

# State Bank of India vs P. K. Thakker Construction Pvt. Ltd.

State Bank of India

...Appellant

M/s. P. K. Thakker Construction Pvt. Ltd.

...Respondent

Case No: Appeal No. 86/2017

Date of Judgement: 31/01/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Sanjay Kelkar with Mr Omkar Kelkar, Advocates.

For Respondent: Mr Prashant Pandit, Advocate.

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## Facts:

The case arises from an appeal filed by the State Bank of India (Appellant) challenging the judgment and order dated 22/06/2016 passed by the Debts Recovery Tribunal-I, Ahmedabad (DRT) in Original Application No. 147 of 1998.

The DRT had allowed the set-off and counter-claim raised by M/s. P. K. Thakker Construction Pvt. Ltd. (Respondent) against the State Bank of India.

The Appellant filed Misc. Application No. 297/2017 under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) seeking a waiver of pre-deposit, stating that the appeal is filed by a bank

which is neither a borrower nor a guarantor or a mortgagor from whom the amount of financial debt is due.

The Respondent company vehemently opposed the application and insisted on directing the Appellant to deposit the mandatory amount as required under Section 21 of the RDB Act.

### Sections and Laws Referred:

Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act): Section 21 deals with the deposit of the amount of debt due on filing an appeal before the Debts Recovery Appellate Tribunal (DRAT).

Section 2(g) of the RDB Act: Section 2(g) defines the term “debt” as “any liability (inclusive of interest) which is claimed as due from any person by a bank or financial institution or by any consortium of banks or financial institutions during the course of any business activity undertaken by the bank or other financial institution or the consortium under any law for the time being in force, in cash or otherwise, where the secured or unsecured, or assigned, or whether payable under a decree order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities.”

Section 19 of the RDB Act: Section 19 provides for a bank or financial institution to recover any debt from any person by filing an application to the Tribunal.

### Arguments by the Appellant (State Bank of India):

The Appellant’s counsel, Mr. Sanjay Kelkar, argued that according to Section 21 of the RDB Act, it is only the borrower or the guarantor who should make the pre-deposit for preferring an appeal against the order passed by the DRT under Section 19 of the RDB Act.

Mr. Kelkar submitted that the Appellant bank is neither a borrower nor a guarantor and, therefore, is not liable to make any pre-deposit under the provisions of the RDB Act for preferring an appeal before the DRAT.

### Arguments by the Respondent (M/s. P. K. Thakker Construction Pvt. Ltd.):

The Respondent's counsel, Mr. Prashant Pandit, submitted that Section 21 uses the words "any person," which would include a bank that is preferring an appeal challenging the set-off and counter-claim raised by the Respondent and allowed by the DRT.

### Cases Cited:

Arul Nadar vs. Authorised Officer, Land Reforms (1998) 7 SCC 157: Mr. Kelkar relied on this case to argue that the basic rules of interpretation of statutes are to give a literal construction or a plain and ordinary meaning where the language of the statute is unambiguous. It is not necessary to examine the intent or object of the Act while interpreting its provisions.

Grasim Industries Ltd. Vs. Collector of Customs, Bombay (2002) 4 SCC 297: Mr. Kelkar relied on this case, wherein it was held that where the language is clear, the intention of the legislature is to be gathered from the language used.

Sree Jeyasoundharam Textile Mills Pvt. Ltd. & Ors. vs. Canara Bank & Ors. MANU/TN/1681/2019: This case was cited by the DRAT, wherein the Hon'ble High Court of Madras held that the object of the enactment of the SARFAESI Act and the RDB Act was for expeditious recovery of loans of banks and financial institutions. Therefore, the secured creditors (i.e., the banks or financial institutions or any consortium of banks or financial institutions) who are taking steps to recover the outstanding loan amount from the defaulting borrower or guarantor cannot be asked to make the pre-deposit for entertaining an Appeal before the DRAT.

### Court's Elaborate Opinions:

The DRAT examined the provisions of Section 21 of the RDB Act and noted that the words “appeal is preferred by any person” cannot be read in isolation. A reading of the entire section would indicate that only when an appeal is preferred by any person from whom the amount of financial debt is due to a bank or financial institution, they need to pay fifty percent of the amount of debt so due from them as determined by the Tribunal under Section 19.

The DRAT also considered the definition of the word “debt” in Section 2(g) of the RDB Act, which indicates that it means a liability that is due from any person to a bank or financial institution.

The DRAT further noted that Section 19 of the RDB Act provides for a bank or financial institution to recover any debt from any person by filing an application to the Tribunal. The defendant (borrower/guarantor) cannot independently file an application under Section 19 for the realization of the amount due from the bank to them. The provision for entertaining set-off and counter-claim is made in the RDB Act to avoid multiplicity of suits, giving the Tribunal jurisdiction to consider such claims together with the claim raised by the bank or financial institution against the debtor. Any independent claim against a bank or financial institution has to be filed before a civil court and not before the DRT.

The DRAT relied on the decision of the Hon’ble High Court of Madras in Sree Jeyasoundharam Textile Mills Pvt. Ltd. & Ors. vs. Canara Bank & Ors. MANU/TN/1681/2019, which held that the secured creditors (banks and financial institutions) who are taking steps to recover the outstanding loan amount from the defaulting borrower or guarantor cannot be asked to make the pre-deposit for entertaining an Appeal before the DRAT.

The DRAT concluded that a plain reading of the statute does not indicate the payment of any pre-deposit by a bank or financial institution while preferring an appeal before the Appellate Tribunal under Section 21 of the RDB Act. The provision for mandatory pre-deposit under Section 18 of the SARFAESI Act and Section 21 of the RDB Act is specifically made for appeals preferred by the borrowers,

guarantors, or mortgagors and not by secured creditors or banks and financial institutions.

Consequently, the DRAT allowed Misc. Application No. 297/2017 and exempted the Appellant (State Bank of India) from making any pre-deposit under Section 21 of the RDB Act for entertaining the appeal.