

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 78/2005

Between

The City & Industrial Development Corporation
of Maharashtra Ltd.

... Appellant/s

V/s.

The Federal Bank Ltd. & Ors.

...Respondent/s

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

Mr Umesh Shetty, Senior Counsel, i/b Mr Vivek Sawant, Advocate for Respondent No. 1 Bank.

Mr Gurjyot Singh, i/b M/s Theba & Associates, Advocate for Respondents Nos. 2 to 12.

:- Order dated: 26/09/2023:-

This is an appeal filed by the City & Industrial Development Corporation of Maharashtra Ltd. (CIDCO) challenging the impugned order dated 21.10.2004 in Misc. Application (M.A.) No. 74 of 2004 in Original Application (O.A.) No. 1252 of 2000 on the files of the Debts Recovery Tribunal-I, Mumbai (D.R.T.) which dismissed the M.A. seeking to set aside the judgment and order dated 12.02.2004 passed by the D.R.T.

2. The abovementioned O.A. was filed by the Federal Bank Ltd. (first Respondent herein) against Respondents Nos. 1 to 12 as Defendants Nos. 1 to 11 and the Appellant as Defendant No. 12 for a recovery of ₹13,63,15,717/-. The first Defendant

company namely Preet Sonal Investment and Finance Pvt. Ltd. was a principal borrower and Defendants Nos. 2 to 11 were guarantors.

3. The Appellant (D-12) 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 a new town known as Navi Mumbai. The Appellant was empowered to dispose of land in Navi Mumbai on terms and conditions as it deemed fit. The Appellant issued a prospectus inviting tenders from the public at large for allotment of plots in Navi Mumbai for residential cum commercial use on a leasehold basis for a period of 60 years.

4. The first Defendant company submitted a tender with a demand draft for ₹35 lakhs towards earnest money deposit (EMD) for allotment of a set of plots namely plots Nos. A-24 to 26 in Sector 15 of CBD Belapur in Navi Mumbai. The tender was accepted and an allotment letter issued on 15.12.1992. The total lease premium to be paid was ₹7,85,99,970/- after deducting the EMD, within a specified period.

5. The first Respondent required ₹5 crores more for the payment of the entire lease premium. The company approached the Federal Bank for a loan, which was agreed subject to a no-objection certificate (NOC) issued by CIDCO to mortgage the plots in favour of the bank and also to entitle the Bank to surrender the leasehold rights on certain eventualities and receive

a refund of 75% of the lease premium and adjust the same towards the outstanding dues. The first Defendant had also agreed to execute a power of attorney (POA) in favour of the bank empowering it to surrender the plots in case the aforesaid eventuality arose.

6. CIDCO issued a NOC for mortgaging the plots in favour of the bank and also confirmed that in the event of cancellation of allotment and surrender of lease, the amount payable by CIDCO to the first Defendant would be directly paid to the bank towards repayment of the debts. On receiving the NOC from CIDCO and the POA from the first Defendant, a sum of ₹5 crores was paid to the first Defendant for paying the balance lease premium for the plots.

7. Several security documents were executed by the first Defendant in favour of the Bank. Defendants Nos. 2 to 11 also executed deeds of guarantee and the plots were mortgaged to the bank. The agreement clarified that an aggregate sum of ₹10,00,13,040/- was paid to CIDCO towards the lease premium by the first Defendant.

8. After taking possession of the plots, the first Defendant came to know that an underground gas pipeline was running through the plots and hence, no construction was possible at that site. The first Defendant requested CIDCO to allot alternative plots. Thereafter, an equivalent extent of land was allotted by CIDCO to D-1 from plots Nos. 24 & 25. However, the alternate

area re-allotted to the first Defendant came within 500 mtrs of the high tide line and therefore, in view of the Coastal Regulations Zone (CRZ) notification of 1991 no construction on the said plots was possible.

9. In the circumstances, the first Defendant did not carry out any activity on the plots and also failed to repay the debt to the bank as per the agreed schedule. The period of term loan was increased to 60 months and then to 104 months. As of 31.03.1997 the amount due was ₹6,87,83,837/- and unpaid interest up to 31.12.1997 was ₹1,86,90,408/-. Despite repeated demands by the bank, there was no repayment. The first Defendant called upon CIDCO to pay damages to the tune of ₹70,46,03,481.05 as the plots allotted by CIDCO were not usable.

10. The bank demanded repayment and also invoked the guarantee provided by Defendants Nos. 2 to 11. CIDCO was also informed that the bank wanted to surrender the leasehold rights over the plots and called upon to pay the balance lease premium after the deduction of EMD and 25% of the lease premium, so as to enable the bank to adjust that amount towards the outstanding dues from Defendants Nos. 1 to 11. There was no response.

11. CIDCO was aware that the plots originally allotted could not have been developed because the gas pipeline was passing through the plots and the alternative plots were within CRZ notification. In view of the matter, the CIDCO is liable to refund the entire amount without deducting the EMD and 25% of the lease

premium. The bank claimed that it is entitled to a sum of ₹10,84,94,971/- from CIDCO. A Writ Petition No. 640 of 2000 was also filed by the bank against CIDCO before the Hon'ble High Court of Bombay.

12. That apart, the Bank also sought to enforce the mortgage and hypothecation. The O.A. was filed for recovery of the amounts from the Defendants.

13. Defendants Nos. 1 to 11 had appeared and filed a written statement raising a contention that despite being the highest bidder for the plots, they could not utilise the plots for the reason that a gas pipeline was laid through the plots and when alternative plots were allotted, the Corporation refused to grant permission for construction on the ground that the plots fell within the CRZ notification. These Defendants have also challenged the amount claimed from them in the O.A.

14. The 12th Defendant CIDCO was served with a summons and also appeared through counsel but did not file any written statement despite being given sufficient opportunity.

15. On the basis of the available evidence, the O.A. was allowed as prayed for vide judgment and order dated 12.02.2004.

16. The Appellant filed M.A. No. 74 of 2004 on 16.06.2004 seeking to set aside judgment and order in O.A. No. 1252 of 2000 dated 12.02.2004 on the ground that Ms Chhabria, an associate of their counsel Mr Hegde entrusted to attend the D.R.T. was attending to the O.A. till she got appointed as a lecturer in

Government Law College. It is also stated that the office of the Appellant's Counsel Mr Hegde was shifted from Fort to Kalbadevi and in the process the papers in the O.A. got mixed up with the papers of the writ petition filed by the Appellant and hence, the steps to restore the O.A. got delayed.

17. The application was opposed by the Respondent bank by stating that an application under Order IX Rule 13 of the Code of Civil Procedure is not maintainable because the judgment and order passed by the D.R.T. against the Appellant was under Order VIII Rule 5 of the CPC. It is further pointed out that on due service of summons, the counsel for the Appellant had appeared before the D.R.T., filed vakalatnama and thereafter sought time to file a written statement which was not filed despite repeated adjournment being granted. It was also pointed out that the counsel appearing for the Appellant Mr Hegde had his office in Kalbadevi in the year 2000 itself and the copies of the letters dated 27.01.2000 and 21.12.2001 issued on the letterhead of Mr Hegde would indicate that his office was already at Kalbadevi and not at Fort as pointed out in the application.

18. After examining the reasons stated in the application for setting aside the judgment and order, the Ld. Presiding Officer observed that the judgment against the Appellant in the O.A. was not an ex-parte judgment which could be set aside under Order IX Rule 13 of the CPC and that it was a judgment passed under Order VIII Rule 5 of the CPC as against the Appellant for want

of written statement and hence, the M.A. was dismissed. The Appellant is aggrieved and hence in appeal.

19. The Respondent bank has opposed the appeal on various grounds. One of the grounds is that there is an unreasonable delay of 8 months in filing the appeal challenging the order dated 12.02.2004. In the appeal, the Appellant has not only sought to set aside the order dated 21.10.2004 in the M.A. but has also challenged the judgment and order in the O.A. dated 12.02.2004.

20. It is pertinent to note that the delay in filing the appeal was condoned vide order dated 13.02.2007 in M.A. No. 962 of 2004 on the payment of cost ₹5,000/-. Hence, the Respondent cannot be heard on the question of limitation any more.

21. The only question that arises for consideration in this appeal is whether the judgment and order dated 12.02.2004 could be set aside against the Appellant under the premise that it is an ex-parte order. The Ld. Presiding Officer had relied upon the decision of the Hon'ble Bombay High Court in *Dhanwantrai R Joshi & Ors. vs. Satish J Dave & Ors* 1998 (3) Mh. L. J. 924 wherein it was held that where a decree is passed under Order VIII Rule 5 CPC an application under Order IX Rule 13 CPC is not tenable and the only remedy is to file an appeal against the judgment.

22. The Ld. Counsel appearing for the Appellant has relied upon a catena of decisions in support of his arguments.

23. In *Prakash Chander Manchanda & Ano. vs. Janki Manchanda* (1986) 4 SCC 699 relied upon by the Ld. Counsel for the

Appellant. The question that was decided was regarding the maintainability of an application under Order IX Rule 13 CPC for setting aside an order under Order XVII Rule 2 CPC on account of failure on the part of the defendant therein to lead evidence and not on account of failure to file written statement.

24. The Ld. Counsel for the Appellant has also relied upon the decision in *B. Janakiramaiah Chetty vs. A. K. Parthasarathi & Ors.* (2003)5 SCC 641 which also relates to an order passed under Order XVII Rule 2 CPC.

25. In the decision *Balu @ Madhavrao Shankarrao Ghorpade vs. Radhakabha Panditrao Ghorpade & Ors* 2004 (1) Bom. C.R. 77 also the court was considering regarding an application under Order IX Rule 6 CPC for setting aside an application under Order XVII Rule 2 CPC.

26. Even if it is considered that the M.A. No. 74 of 2004 was maintainable. There is no dispute that the Appellant was served with a summons and did appear before the D.R.T. The reasons for the subsequent absence of the Appellant and counsel would definitely require an explanation which is not forthcoming.

The provisions of the RDDDB & FI Act that were applicable to the instant case provide for a fixed time to file a written statement. Sec.19(5) provided only thirty days from the date of service of summons to the defendant to present a written statement of his defence, and the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing allow not more

than two extensions to the defendant to file the written statement. After the amendment of the Act, the period of extension to file a written statement has been limited to just fifteen days. Such provisions were incorporated with the intention to avoid unnecessary delay in disposing of the applications. The D.R.T. was not competent to grant an extension of time to file a written statement beyond the stipulated time. Hence, the fact that the Appellant did not file a written statement to contest the application indicates the manner in which the application was contested. The Ld. Presiding Officer rightly rejected the M.A. on the grounds stated therein. I find no reason to interfere. As a result, the appeal has no merits and is dismissed.

Sd/-
Chairperson

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