

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA
Appeal No. 18 of 2020

(Arising out of I.A. 152 of 2018 in OA 188 of 2016 DRT-Guwahati)

THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

19.09.2023

Mr. Bikash Biswas residing at
House Plot no. GJ-4, 838,
Rajdanga Main Road, Kolkata –
700107.

... Appellant

-Vs-

Punjab National Bank, Agartalla
Branch, Hariganj Basak Road,
Agartalla – 799010, Tripura.

... Respondent

For Appellant : Mr. Prabhat Sil, Learned Advocate.

For Respondent : Mr. Debasish Chakraborty, Learned Advocate
Ms. S. Pal, Id. Advocate.

THE APPELLATE TRIBUNAL :

Instant appeal has arisen against an order dated 17.01.2019 passed by learned DRT Guwahati dismissing the I.A. No. 152 of 2018 arising out of O.A. No. 188 of 2016 [United Bank of India Vs. Tripura Bricks Company & Ors.].

2. O.A. No. 188 of 2016 was filed by the respondent bank against the appellant u/s 19 of the Recovery of Debts & Bankruptcy Act, 1993 (hereinafter referred to as 'RDB Act') for recovery of Rs.2,01,61,028.58. Written statement was filed by the appellant who was defendant no.4 in the O.A. Pending O.A., respondent bank filed evidence on affidavit as well as documentary evidence. An application for permission to cross-examine witnesses was filed by the appellant on 20.02.2017 on

the ground that there are disputed facts which warranted cross-examination of bank witnesses, accordingly, appellant be permitted to cross-examine the bank witnesses. It appears that thereafter another application was filed by the appellant on 05.04.2018 seeking relief for cross-examining the bank witnesses on the ground that the bank has filed evidence on affidavit wherein 50 number of documents were exhibited, hence, cross-examination is required to verify those documents. Further, there are disputed facts which warrant cross-examination of the witnesses. Application was disposed of by the learned DRT holding that in the written statement appellant has not denied the signature or the execution of the documents, hence, there is no necessity for cross-examination of the bank witnesses. Accordingly, application was dismissed. Feeling aggrieved appellant preferred the appeal.

3. I have heard the learned counsel for the parties and perused the records.

4. Learned counsel for the appellant submits that other defendant no.3 also prayed for cross-examination of bank witnesses which was allowed by the learned DRT on the same date i.e. 17.01.2019. It is further submitted that appellant was Director of the Company as well as guarantor, it is a limited liability company. Appellant has no liability for executing fresh guarantee and no fresh guarantee was executed by him. It is further submitted that in order to bring the fact and evidence on

record, it is necessary to cross-examine the bank witnesses by the appellant.

5. Learned counsel for the respondent bank submits that the proceedings of O.A. u/s 19 of the RDB Act are summary in nature. Admittedly, appellant is a guarantor of the loan. He is not denying his signature either on the guarantee document or fresh guarantee document. This fact is admitted by the appellant. Sub-rule (9) of Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993 nowhere provides for cross-examination of the witnesses as of right. Reliance is placed upon the judgement of **Union of India Vs. Delhi High Court Bar Association & Ors.** reported in (2002) 4 SCC 275.

6. Rule 12(9) of the DRT (Procedure) Rules, 1993 empowers the DRT to call for any witness for cross-examination, but witness can only be called after recording specific finding by the Tribunal to the effect that it is necessary to do so and sufficient reason has to be recorded by the Tribunal. It shows that it is incumbent upon the party seeking cross-examination of the witnesses to make out a case that cross-examination is necessary to meet the ends of justice.

7. In Delhi High Court Bar Association (supra) Hon'ble Supreme Court has held in Para 23 of the judgement as under :

"23. In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction, on its own, for

any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before it ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient."

8. Now burden lies upon the appellant to show reasons for calling witnesses for cross-examination.

9. Now it is to be seen as to whether any ground is made out to summon bank witnesses for cross-examination? In the application u/s 19 of the RDB Act at Para 5 it is stated that defendant no. 2, 3 and 4, namely, Mr. Subir Choudhury, Mr. Pankaj Narayan Trivedi and Mr. Bikash Biswas, respectively, (appellant in the present case) stood personal guarantors of the loan availed by defendant no.1 by executing letter of guarantee on 08.09.2010. Written statement was filed by the appellant wherein it is nowhere denied that the appellant has not signed the document or did not stand as guarantor. Guarantee deed was executed by the appellant on 08.09.2010. Further, in the application for permitting cross-examination of the witnesses also

it is not denied that the documents were not signed by the appellant. Only ground taken is that in order to bring out the truth of the record, appellant may be permitted to cross-examine the bank witnesses. Under Rule 12(9) of the DRT (Procedure) Rules sufficient cause has to be shown by the appellant for cross-examining the bank witnesses.

10. In view of the law laid down by the Hon'ble Apex Court as well as the ground taken by the appellant in the application for permission of cross-examination, I do not find any illegality in the impugned order dismissing the application for permitting cross-examination of witnesses. Accordingly, I am of the view that appeal lacks merit and liable to be dismissed.

ORDER

11. Appeal is dismissed. It is an old O.A. of 2016. It is expected that learned DRT should dispose of the matter expeditiously. No costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondent and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 19th of September, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 19th September, 2023
/pkb

