A. No. 744 of 2014 filed by the Defendants against the Appellant herein.

2. As far as facts of the matter are concerned, admittedly an Original Application No. 744 of 2014 was filed by the Appellant Bank for a decree of Rs.4,01,49,439.00 together with interest at the rate of 14% against the Respondent herein. Pending O.A. a proposal for OTS was submitted by the Respondent which was accepted by the Bank on 30th March, 2015. As per terms and conditions of the OTS, as regards time frame, an amount of Rs.3.25 crore was to be paid by the Respondent on or before 30th June, 2015 which was not paid. Subsequently, on various dates Rs.2.72 crore was paid by the Respondent. An amount of Rs.53.00 lac remained in balance which Respondent was ready and willing to pay, but the Bank did not accept the same. Therefore, I.A. was filed by the Respondent before DRT with a prayer for direction to pay the balance amount under the compromised sanction with nominal interest and

further direction to the Bank to give NOC by cancelling the mortgage and return all original title deeds.

3. I.A. was allowed by learned DRT vide order dated 6th October, 2017 wherein Respondent herein was directed to pay an amount of Rs.53.00 lac with 4% interest per annum from 7th April, 2017 within two months.

4. Feeling aggrieved by the rate of interest ordered by the learned DRT, Appellant Bank has preferred the appeal.

5. Heard Learned Counsel for the parties and perused records.

6. Learned Counsel for Appellant submits that only grievance of the Appellant Bank is the rate of interest ordered by learned DRT. It is submitted that the Respondent himself did not comply the terms and conditions of the OTS. It is also submitted that rate of interest should be 4% and not the contractual rate of interest which is not permissible under the law.

7. Ld. DRT fixed the rate of interest 4% of Rs. 53 lacs from 07.04.2017.

8. As far as rate of interest is concerned, same should have been fixed by the Ld. DRT keeping in view the Section 34 of Code of Civil Procedure. No doubt when the matter was settled under the O.T.S., DRT was well within its powers to fix the rate of interest which is below the contractual rate of interest. But at the same time, this rate should not be so minimum so as to prejudicial to the interest of the Bank. The O.A. was filed for recovery of the amount at the rate of 14%.

9. Having considered the submissions, I find it appropriate that the rate of interest as granted by the DRT be modified to 9% per annum. Accordingly, Appeal deserves to be allowed.

Appeal is allowed to an extent that the Appellant shall be entitled for an interest of 9 % per annum of Rs. 53 lacs with effect from 07.04.2017. Rest of the findings are confirmed.

No order as to costs.

File be consigned to Record room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 7th day of August, 2023.