

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 68/2019

Between

IDBI Bank Limited

... Appellant/s

V/s.

Ramdas Shankar Satras & Ors.

...Respondent/s

Mr V. V. Chandavale, Advocate for Appellant Bank.

:- Order dated: 05/12/2023:-

The Appellant IDBI Bank Limited is aggrieved by the dismissal of the Original Application (O.A.) No. 281 of 2012 on the files of the Debts Recovery Tribunal, Pune (D.R.T.) vide judgment and order dated 22.06.015.

2. The O.A. was filed under sections 19 (1) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (“RDDB & FI Act”, for short) by the Appellant for recovery of ₹1,076,410/-together with future interest from the defendants therein. The 1st defendant is the principal borrower and defendants Nos. 2 to 12 are the mortgagors while defendants Nos. 13 and 14 are the guarantors for the loan. Financial assistance was required to purchase a tractor, accessories and implements for the improvement and development of the immovable properties and therefore, the 1st defendant approached the Appellant bank on 11.08.2008 for financial assistance. ₹7 lakhs were sanctioned towards the loan. The 1st defendant executed necessary security documents in support of the loan transaction on 01.09.2008. Defendants Nos. 2 to 12 executed and delivered a Power of Attorney

authorising the 1st defendant to execute a mortgage concerning their properties to secure the loan. The 1st defendant using the Power of Attorney executed a mortgage in favour of the bank. The tractor and the other implements were delivered to the 1st defendant. Repayment of the debt was defaulted and the bank issued a reminder to the defendants on 02.01.2011 calling upon them to remit a sum of ₹2,63,000/- together with interest accrued thereon. The defendants did not respond to the notice and hence, yet another notice was issued on 21.02.2011 calling upon the defendants to repay the overdue amount of ₹1,70,900/-. On 22/08/2011 defendants Nos. 1 to 3 confirmed the balance due to the bank. Repeated notices were issued thereafter to the defendants for payment which fell on deaf ears. Left with no option, the Appellant appropriated the available collateral fixed deposit of the 1st defendant for ₹62,308/- towards the loan amount. Thereafter, the Appellant filed the O.A. to realise the balance amount due.

3. All the defendants were duly served but remained ex-parte. The D.R.T. proceeded to hear the matter ex parte. Claim affidavit was filed on behalf of the bank and all the documents relied upon by the bank to prove the transaction was let in evidence.

4. The Ld. Presiding Officer has in the impugned judgment observed that “the Applicant has led evidence de hors the pleadings”. It was observed that the Applicant has not adduced any evidence concerning the statement of accounts. It is stated that the Applicant did not seek leave of the Tribunal to lead secondary evidence for the calculation of interest. The document produced is a photocopy. It is also stated that no notice was issued to the guarantors for invoking the

guarantee. The D.R.T. observed that entries including penal interest and legal charges have been capitalised. It is also observed that there is inconsistency in the amount claimed. The Ld. Presiding Officer observed that even if the D.R.T. had to proceed based on the letter of acknowledgement of debt, that is only for a sum of ₹7 lakhs, and the claim would be outside the purview of the D.R.T.

5. Respondents remained ex-parte and the Ld. Counsel Mr V.V. Chandavale appearing for the Appellant was heard. Records including the R & P perused.

6. The Ld. Presiding Officer has dismissed the O.A. because the claim has not been proved and the statement of account certified under the Bankers' Books Evidence Act has not been produced.

7. Exhibit-A-1 is the loan application. Exhibit-A-2 is a quotation received for the purchase of a tractor and another implement. Exhibit-A-3 is the loan sanction letter. The demand promissory note executed by the Defendants is Exhibit-A-4. Exhibit-A-6 is the consent of the guarantors while Exhibit-A-7 is the hypothecation deed pertaining to the goods purchased with the loan amount. Exhibit-A-8 is the hypothecation of the standing crops while Exhibit-A-10 is the general form of guarantee. The Power of Attorney executed on behalf of the first defendants is Exhibit-A-11. The bills and receipts for the purchase of implements including the tractor are Exhibit-A-14. The acknowledgement of the debt is Exhibit-A-17. Exhibits-A-18 & A-19 are the recall notices. The Ld. Presiding Officer is not referred to Exhibit-A-20 which is the statement of account. It is pertinent to note that the defendants did not contest the O.A. and it is a basic principle that the admission is the best form of the evidence. When the

documents produced by the Applicant are uncontroverted, it has to be accepted. The Ld. Presiding Officer cannot act on behalf of defendants to challenge the claim put forth by the Applicant as long as it is not barred by limitation. There is no justification in dismissing the O.A. rejecting the uncontroverted claim of the Applicant.

Resultantly, the appeal is allowed and the impugned judgment and order dismissing O.A. No. 281 of 2012 is quashed and set aside. The O.A. is allowed as prayed for directing the defendants to pay a sum of ₹10,76,410/- together with interest at the rate of 15% per annum from the filing of the O.A. till the date of disposal of the O.A. (22.06.2015) and future interest at the rate of 6% per annum on the aforesaid principal amount adjudged from the date of decree till realisation from the defendants personally, out of the hypothecated movables and the mortgaged properties. The Appellant is also entitled to the costs of proceedings throughout. Issue a Recovery Certificate per the terms described above.

Sd/-
Chairperson

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