

Ross Deas & Anr. v. Central Bank of India

Ross Deas & Anr.

...Appellant

Central Bank of India

...Respondent

Case No: Appeal No. 37/2008

Date of Judgement: 14/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Dinesh Purandare along with Mr Vinay Deshpande and Mr Rupak Sawangikar, i/b M/s. V. Deshpande & Co., Advocate.

For Respondent: Mr R. K. Jha, i/b M/s R. K. Jha & Associates, Advocate.

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Facts:

This is an appeal (No. 37/2008) filed by Ross Deas & Anr. (Appellants) against the judgment and order dated 18/07/2007 passed by the Debts Recovery Tribunal-I, Mumbai (D.R.T.) in Original Application (O.A.) No. 2035 of 1999. The Appellants were defendants No. 3 and 4 in the O.A., impleaded as guarantors to the first defendant principal borrower, M/s Rossell Finance Ltd. (Company in Liquidation). The Appellants were erstwhile directors of M/s Rossell Finance Ltd. and had resigned from the Board and sold their shareholding to the 2nd defendant, Mr. Y. K. Modi, in 1994. The Appellants contended that Mr. Y. K. Modi had assured them that their guarantees given to the bank (Central Bank of India – Respondent) would be substituted and replaced, and they would be released from their obligations. The

Appellants informed the Respondent bank vide letter dated 06/02/1995 that they had withdrawn their guarantees. The bank responded vide letter dated 24/02/1995, stating that their guarantees would be replaced after consulting with the consortium. Mr. Y. K. Modi executed a fresh guarantee on 03/08/1995, consequent to which the Appellants claimed they stood discharged from their guarantees. The D.R.T. allowed the O.A., making defendants No. 1 to 4 (including the Appellants) jointly and severally liable to pay the decretal amount to the Respondent bank.

Arguments by the Appellants:

The Appellants' counsel, Mr. Dinesh Purandare, drew the Tribunal's attention to Exhibit-G, a letter dated 23/04/1999 issued by the Respondent bank's advocates to defendants No. 1 and 2, which stated: "...previously Mr. Ross Deas and Ms. Lynn Deas were in their individual capacities, the personal guarantors for the said credit facilities. However, consequent upon the retirement from No. 1 of you, the said personal guarantees have been replaced by the personal guarantee of No. 2 of you." Mr. Purandare argued that the above recital is a clear admission by the bank that the Appellants have been discharged from their liability as guarantors. He also pointed out another letter dated 24/07/1999 by the bank's advocates addressed to the 1st defendant alone, claiming the amount from it and mentioning that the Appellants are guarantors to the debt availed by the 1st defendant company. He further argued that none of the other consortium members have proceeded to claim any amount from the Appellants as guarantors.

Arguments by the Respondent Bank:

The Respondent bank was represented by Mr. R. K. Jha, advocate, and Ms. Swarnima Singh, Law Officer. (No specific arguments by the Respondent bank are mentioned in the order.)

Court's Elaborate Opinions:

The Tribunal observed that the Respondent bank's letter dated 24/02/1995 stated that the Appellants' guarantee would continue till an alternate arrangement is made by the company to the satisfaction of

the consortium, indicating that it was within the bank's discretion to discharge or not discharge the Appellants' guarantee. The Tribunal noted that as per the guarantee agreement, the Respondent bank was entitled to take additional guarantees, and on providing such additional guarantees, the earlier guarantees would not get automatically discharged. However, the Tribunal found it adequately clear that with the consent of the bank, the Appellants' guarantee was substituted with the guarantee submitted by the 2nd defendant, Mr. Y. K. Modi. Considering the notice issued by the bank's advocates against defendants No. 1 and 2, containing a categorical admission that the Appellants' guarantee was substituted and replaced by Mr. Y. K. Modi's guarantee, the Tribunal held that the bank had accepted the substitution of the guarantee. The Tribunal observed that the 1st defendant company (M/s Rossell Finance Ltd.) had gone into liquidation, and an Official Liquidator was appointed in the company proceedings. The Tribunal referred to the Appellants' Writ Petition No. 9304/2014, where the Hon'ble High Court of Bombay had observed that a sum of ₹9,09,95,492.73 was lying with the Official Liquidator to the account of the company in liquidation, and the liquidator had already paid the Respondent bank a sum of ₹41,30,765 (the decretal sum). The Tribunal noted that the Respondent bank had filed a Company Application No. 246 of 2014 before the Company Court, claiming a sum of ₹4,08,64,047/- from the Official Liquidator as the decretal amount in O.A. No. 2035 of 1999. However, on 15/12/2014, the Hon'ble High Court of Bombay passed an order dismissing the application and directing the Official Liquidator to pay an amount of ₹40,00,000/- to the Respondent bank. In the Writ Petition No. 9304/2014, the bank had filed an affidavit stating that it had received only a sum of ₹40 lakhs from the Official Liquidator and that it was entitled to recover a total sum of ₹6,28,42,603/- together with interest from the borrower company and the guarantors. The Tribunal observed that a status report filed by the Official Liquidator in the Writ Petition stated that a sum of ₹9,09,95,492.73 was still lying to the credit of the Company in Liquidation as of 04/07/2019. The Tribunal held that if the Respondent bank wants to proceed against the 1st Respondent company, it is at liberty to realize the entire amount from the amount still lying in deposit with the Official Liquidator, and there is no necessity for

the bank to proceed against the Appellants, who have already been discharged as guarantors of the debt incurred by the company in liquidation.

Conclusion:

Based on the above analysis, the Tribunal allowed the appeal, set aside the impugned judgment and order of the D.R.T. dated 18/07/2007 as regards defendants 3 and 4 (the Appellants), discharged them from the debt and liability of the 1st defendant company, and directed the Recovery Certificate to be modified accordingly.