

**BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI**

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 02/2020

Between

ICICI Bank Ltd.

... Appellant/s

V/s.

Siddharth Polymers

Porp. Sanjay Mehrotra

...Respondent/s

Mr Aayush Kothari, i/b M/s. H & M Legal Associates, Advocate for
Appellant Bank.

:- Order dated: 16/08/2023:-

ICICI Bank, the Applicant in the Original Application (O.A.) No. 509 of 2017 on the files of the Debts Recovery Tribunal, Pune (D.R.T.) is the Appellant which is aggrieved by the dismissal of the O.A. vide judgment dated 15.10.2018.

2. The facts, in brief, can be summarised thus:

On 07.03.2007, the Respondent, a sole proprietorship had availed an overdraft facility ('OD facility', for short) for a sum of ₹25 lakhs from the Appellant Bank. Several documents concerning the loan were executed by the proprietor which also includes a Master Facility Agreement of even date. The Respondent had also requested for an automatic renewal of the OD facility and Bank conceded to the request vide letter dated 18.09.2007 as a result of which the OD facility was getting renewed every year since 2007. The Respondent was making payments towards the dues till the last payment towards the

debt was on 11.05.2016, as is borne out from the summary of accounts produced by the Appellant. As a consequence of the default of further payment, the Appellant issued a demand notice on 16.12.2016 calling upon the Respondent to repay the entire outstanding dues. There was no response from the Respondent which resulted in the Appellant filing the O.A. for recovery of ₹17,00,644.92 due as of 31.03.2017 together with future interest under Sec. 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act', for short).

3. The Respondent remained ex-parte in the proceedings before the D.R.T as also before this Tribunal.

4. The Ld. Presiding Officer vide a brief judgment observed that after executing the Master Facility Agreement on 07.03.2007, there is a reference in the application regarding the issuance of the demand notice on 16.12.2016 which is after more than nine years. The Ld. Presiding Officer observed that the Applicant has no case about the transaction being based on a running account and the accounts for the period 2007 to 2013 have also not been filed. The Ld. Presiding Officer concludes that the Applicant has filed the O.A. beyond the period of limitation and hence the O.A. deserves to be dismissed and is accordingly dismissed.

5. The Appellant contends that the statement of accounts for the period 01.03.2007 to 01.04.2014 was not produced inadvertently and left out from the account statements for the period till 31.03.2017. To correct this innocuous omission, the Appellant had filed an application on 16.08.2018 before the D.R.T. with a prayer to receive the left-out account statements in evidence, which was however declined for the

reason that there were no specific pleadings in the O.A. An amendment application filed as I.A. No.983 of 2018 for inserting specific pleadings in the O.A. was also declined and ultimately dismissed the O.A. on the grounds of the limitation.

6. The Ld. Counsel for the Appellant submits that the D.R.T. erred in concluding that the O.A. was barred by limitation. The fact regarding the amendment of the Master Facility Agreement agreeing to renew the OD facility yearly was failed to be noticed. The inadvertent omission sought to be incorporated by way of an amendment was also declined for no valid reasons. The fact that the last payment by the Respondent was on 11.05.2016 was also not considered in the impugned judgment. That fact regarding payment would have the effect of an acknowledgement of liability by the Respondent under the provisions of Sec. 19 of the Limitation Act, 1963. Hence, the Appellant seeks interference from this Tribunal.

7. The only question that arises for consideration in this appeal is whether the Ld. Presiding Officer was justified in non-suiting the Applicant on the ground of limitation.

8. The Master Facility Agreement was executed on 07.03.2007 and subsequently, there is a letter of amendment/ migration issued by the borrower to the bank concerning the Master Facility Agreement on 18.09.2007 authorising the bank to automatically renew/discontinue/cancel/reduce/enhance the OD facility for such further period as may be decided at the sole discretion of the bank.

9. The findings of the Ld. Presiding Officer that there is no pleading regarding the Respondent/Defendant agreeing to

automatically renew the OD facility does not appear to be correct. In paragraph 4 of the O.A. it is specifically stated that Defendant availed loan facility on 07.03.2007 by executing a Master Facility Agreement and that the same is extended vide letter of amendment dated 18.09.2007 agreeing for automatic yearly renewal and the same is thereafter renewed yearly. It is also stated that Defendant had made the last payment on 11.05.2016 and thus acknowledged the debt and the liability. Hence, the Applicant pleaded that the application is within the limitation.

10. The Defendant/Respondent did not appear to contest the OA. Hence, the fact regarding the automatic renewal pleaded by the Applicant stands uncontroverted. Sec. 19 of the Limitation Act states that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. There is also a proviso to Sec. 19 which states that save in the case of payment of interest made before the 1st day of January 1928, an acknowledgement of the payment appears in the handwriting of, in writing signed by, the person making the payment. To attract the operation of this Section, two conditions are essential. First, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting payer himself or signed by him. Though it is a payment which extends the period of limitation; the payment has got to be proved in a particular way and a written or

signed acknowledgement is the only proof of the payment. (*Sant Lal Mahdon vs Kamla Prasad AIR 1951 SC 477*).

11. The amendment to the Master Facility Agreement granting the liberty to the Bank to renew or extend the OD facility by a signed letter issued by the Respondent to the Appellant Bank, would serve the purpose of acknowledgement under Sec. 19 of the Limitation Act, and the payments which are made regularly by the Respondent towards the OD account would amount to an acknowledgement of the debt. The Ld. Presiding Officer has, therefore, erred in dismissing the O.A. on the ground of limitation. The O.A. should have been allowed as prayed for.

Resultantly, the appeal is allowed and the impugned judgment and order dated 15.10.2018 are set aside and the O.A. No. 509 of 2017 is allowed directing the Defendant/Respondent to pay to the Applicant/Appellant a sum of ₹17,00,644.92 together with future interest at the contractual rate of 20.25% per annum with effect from 01.04.2017 till 21.08.2017, the date of filing of the O.A. and further interest at the rate of 7% per annum with effect from the date of filing of the application till realisation from the Defendant/Respondent personally and from out of his assets. A Recovery Certificate to this effect shall be issued in favour of the Applicant/Appellant.

Sd/-
Chairperson

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