

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

Present: Mr Justice Ashok Menon, Chairperson

Misc. Appeal No. 121/2022

Between

State Bank of India

... Appellant/s

V/s.

Shrikrishna Agro Farm & Ors.

... Respondent/s

Mr Atul Pande, Advocate for Appellant.

M.D. Samuel, Advocate for Respondents.

-: Order dated: 26/05/2023:-

This is an appeal filed by the Appellant State Bank of India (SBI) challenging the order dated 28.04.2017 of the Debts Recovery Tribunal, Nagpur (D.R.T.) passed in I.A. No. 79/2017 in Original Application (O.A.) No. 81/2010 allowing the application seeking an amendment of the written statement/ counter-claim filed by the Respondents in the O.A.

2. The facts, in brief, are thus-

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.

3. On 05.02.2010, the first Respondent firm filed a Civil Suit No. 262/2010 before the third Joint Civil Judge, Senior Division, Nagpur for prayers of declaration, permanent injunction and recovery of ₹9 lakhs from the Appellant Bank. The first Respondent had borrowed money from the Appellant Bank and defaulted

repayment. On 21.07.2010, the Bank filed the aforesaid O.A. No. 81 of 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. The Appellant Bank raised an objection stating that the court fee will have to be paid on the counter-claim.

4. The Respondents filed a Writ Petition 2097/2011 before the Hon'ble High Court of Bombay, Nagpur Bench for transfer of the 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.

5. On 21.07.2017, the Respondents filed the above said I.A. 79/2017 for amendment of the written statement in which the main prayer was to enhance the counter-claim from Rs.9 lakhs to ₹51,86,761/- by way of an additional counter-claim. The Appellant opposed the application and filed a reply. The Ld. Presiding Officer vide the impugned order allowed the amendment application and directed the amendment to be carried out within two days. The Appellant is aggrieved and hence, in appeal.

6. The Respondents appeared and raised the objection by filing a reply. It is contended that the Appellant Bank had, in the O.A., claimed a highly exaggerated amount by charging exorbitant interest at the rate of 14.79% p.a. 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 the rate of more than 9 % p.a. The Respondents filed a Civil Suit referred to above for

recovery of ₹9 lakhs being the lost sustain to the first Respondent firm due to 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 for the same to be treated as a counter-claim against the Appellant Bank. That apart, the Respondents had also filed a reply to the O.A. disputing the claim in the application.

7. 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, a direction was given to the Appellant Bank by the D.R.T. to produce details of the State Bank rate of interest for the relevant period. The Appellant did not comply with the direction and kept on 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. Since the provisions of CPC are not applicable to the proceedings before the D.R.T., there is no bar to the limitation also. It is also stated that the provisions of Order 6 Rule 17 of the CPC also would not strictly apply to the proceedings before the D.R.T. Hence, the D.R.T. had rightly allowed the application for amendment and there are no reasons to upset that finding.

8. The Ld. Counsel appearing for the Appellant contends that the amendment to the pleadings before the D.R.T. is in accordance with the Code of Civil Procedure guided by the principle of natural

justice. Though 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. Necessarily the principles of the amendment of pleadings prescribed under Order 6 Rule 17 of the CPC would apply. The proviso to Rule 17 makes it adequately clear that no application for amendment shall be allowed after the trial commences unless the court concludes that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The suit was filed in the year 2010 before the Civil Court and was transferred to the D.R.T. in 2011. The application for amendment is filed only in 2017. Any additional claim by way of amendment cannot be introduced if the said claim is barred by the limitation. In the instance case, the Appellant has enhanced the claim after the period of seven years and therefore, it cannot be allowed. Hence, it is prayed that the appeal may be allowed.

9. The Ld. Counsel appearing for the Respondents has relied on a catena of decisions in support of his arguments. The Division Bench of the Hon'ble Bombay High Court has in *HDFC Bank Ltd. vs. Ashapura Minechem Ltd II (2017) BC 515 (DB) (Bom.)* wherein the amendment sought to the Original Application filed by the Applicant was allowed by the Hon'ble High Court stating that the cause of action is a continuing one and if the amendment, as proposed, is not allowed, it will lead to multiplicity of proceedings. The facts would reveal that by virtue of the amendment application, the Applicants sought to incorporate certain claims which arose subsequently. The D.R.T. had declined to amend the application for

the reason that the proposed amendment based on a new cause of action and introduces a further claim. The Hon'ble Supreme Court had in *Mahendra Kumar & Ano. vs. State of Madhya Pradesh & Ors.* (1987) SCC 265 observed that a counter-claim can be filed after the filing of the written statement under Order 8 Rule 6-A (1) provided it is within the period of limitation. The Ld. Counsel has relied upon the decision of *State Bank of India vs. Sarthi Textiles & Ors* (2009) 16 SCC 328 to argue that the provisions of the CPC will have no application except certain provisions thereof as mentioned in Sec. 22 of the RDB Act. The question that arose for consideration in that decision was regarding the applicability of Order 34 of the CPC to the D.R.T. The decision of the Chhattisgarh High Court in *Central Bank of India, Dhantari vs. M/s. Sharad Rice Industries & etc.* AIR 2010 Chhattisgarh 69 to argue that the Tribunal is not bound by the procedures laid down by CPC and is only guided by the principle of natural justice subject to the provisions of the Act and Rules.

10. The intention of the legislature while acting the RDB Act is adequately clear under sub-section 5 to Sec. 19 of the RDDB & 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 in 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. Under the circumstances, the decision in *HDFC Bank Ltd* (supra) will not apply because the cause of action for the Respondents/Defendant had arisen not subsequently but at the time of the written statement/ suit before the Civil Court itself. The decision of *Mahendra Kumar* (supra) will 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 the special statute and rule 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. It is hopelessly barred by limitation as well.

11. The Ld. Presiding Officer has not gone into all these aspects before allowing the application for amendment. The impugned order is, therefore, unsustainable. The appeal is, therefore, to be allowed.

Resultantly, the appeal is allowed. I.A. No. 79 of 2017 filed in O.A. No. 81 of 2010 before the D.R.T. is dismissed. Endeavour shall be made by the Ld. Presiding Officer to dispose of the O.A. expeditiously.

Sd/-
Chairperson