

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

**Present: Mr Justice Ashok Menon, Chairperson**

**Appeal No. 347/2006**

**Between**

Bank of Baroda

... Appellant/s

V/s.

M/s Swastik Corporation & Ors.

...Respondent/s

Mr K. D. Shukla, Advocate for Appellant.

Ms Jaishree Surati, i/b M/s Ashwini Kumar & LLP, Advocate for Respondent No. 5.

Mr Rishabh Shah, i/b M/s. Raval-Shah & Co., Advocate for Respondent No.7.

**:- Order dated: 18 /05/2023:-**

The Appellant is the Bank of Baroda. The appeal is filed by the Appellant aggrieved by certain findings in Original Application (O.A.) No. 416 of 2001 on the files of the Debts Recovery Tribunal No. II, Mumbai (D.R.T.) in the judgment dated 10.03.2006. The original Appellant Dena Bank had merged with the Bank of Baroda and accordingly, the Appellant was substituted.

2. The O.A. was filed for recovery of ₹8,71,12,041/- being dues under cash credit (hypothecation of stocks and book debts) facility and ₹6,96,574/- being dues under bill discount/demand loan facility together with interest @16.50% per annum and @19.09% per annum respectively with quarterly rest from the date of filing of the O.A. till realisation.

3. The first Respondent is a partnership firm and Respondents Nos. 2 to 5 & 8 are partners. Respondents Nos. 6 & 7 are mortgagors. In April 1996, renewal of the debt was sanctioned and enhanced amounts were advanced in continuation of the earlier mortgage. Promissory Notes from the acknowledgement of debts were executed.

4. The Ld. Presiding Officer allowed the application against Defendants Nos. 1 to 8 restricting the liability of Respondents Nos. 6 & 7 to the extent of the mortgaged property. The decree as prayed for was granted but future interest from the date of filing of the O.A. till realisation was reduced to @6% per annum. Aggrieved by the judgment, the Appellant is in appeal.

5. The Appellant is aggrieved for not being granted future interest at the contractual rate and is also aggrieved by not allowing interest for the period 01.01.1999 till 24.05.2000 for the cash credit debt and from 01.01.1999 till 20.05.2000 in the other facility. It is also prayed that the Appellant be allowed to realise its dues against the entire mortgaged flat without excluding the share of the minor.

6. The seventh Respondent filed a reply on behalf of herself and her minor son. It is pointed out that the Appellant could not satisfy the D.R.T. as to whether the sanctioned facility was used for the personal benefit of the minor Krish Shah and whether the Appellant had sought permission from any Civil Court permitting them to create a mortgage of the minor share.

7. The Appellant had failed to show that the mortgage regarding the minor's share would bind him; hence, it is prayed that the appeal may be dismissed.

8. Heard both sides. Records perused. As regards the rate of interest, the Ld. Presiding Officer has granted the contractual rate of interest till the filing date of the O.A. but future interest is allowed only @6% per annum. Future interest is the discretion of the adjudicating authority and therefore, cannot be interfered with. Regarding the interest of ₹1,50,01,218/- for the period 01.01.1999 to 23.05.2000 for the cash credit facility and the interest for a period 01.01.1999 till 25.09.2000 being ₹3,69,900/- for the other facility has been excluded and disallowed by the Ld. Presiding Officer for the reason that the outstanding amount is shown in the statement of account as of the dates 23.05.2000 and 25.09.2000 for the two facilities and the interest has not been shown. Hence, it is decided that the outstanding amount includes interest until that date. The Appellant could not come out with a reasonable explanation and therefore, I find no reason to interfere with the findings of the Ld. Presiding Officer.

It is only the share of the minor Krish Shah that has been excluded. There should have been specific reasons mentioned for mortgaging the property belonging to a minor to the effect that it was in his interest that the mortgage was created. There is no such recital and therefore, the Ld. Presiding Officer has rightly excluded from the share of the minor. There is no reason to interfere with the findings of the Ld. Presiding Officer.

Resultantly, the appeal is dismissed.

Sd/-  
Chairperson

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