

The City & Industrial Development Corporation of Maharashtra Ltd. v. The Federal Bank Ltd. & Ors.

The City & Industrial Development Corporation of Maharashtra Ltd.

...Appellant

The Federal Bank Ltd. & Ors.

...Respondent

Case No: Appeal No. 78/2005

Date of Judgement: 26/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr R.S. Apte, Senior Counsel, i/b Mr Prag Kale along with Vaishali V., Advocate.

For Respondent: Mr Umesh Shetty, Senior Counsel, i/b Mr Vivek Sawant, Mr Gurjyot Singh, i/b M/s Theba & Associates, Advocate.

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Facts:

The case pertains to an appeal filed by the City & Industrial Development Corporation of Maharashtra Ltd. (CIDCO) (hereinafter referred to as the "Appellant") challenging the order dated 21.10.2004 passed by the Debts Recovery Tribunal-I, Mumbai (DRT) in Miscellaneous Application (M.A.) No. 74 of 2004 in Original Application (O.A.) No. 1252 of 2000. The DRT had dismissed the M.A. filed by the Appellant seeking to set aside the judgment and order dated 12.02.2004 passed in O.A. No. 1252 of 2000. The O.A. No. 1252 of 2000 was filed by the

Federal Bank Ltd. (Respondent No. 1) against Respondents Nos. 1 to 11 as Defendants Nos. 1 to 11 and the Appellant as Defendant No. 12 for the recovery of ₹13,63,15,717/-. Defendant No. 1, Preet Sonal Investment and Finance Pvt. Ltd., was the principal borrower, and Defendants Nos. 2 to 11 were guarantors. The Appellant, CIDCO, was declared as a new Town Development Authority by the Government of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966, for the development of Navi Mumbai. CIDCO issued a prospectus inviting tenders for the allotment of plots in Navi Mumbai for residential cum commercial use on a leasehold basis for 60 years. Defendant No. 1 submitted a tender with an earnest money deposit (EMD) of ₹35 lakhs for the allotment of plots Nos. A-24 to 26 in Sector 15 of CBD Belapur, Navi Mumbai. The tender was accepted, and an allotment letter was issued on 15.12.1992. The total lease premium payable was ₹7,85,99,970/- after deducting the EMD, which was to be paid within a specified period. Defendant No. 1 approached the Federal Bank for a loan of ₹5 crores to pay the remaining lease premium. The bank agreed to provide the loan subject to CIDCO issuing a no-objection certificate (NOC) for mortgaging the plots in favor of the bank and allowing the bank to surrender the leasehold rights in certain eventualities and receive a refund of 75% of the lease premium to adjust against the outstanding dues. CIDCO issued the NOC, and Defendant No. 1 executed a power of attorney (POA) in favor of the bank, empowering it to surrender the plots in case of the aforementioned eventuality. After receiving the NOC and POA, the bank paid ₹5 crores to Defendant No. 1 for paying the balance lease premium. Several security documents were executed by Defendant No. 1 in favor of the bank, and Defendants Nos. 2 to 11 executed deeds of guarantee. The plots were also mortgaged to the bank. After taking possession of the plots, Defendant No. 1 found that an underground gas pipeline was running through the plots, making construction impossible. CIDCO allotted alternative plots, but they fell within the Coastal Regulation Zone (CRZ) notification of 1991, prohibiting construction. Defendant No. 1 failed to repay the debt to the bank as per the agreed schedule, and the term loan period was extended multiple times. As of 31.03.1997, the amount due was ₹6,87,83,837/- with unpaid interest of ₹1,86,90,408/- until 31.12.1997. Defendant No.

1 called upon CIDCO to pay damages of ₹70,46,03,481.05 as the allotted plots were unusable. The bank demanded repayment from the defendants and invoked the guarantees provided by Defendants Nos. 2 to 11. CIDCO was informed about the bank's intention to surrender the leasehold rights and requested to pay the balance lease premium after deducting the EMD and 25% of the lease premium to enable the bank to adjust the amount towards the outstanding dues. CIDCO did not respond, and the bank claimed that it was entitled to ₹10,84,94,971/- from CIDCO. The bank also filed a Writ Petition No. 640 of 2000 against CIDCO before the Hon'ble High Court of Bombay. The O.A. No. 1252 of 2000 was filed by the bank for the recovery of amounts from the defendants. Defendants Nos. 1 to 11 appeared and filed a written statement, while CIDCO (Defendant No. 12) appeared through counsel but did not file a written statement despite being given sufficient opportunity. Based on the available evidence, the O.A. was allowed as prayed for vide judgment and order dated 12.02.2004. The Appellant filed M.A. No. 74 of 2004 on 16.06.2004, seeking to set aside the judgment and order dated 12.02.2004 on the grounds of alleged lapses by their counsel's associate, Ms. Chhabria, in attending the DRT proceedings, and the shifting of their counsel's office from Fort to Kalbadevi. The M.A. was opposed by the Respondent bank, stating that an application under Order IX Rule 13 of the Code of Civil Procedure (CPC) was not maintainable as the judgment and order against the Appellant were passed under Order VIII Rule 5 of the CPC. The DRT dismissed the M.A. on the grounds that the judgment against the Appellant was not an ex-parte judgment that could be set aside under Order IX Rule 13 of the CPC but was a judgment passed under Order VIII Rule 5 of the CPC for want of a written statement. Aggrieved by the dismissal of the M.A., the Appellant filed the present appeal.

Arguments by the Parties:

Appellant's Arguments:

The Appellant sought to set aside the judgment and order dated 12.02.2004 passed in O.A. No. 1252 of 2000, claiming that it was an ex-parte order that could be set aside under Order IX Rule 13 of the CPC. The Appellant relied on several decisions to support their

arguments, including Prakash Chander Manchanda & Ano. vs. Janki Manchanda (1986) 4 SCC 699, B. Janakiramaiah Chetty vs. A. K. Parthasarathi & Ors. (2003) 5 SCC 641, and Balu@ Madhavrao Shankarrao Ghorpade vs. Radhakkabia Panditrao Ghorpade & Ors 2004 (1) Bom. C.R. 77.

Respondent Bank's Arguments:

The Respondent bank opposed the appeal on various grounds, including an unreasonable delay of 8 months in filing the appeal challenging the order dated 12.02.2004. The Respondent bank argued that an application under Order IX Rule 13 of the CPC was not maintainable, as the judgment and order against the Appellant were passed under Order VIII Rule 5 of the CPC for want of a written statement. The Respondent bank contended that the Appellant's counsel had appeared before the DRT, filed a vakalatnama, and sought time to file a written statement, which was not filed despite repeated adjournments being granted.

Court's Elaborate Opinions:

The Tribunal noted that the delay in filing the appeal had been condoned vide order dated 13.02.2007 in M.A. No. 962 of 2004 upon the payment of costs, and therefore, the Respondent could not be heard on the question of limitation. The Tribunal observed that the only question for consideration was whether the judgment and order dated 12.02.2004 could be set aside against the Appellant under the premise that it was an ex-parte order. The Tribunal relied on the decision of the Hon'ble Bombay High Court in Dhanwantraai R Joshi & Ors. vs. Satish J Dave & Ors 1998 (3) Mh. L.J. 924, which held that where a decree is passed under Order VIII Rule 5 of the CPC, an application under Order IX Rule 13 of the CPC is not tenable, and the only remedy is to file an appeal against the judgment. The Tribunal observed that even if M.A. No. 74 of 2004 was considered maintainable, the Appellant was served with a summons and did appear before the DRT. The reasons for the subsequent absence of the Appellant and counsel would require an explanation, which was not forthcoming. The Tribunal referred to Section 19(5) of the Recovery of Debts Due to Banks and Financial Institutions Act (RDDB & FI Act), which provided only thirty days from

the date of service of summons to the defendant to present a written statement of defense, and the Presiding Officer may, in exceptional cases and special circumstances to be recorded in writing, allow not more than two extensions to the defendant to file the written statement. The Tribunal noted that after the amendment of the Act, the period of extension to file a written statement had been limited to just fifteen days, indicating the intention to avoid unnecessary delay in disposing of applications. The Tribunal observed that the DRT was not competent to grant an extension of time to file a written statement beyond the stipulated time, and the fact that the Appellant did not file a written statement indicated the manner in which the application was contested. The Tribunal found no reason to interfere with the DRT's order dismissing M.A. No. 74 of 2004 and concluded that the appeal had no merits.

Cases Cited:

Dhanwantraai R Joshi & Ors. vs. Satish J Dave & Ors 1998 (3) Mh. L.J. 924

Prakash Chander Manchanda & Ano. vs. Janki Manchanda (1986) 4 SCC 699

B. Janakiramaiah Chetty vs. A. K. Parthasarathi & Ors. (2003) 5 SCC 641

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Sections and Laws Referred:

Code of Civil Procedure (CPC)

- Order VIII Rule 5 (Decree against Defendant not filing Written Statement)
- Order IX Rule 13 (Setting aside Ex-parte Decree)
- Order XVII Rule 2 (Dismissal of Suit for Non-Appearance of Parties)

Recovery of Debts Due to Banks and Financial Institutions Act (RDB & FI Act)

- Section 19(5) (Time Limit for Filing Written Statement and Extensions)

In conclusion, the Debts Recovery Appellate Tribunal dismissed the appeal filed by CIDCO, finding no reason to interfere with the DRT's order dismissing the Miscellaneous Application seeking to set aside the judgment and order passed against CIDCO for want of a written statement. The Tribunal held that an application under Order IX Rule 13 of the CPC was not maintainable in such cases, and the only recourse was to file an appeal against the judgment.