IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Regular Appeal No. 57/2019

(Arising out of O.A. No. 798/2018 of the DRT, Jabalpur)

Canara Bank, Arera Colony, Bhopal (M.P.)-462039.

Wersus

Sri Dinesh Lilwani, S/o Late Nathulal Lilwani, R/o House No. 70

Amarnath Colony, Akbarpur, Kolar Road, Bhopal (M.P.).

Respondent

Advocates who appeared in this case

For the appellant-Bank

Shri Awadhesh Kumar Pal, Advocate
For the respondent

None

JUDGMENT

Date of Decision: 04.10.2021

R. S. KULHARI, CHAIRPERSON

- The present appeal has been preferred under section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (for short "the RDB Act") against the order dated 17.05.2019, whereby the Tribunal below has dismissed the original application filed by the appellant-Bank.
- 2. The essential facts in brief are, that the respondent was having a Savings Bank account with the appellant-Bank. On deposit of a cheque of ICICI Bank amounting to Rs. 9.25 lacs by the respondent on 08.08.2015, the appellant-Bank credited the said amount in the S.B. account of the respondent by debiting LCCR account. The said cheque was sent for clearing, but the same was dishonoured. The record reveals that on the same day of deposit of cheque, the appellant-Bank adjusted an amount of Rs. 1,62,124/towards the dues of credit card and Rs. 6,876/- was transferred to housing loan account of the respondent. On the very day, the balance amount of Rs. 7.56 lacs was

transferred to Savings Bank accounts of five different persons, in which there were debit entries because of some earlier transactions. The transactions did not stop here, but residue remained in Savings Bank account of those five third party account holders, (total Rs. 18,172/-) was also transferred to their respective housing loan accounts. This way, all the transactions were carried out adjusting the total amount of Rs. 9.25 lacs on the same day without waiting for clearing of the cheque and receipt of the amount from ICICI Bank.

- 3. It is also a matter of record that the Bank has failed to produce any evidence to the effect that there was any request of the respondent for transfer of such amount or he had signed any debit confirmation voucher nor there is any loan document or agreement under which such type of facility was extended to the defendant. On the transaction slip, placed at page no. 71, there appear the signatures of the Manager and the Supervisor of the Bank, but there is no signature of the respondent. Although, it is mentioned in the narration that "Tr as per party request" but no such request in writing is there on record and no Bank official is supposed to debit the Savings Bank account without any written authority to transfer the amount in the account of third party.
- 4. It is also surprising that after dishonour of the cheque on 11.08.2015, the debit entry of Rs. 9.25 lacs was made in the Savings Bank account of the respondent, but no effort whatsoever was made for recovery of this amount for a period about three years nor the entries were reversed from the accounts of third parties, wherein the amount was earlier wrongly transferred. Ultimately, just before completion of three years, a recall notice was given to the respondent and original application was filed before the Tribunal below

- claiming a sum of Rs. 15,55,372/- alongwith interest @ 17.45% per annum with costs.
- 5. The Tribunal below vide impugned order dismissed the O.A., holding that "This is a clear case of fraud and misappropriation of amount of the Bank by its employee in connivance with the defendant and cannot be construed a 'debt' under section 2(g) of the RDB Act". The copy of the judgment was also sent to the General Manager for initiating appropriate proceedings against the delinquent employee, but it is not known what action was taken by the Bank. Being aggrieved by the said order, the Bank has preferred the present appeal.
- 6. The notices were sent to the respondent, but he has not appeared despite service, therefore, the respondent was proceeded ex-parte.
- 7. Learned counsel for the appellant-Bank submitted that the term 'debt' as defined under the RDB Act has to be given the widest amplitude to mean any liability, which is alleged as dues from any person by a Bank during the course of any business activity. The Bank has extended the facility of discounting of the cheque to the respondent, whose cheque was returned, but the respondent did not repay the amount, therefore, it is covered under the definition of 'debt'. The transactions are proved on the basis of transaction slip and the statement of accounts, therefore, the Bank is entitled for the amount as claimed in the O.A. The Tribunal below has not considered these aspects, therefore, the impugned order be set aside.
- 8. Having heard the learned counsel for the appellant and considering the material available on record, the moot question for consideration is, that whether the amount paid by the Bank under the circumstances as mentioned above is

covered under the definition of 'debt' as defined in RDB Act? which is as under:-

"2(g)-"debt" means any liability (inclusive of interest_) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities".

- 9. The plain reading of the definition of 'debt' indicates that there should be a liability as due from any customer by a Bank as claimed during the course of any business activity. Thus, such liability has to be under business transaction and the business transaction of the Bank is to provide the financial assistance to the borrower under any agreement.
- 10. In the instant case, the transaction pertains to a cheque sent for clearing. The collection of amount through clearing is not a type of business transaction, but it is an ancillary service being provided by the Bank to its customers to facilitate the receipt of proceeds of cheque and for that purpose a common clearing house of the Banks in a particular city remains in operation. This type of service is being provided without any agreement or without any execution of document to this effect. If the Bank discounts the cheque without taking any document or without sanctioning any overdraft limit, the same is being done at its own risk and such type of transaction cannot be treated as business transaction or a financial assistant extended under any agreement.

- 11. Therefore, the claim as made by the Bank is not covered under the definition of debt as defined under the RDB Act. As such the O.A. was not maintainable. However, the Bank may take recourse of recovery of the amount in common law. This view is fortified by the judgment of the Hon'ble Allahabad High Court in M/s B.K. Jewellers and another Vs. State Bank of India and others, 2016(3) ADJ 482 (Allahabad High Court). The same view has also been followed by this Appellate Tribunal in Axis Bank Ltd., Satna Vs. Bhanu Oil and Dal Mills and Ors, 2013 (3) BC 8 (DRAT, Allahabad) and in Appeal Sr. No. 33/2017-ING Vysya Bank Ltd. Vs. State Bank of India & Ors., decided on 17.08.2018.
- 12. As observed above, the appellant-Bank has failed to demonstrate any document showing that the respondent has ever requested for discounting of cheque or for over draft limit. Furthermore, there is no document on record to show that the respondent has executed any loan agreement or any agreement to provide credit facility. Even otherwise, the loan is sanctioned in the shape of term loan, housing loan, cash credit limit account, over draft account by whatever name it is called in respective Banks, but the Savings Bank account of a customer cannot be kept in debit balance as it was debited in the present case.
- 13. In these circumstances, I am in total agreement with the finding recorded by the Tribunal below that the transactions were carried out in order to adjust the debit balances shown in the Savings Bank accounts of the defendant and other five third party and also to regularize their housing loan accounts. Thus, apparently it appears to be a case of negligence on the part of the Bank employee or there may be a possibility of connivance with the respondent for regularization of debit balances.

IBC Laws www.ibclaw.in

14. In view of the above, there is no infirmity in the impugned

order of the Tribunal below. However, it is open to the

appellant-Bank to initiate the appropriate proceedings under

the common law for recovery of disputed amount in

accordance with law.

15. Accordingly, the appeal is dismissed with no order as to

costs.

16. A copy of this judgment be sent to the parties as well as the

DRT concerned and be also uploaded on the e-DRT portal.

CHAIRPERSON

Date: 04.10.2021

Anupam