

State Bank of India v. Shrikrishna Agro Farm & Ors.

State Bank of India

...Appellant

Shrikrishna Agro Farm & Ors.

...Respondent

Case No: Misc. Appeal No. 121/2022

Date of Judgement: 26/05/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Atul Pande, Advocate.

For Respondent: M.D. Samuel, Advocate.

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Facts:

State Bank of India (Appellant) filed an appeal (Misc. Appeal No. 121/2022) before the Debts Recovery Appellate Tribunal (D.R.A.T.), Mumbai, challenging the order dated 28.04.2017 of the Debts Recovery Tribunal, Nagpur (D.R.T.). The order under challenge was passed in I.A. No. 79/2017 in Original Application (O.A.) No. 81/2010, allowing the application filed by the Respondents seeking an amendment of their written statement/counter-claim. The first Respondent, M/s Shrikrishna Agro Farm, is a partnership firm represented by the second Respondent as one of its partners. The other Respondents are also partners of the firm. On 05.02.2010, the first Respondent firm filed a Civil Suit No. 262/2010 before the third Joint Civil Judge, Senior Division, Nagpur, seeking declaration, permanent injunction, and recovery of ₹9 lakhs from the Appellant Bank. The first Respondent had borrowed money from the Appellant Bank and defaulted in repayment. On 21.07.2010, the

Appellant Bank filed O.A. No. 81/2010 against the firm and its partners for recovery of ₹18,48,746.65. The Respondents filed a written statement raising a claim of ₹9 lakhs on 15.12.2010. However, no specific counter-claim was filed, and the Appellant Bank raised an objection regarding the court fee payable on the counter-claim. The Respondents filed a Writ Petition (2097/2011) before the Hon'ble High Court of Bombay, Nagpur Bench, for the transfer of Civil Suit No. 262/2010 from the court of the Civil Judge, Senior Division, Nagpur, to the D.R.T., Nagpur. The writ was allowed on 22.09.2011. On 21.07.2017, the Respondents filed I.A. 79/2017 for amendment of the written statement, seeking to enhance the counter-claim from ₹9 lakhs to ₹51,86,761/- by way of an additional counter-claim. The Appellant opposed the application, and the D.R.T., vide the impugned order, allowed the amendment application and directed the amendment to be carried out within two days. The Appellant is aggrieved by the impugned order and hence filed the present appeal before the D.R.A.T.

Arguments by the Respondents:

The Respondents contended that the Appellant Bank had claimed a highly exaggerated amount in the O.A. by charging exorbitant interest at the rate of 14.79% per annum on the cash credit and term loan facilities granted to the Respondents as agricultural finance, for which the Bank could not have charged interest at a rate of more than 9% per annum. The Respondents filed the Civil Suit referred to above for recovery of ₹9 lakhs, being the loss sustained by the first Respondent firm due to the wilful default on the part of the Bank by not claiming the amount of insurance for the loss of poultry due to bird flu. The Hon'ble High Court permitted the transfer of the aforesaid suit to be treated as a counter-claim against the Appellant Bank. The Respondents had also filed a reply to the O.A., disputing the claim in the application. When the O.A. was taken up for arguments, the documents were perused, and the exorbitant interest charged by the Bank was noted. No explanation was forthcoming from the Bank regarding the rate of interest claimed in the O.A. Consequent to the filing of an application by the Respondents, the D.R.T. directed the Appellant Bank to produce details of the State Bank rate of interest for the relevant

period, but the Appellant did not comply and kept seeking adjournments. It was the Presiding Officer who directed the Respondents to apply for an amendment. Thereafter, the O.A. was adjourned, and ultimately, the application for amendment was filed as I.A. No. 79/2017 on 24.01.2017. The Respondents argued that since the provisions of the Code of Civil Procedure (CPC) are not applicable to the proceedings before the D.R.T., there is no bar to the limitation, and the provisions of Order 6 Rule 17 of the CPC would not strictly apply. The Respondents relied on several decisions, including *HDFC Bank Ltd. vs. Ashapura Minechem Ltd II* (2017) BC 515 (DB) (Bom.), *Mahendra Kumar & Anor. vs. State of Madhya Pradesh & Ors.* (1987) SCC 265, *State Bank of India vs. Sarthi Textiles & Ors* (2009) 16 SCC 328, and *Central Bank of India, Dhantari vs. M/s. Sharad Rice Industries & etc.* AIR 2010 Chhattisgarh 69, to support their arguments.

Arguments by the Appellant Bank:

The Appellant Counsel contended that the amendment to the pleadings before the D.R.T. should be in accordance with the Code of Civil Procedure and guided by the principles of natural justice. Although the Tribunal is not bound by the procedure laid down by the CPC, there is no specific procedure prescribed for the D.R.T. to carry out amendment of the pleadings. Therefore, the principles of amendment of pleadings prescribed under Order 6 Rule 17 of the CPC would apply. The proviso to Rule 17 makes it clear that no application for amendment shall be allowed after the trial commences unless the court concludes that, despite due diligence, the party could not have raised the matter before the commencement of the trial. The suit was filed in 2010 before the Civil Court and was transferred to the D.R.T. in 2011. The application for amendment was filed only in 2017. Any additional claim by way of amendment cannot be introduced if the said claim is barred by limitation. In the present case, the Respondents have enhanced the claim after a period of seven years, and therefore, it cannot be allowed.

Court's Elaborate Opinions:

The D.R.A.T. observed that the intention of the legislature while

enacting the Recovery of Debts and Bankruptcy (RDB) Act is adequately clear under sub-section 5 to Section 19 of the RDB & FI Act. A written statement is to be filed within 30 days from the date of service of the summons, and it can be extended by the Presiding Officer only in exceptional cases and special circumstances, to be recorded in writing. More than two extensions could not be granted. Consequent to the amendment in 2016, the provision has been made more rigorous. The written statement, including the claim for set-off or a counter-claim, has to be made within 30 days of receipt of the summons, and a further period of extension could be granted only up to 15 days. Even prior to the amendment, a written statement ought to be made together with the written statement. The D.R.A.T. opined that the decision in HDFC Bank Ltd. (supra) would not apply because the cause of action for the Respondents/Defendants had arisen not subsequently but at the time of the written statement/suit before the Civil Court itself. The decision of Mahendra Kumar (supra) would also not apply because the provisions of Order 8 Rule 6-A (1) of the CPC relied upon in that decision would not be applicable to the proceedings before the D.R.T., which is governed by a special statute and rules made thereunder. A counter-claim under the statute is expected to be made together with the written statement and not thereafter. No reasons whatsoever have been subscribed in the application for amendment explaining the delay in incorporating an enhanced claim in the counter-claim. The claim sought to be introduced by way of amendment is hopelessly barred by limitation as well. The Ld. Presiding Officer has not gone into all these aspects before allowing the application for amendment. The impugned order is, therefore, unsustainable.

Sections and Laws Referred:

Section 19(5) of the Recovery of Debts and Bankruptcy & Financial Institutions (RDB & FI) Act.

Order 6 Rule 17 of the Code of Civil Procedure (CPC).

Order 8 Rule 6-A (1) of the CPC.

Section 22 of the RDB Act.

Cases Cited:

HDFC Bank Ltd. vs. Ashapura Minechem Ltd II (2017) BC 515 (DB) (Bom.)

Mahendra Kumar & Ano. vs. State of Madhya Pradesh & Ors. (1987) SCC 265

State Bank of India vs. Sarthi Textiles & Ors (2009) 16 SCC 328

Central Bank of India, Dhantari vs. M/s. Sharad Rice Industries & etc. AIR 2010 Chhattisgarh 69

Final Order:

The D.R.A.T. allowed the appeal filed by the State Bank of India and dismissed I.A. No. 79/2017 filed in O.A. No. 81/2010 before the D.R.T. The D.R.T. was directed to endeavor to dispose of the O.A. expeditiously.