

Madras High Court

Ramapandiyan vs The Manager on 7 October, 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/10/2005

Coram

The Hon'ble Mr.Justice P.K.MISRA

and

The Hon'ble Mr. Justice N.KANNADASAN

O.S.A.No.91 of 2005

and O.S.A. No.92 of 2005

and

C.M.P.No.7524 of 2005

1.Ramapandiyan

2.Vasugi Pandian

.. Appellant in both Appeals

-Vs-

1.The Manager,

Indian Bank,

Chinglepet Branch,

Chingleput,Kancheepuram.

2.The Official Liquidator,

High Court,Madras-104.

3.M.Ravindran,

Senior Advocate,

Administrator

Anubhav Group of Companies

Bar Association, High Court Buildings,

Chennai-104.

.. Respondents in both Appeals

These Appeals are preferred against the judgment and decree of this Court dated 31.3.2005 in C.A.Nos.272 and 273 of 2005 in Company Petition No.130 of 1999.

!For Appellant in

both appeals : Mr.B.Kumar,

Senior Counsel for
Mr.R.Loganathan

^For Respondent-1 in : Mr.V.T.Gopalan,
both appeals Addl. Solicitor General
of India for Mr.Jayesh
Dolia

For Respondent-2 in : Mr.B.Ramesh
both appeals

For Respondent-3: Mr.M.Ravindran
(Administrator)

For Reserve Bank of
India : Mr.C.Mohan for
M/s.King and Patridge
or Highest Bidder : Mr.P.Solomon Francis

:COMMON JUDGMENT

N. KANNADASAN, J.

The above appeals arise as against the order dated 31.3.2005 in C. A.Nos.272 and 273 of 2005 in C.P.No.130 of 1999.

2. The company petition is filed in respect of the Company called M/s.Anubhav Plantations Ltd., which is a company in liquidation. In the company petition, the Company Court has appointed Mr.M.Ravindran, Senior Advocate as an Administrator in respect of the company in liquidation with a view to take effective steps to recover the amounts due from various persons who owe money to the company and in order to distribute the same to the depositors.

3. The Administrator filed a memo dated 24.2.2000 before the Company Court with regard to the payment of Rs.96 lakhs made by the company to the appellants towards the advance amount for the purchase of 35.60 acres of land situate at Idayakodumanthangal Village, Chinglepet Taluk, Kancheepuram District. In the said proceedings, the first appellant appeared before the Company Court on 29.6.2000 and admitted the receipt of the said sum of Rs.96 lakhs by him and his wife. The first appellant also represented that he has no objection to bring the properties into sale and the sale proceeds could be distributed towards the amounts due to the Company as well as the Indian Bank from whom he borrowed the money for the development of the said lands. The Company Court, by order dated 29.6.2000, has attached the property in question and also issued notice to the Indian Bank Chinglepet Branch viz., the second respondent herein.

4. The Indian Bank viz., the second respondent has filed an application in C.A.No.150 of 2001 before the Company Court seeking permission to conduct the auction to sell the property of the appellant

after due publication and permission was granted on 30.4.2001. The Indian Bank has also obtained a valuation report dated 28.4.2001 which indicates that the value of the property as Rs.97,84,000/-. In pursuance of the order of the Company Court, the Indian Bank advertised in the papers on various occasions but no tender was received. In the meanwhile, the appellant sought permission of the Company Court to sell the property for a better price by entering into negotiations with the private parties which was granted. In spite of the said permission, the appellant was not in a position to bring in any purchaser immediately. Accordingly, by order dated 10.12.2001, the Company Court has directed the Official Liquidator to bring the property for sale.

5. In the meanwhile, the Administrator has filed an application in C.A.No.1609 of 2001 under Rule 9 and 11 (b) of the Company Court Rules r/w Section 457 of Companies Act, seeking direction as against the appellants herein to hand over the possession of the property with a view to secure better offer for the same. Accordingly, the Company Court, by order dated 21.11.2003, directed the Official Liquidator to take possession of the property. In pursuance of the said order to the Official Liquidator initiated steps to take possession of the said property. But however, the possession could not be taken, since the first appellant has filed an appeal viz., OSA No.378 of 2003 and obtained an order of stay. Subsequently, the said appeal was disposed of by a Division Bench of this Court by order dated 25.11.2003 by permitting the appellant to sell the property within a period of four weeks and to discharge the entire amount payable to the Company in liquidation and on failure to effect the said sale within the stipulated period, the order of the learned single Judge shall stand confirmed.

6. Since the appellant could not get any purchasers, they have filed a Review Application No.144 of 2003 in OSA No.378 of 2003. The Division Bench, by order dated 5.2.2004, has dismissed the same, against which Special Leave Petition Nos.4195 and 4301 of 2004 were filed before the Hon'ble Supreme Court. During the pendency of these proceedings, the Official Liquidator had taken possession of the land which was also brought to the knowledge of the Hon'ble Supreme Court. On 30.9 .2004, the Supreme Court dismissed the special leave petitions with a direction that the sale should take place in pursuance of the order dated 10.12.2001 of the Company Court.

7. In the meanwhile, the Company Court has passed orders permitting the Official Liquidator to initiate further steps to conduct the survey of the lands and also for the submission of the valuation report. By order dated 31.3.2005, the Company Court fixed the value of the land and building as Rs.86,16,000/- on the basis of the valuation report, surveyor report as well as the submissions made by all the parties concerned and directed the appellant to make a substantial payment within a period of two weeks. Subsequently, the Official Liquidator has caused publication of the same, inviting tenders and last date of the submission of the tenders was fixed as 25.4.2005.

8. Subsequently, the appellants filed the Company Application Nos.2 72 and 273 of 2005 challenging the procedure adopted by the Company Court in effecting the sale. The said applications were listed on 31.3 .2005, and the learned single Judge has adjourned the matter to 15.4.2005 by directing the appellants to make a substantial payment against which order, the present appeals are filed.

9. The present appeals are filed by raising the main grievances to the effect that the value as fixed by the Company Court in respect of the property in question as very low and there are certain procedural illegality.

10. In the meanwhile, the applications viz., C.A.Nos.272 and 273 of 2005 filed by the Indian Bank were heard by the Company Court on 26.4.2005, wherein a direction is sought for to hand over the vacant portion of the property and to bring the property in public auction. Though the said applications were resisted by the appellants herein by contending that the appeals filed in OSA Nos.91 and 92 of 2005 on the ground that the procedure adopted by the Company Court as illegal and the said appeals were pending, however the Company Court has proceeded with the auction. In the said auction, one P.S.Muthukumar has offered a sum of Rs.1,32,00,000/- as the highest bid amount. The Company Court has passed an order of provisional confirmation of the offer of the abovesaid P.S.Muthukumar subject to final orders to be passed in the appeals.

11. Subsequently, by order dated 28.4.2005, the Division Bench has passed an order staying the further proceedings before the Company Court and the appeals were directed to be listed. Again, when the appeals were listed on 29.6.2005, this Court permitted all the parties to bring new bidders who can offer more to the property in question. The Administrator was directed to inform all the bidders who participated in the earlier auction including the highest bidder to make any higher offer. The new bidders were required to make such offer subject to the condition that they pay a sum of Rs.17,20,000/- towards EMD by way of DD/Pay order.

12. On 27.7.2005, several persons participated in the bid and in the course of bid, Indus City Scapes has submitted a highest offer of Rs.2,70,00,000/- to the property. On 28.7.2005, the highest bidder has deposited a pay order of Rs.27 lakhs representing 10% of the highest offer towards EMD. The second highest bidder who has offered a sum of Rs.2,65,00,000 has not submitted 10% of the amount offered towards EMD. Since the highest bidder has deposited the EMD and undertook to deposit the balance amount on or before 31.8.2005, the said offer was accepted subject to further orders to be passed in the appeals. The Indian Bank was directed to permit the highest bidder to peruse the documents by making available to them the Photostat copies. On 31.8.2005, when the matter was listed again, the highest bidder deposited the balance amount of Rs.2.43 crores by means of a pay order. In view of the entire payment made by the highest bidder, the sale was provisionally confirmed.

13. In the light of the narration of facts as set out above, it is to be seen that due to the persistent effort made by the appellants herein the property which was sold in the auction by the Company Court for a sum of Rs.1.32 crores has fetched a higher amount viz., Rs.2.70 crores. Since the additional amount is realised at the instance of the appellants and admittedly, the secured creditor viz., the Indian Bank having chosen to remain content with the amount of Rs.1.32 crores which offer was provisionally confirmed by the Company Court and which order was not challenged by the Indian Bank, we have considered the plea of the learned senior counsel for the appellants as well as the Administrator to apportion the higher amount among themselves in exclusion of the Indian Bank.

14. Accordingly, the matter was heard on various dates and we have directed the Indian Bank as to whether the amounts payable by the appellants could be reduced in terms of the Reserve Bank of India guidelines under the one time settlement scheme or in terms of the settlement arrived at by the very same Indian Bank before the Lok Adalat organised by the State Legal Services Authority. The Indian Bank has expressed its inability to apply the principles of one time settlement scheme by contending that the bank has filed an application before the Debt Recovery Tribunal, claiming a substantial amount by way of principal as well as accrued interest. We have also directed a responsible Officer of the Reserve Bank of India to apprise the Court about the manner in which the guidelines envisaged by the Reserve Bank of India as a one time settlement should be implemented. In pursuance of the said direction, the counsel representing the Reserve Bank of India reported that to consider the claim of one time settlement, though the guidelines are framed, each matter has to be decided by the concerned bank by considering all the details of the borrowers.

15. In the meanwhile, we have also directed the State Legal Services Authority to make available all the details pertaining to the cases which were settled in the recent past, wherein the Indian Bank has agreed for a settlement for a smaller amount as against the larger claim. Accordingly, the said particulars were made available by the said authority.

16. Learned counsel for the appellants contended that there is no impediment on the part of the Indian Bank to treat the loan account of the appellants on par with other account holders for which the scheme of one time settlement was made applicable. According to him, inasmuch as the said scheme was in force till September 2004 and the present proceedings was initiated and pending from the year 2000 onwards, the benefit of the said scheme should be made applicable to the appellants also. It is further contended that the subject matter of the loan account forms part of two loan viz., 17,50,000/- and Rs.6,76,300/- in all totalling to Rs.23,91,300/- was disbursed in the year 1987 by obtaining finance from the NABARD, to which the interest rate was being charged only 6% and the Indian Bank is expected to charge only 2 % over and above the said 6% as per the terms and conditions of the sanction of the said amount by NABARD. According to the learned senior counsel, if the simple rate of interest is calculated at the rate of 9%, the interest works out to Rs.56,19,555/- and if the same is calculated at the rate of 12%, it works out to Rs.66,95,640/-. Learned senior counsel further contended that the Indian Bank has chosen to calculate the interest with half-yearly rests along with penal rate of interest with the minimum rate of interest as 12.5% which is not permissible in law as per the decision of the Apex Court in Corporation Bank vs. D.S.Gowda (1994 (5) SCC 213), the bank is entitled to charge interest with half-yearly rests since the present loan is for agricultural purposes. It is further contended that if the rate of interest is calculated with annual rests from the date of non-performing account viz., 31.3.1996, the total amount payable by the appellants works out to only Rs.81,90,138/-. According to the learned senior counsel, a further income which was accrued in pursuance of two investments made by the appellants viz., Rs.8,25,0000/- in 'Swarna Pushpa' and Rs.2,10,000/- in 'Ind Jyothi' ought to have been credited to the above said sum. Learned senior counsel further contended that inasmuch as the Indian Bank has chosen to remain content with the highest offer of Rs.1.32 crores, which money would again be distributed by the Company Court to the depositors as well as to the Indian Bank, there is no justification on the part of the bank to stick to the claim in entirety as claimed in the application which is pending before the Debt Recovery Tribunal. The learned senior counsel also contended that

the present loan being sanctioned under the heading agricultural loan has to be treated on a different pedestal than the others.

17. As far as the Administrator is concerned, he contended that he has also initiated several steps by pursuing litigation upto the level of the Apex Court and thereby incurred expenses of about Rs.5,40,00 0/- (travelling expenses, salary to the security guards to protect the property in question, publication expenses towards survey and other miscellaneous expenses), and as such the necessary safeguard should be made to protect the interest of the depositors since the Company in liquidation has paid a sum of Rs.96 lakhs to the appellants for the purchase of the property in question by way of an advance and the said amount should be disbursed to the depositors concerned.

18. The learned Additional Solicitor General appearing for the Indian Bank contended that the Indian Bank being a secured creditor, its interest should be protected since the bank deals with the public funds and the action of the bank in charging the interest cannot be challenged inasmuch as the said interest is being charged in terms of the agreement entered into with the borrower. The learned Additional Solicitor General further contended that even though initially a sum of Rs.23,91,300/- alone was disbursed by way of loan in the year 1987, in the year 1999, the bank has chosen to file a suit to recover an amount of Rs.87 lakhs and the present dues as on today comes about to Rs.2 crores and odd and as such, he has pleaded that the interest of the bank should be safeguarded adequately, since the appellants do not have any other property. As regards the claim made in respect of charging of the interest is concerned, the Supreme Court in its decision in Central Bank of India vs. Ravindra and Others (2002 (1) SCC 367) has observed that it can be charged either on annual or six monthly rests and as such, the bank cannot be found fault in charging the interest at half-yearly rests.

19. For the purpose of deciding the above issues, we have perused the details furnished by the State Legal Services Authority in respect of the matters wherein the Indian Bank has agreed for the settlement through Lok Adalat. We are extracting the details of few cases wherein the bank has settled for a lesser amount and the details are as set out hereunder:- Date of Case Number Total amount Settled Adalat claimed (Rs.) and Awarded (Rs.)

29.4.05 OA 827/98 3,26,94,359.00 45,00,000.00 22.1.05 OA 2233/01 17,96,462.00 7,05,000.00
07.2.04 OA 745/01 84,82,962.36 28,00,000.00 07.2.04 OA 474/01 3,59,86,583.00 1,50,00,000.00
07.2.04 OA 513/01} OA 989/01} OA 199/01} 7,41,96,579.00 2,92,00,000.00 28.8.04 TA 28/01
1,99,30,840.00 1,00,00,000.00 28.8.04 OA1881/01 1,13,89,271.00 35,00,000.00 A perusal of the above details disclose that the Indian Bank has settled the matter in respect of several loan accounts for a lesser amount though the claim made therein was on the higher side. In the instant case, though the present claim of the Indian Bank works out to Rs.2 crores and odd, the said amount is arrived at by calculating the interest at the compound rate with quarterly rests inclusive of penal interest. It is not in dispute that if the interest is calculated at the rate of 12% simple interest, the same works out to Rs.66,95,640/- as against the principal amount of Rs.23,91,300/-.

(6) Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or sixmonthly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong."

58. Subject to the above we answer the reference in the following terms:

(2) The principal sum so adjudged is "such principal sum" within the meaning of Section 34 of the Code of Civil Procedure, 1908 on which interest pendente lite and future interest i.e., post-decree interest, at such rate and for such period which the court may deem fit, may be awarded by the court."

"55. . . .

22. In the light of the principles as set out above and in order to pass an equitable order, we have taken note of the following aspects:-

- a) The suit was filed in the year 1999 to recover a sum of Rs.87,07,258/- with future interest. Till the date of filing the suit, the rate of interest charged by the bank varied from 12.5% onwards upto 19.85% at half-yearly rests including penal interest.
- b) As per the pleadings as set out in the plaint, a sum of Rs.32,74,611/- is indicated as outstanding towards the principal and a sum of Rs.54,32,647/- is indicated as memorandum of interest.
- c) It is not in dispute that the appellants have borrowed the loan only for agricultural purposes. If that is so, the said loan should be treated on a different pedestal as per the decision of the Apex Court rendered in Central Bank of India's case referred to supra.
- d) Since the suit is filed in the year 1999, claiming a sum of Rs.87,07,258/- an award of interest pendente lite and post-decree is discretionary with the Court as per the decision of Central Bank of India's case, wherein discretion is conferred upon the Court either to award a lower interest or even declined to award any interest. If such principle is adopted, in our opinion, the bank's interest can be protected by awarding an interest of 10% approximately on the suit claim viz., Rs.87,07,258/- for a period of six years by taking note of the fact that the suit was filed in the year 1999. e) Even though Indian bank has chosen to issue advertisements to sell the property on various occasions, there was no bid from the general public.
- f) The Indian Bank has not chosen to file any further appeal aggrieved against the highest bid of Rs.1.32 crores which was offered by the bidder before the Company Court and it is only at the instance of the appellants, the higher amount of Rs.2.70 crores is realised. If the matter would have rested at that stage, the Bank and Respondent No.2 and 3 would have shared Rs.1.32 crores and may be the Bank would have got a personal decree in the suit filed before the Debt Recovery Tribunal, which would have been of no practical use.
- g) The Indian Bank has chosen to settle for a meagre amount as against the amount claimed as one time settlement before the Lok Adalat in number of cases.
- h) It is not in dispute that the appellants do not have any other property and as such, the suit is filed by the Indian Bank before the Debt Recovery Tribunal is allowed to be proceeded with, necessarily all the questions raised by the appellants such as the payments made on various occasions and investment made by the Indian Bank in mutual funds etc., will have to be gone into and the bank has to establish its claim to get a decree as claimed therein, which would be time consuming.
- i) Having regard to the fact that the loan which was sanctioned originally works out to only Rs.21,06,264/- (Rupees Twentyone Lakhs Six Thousand Two Hundred and Sixtyfour only) and the Indian Bank has disbursed the said sum from and out of the finance obtained by NABARD at the rate of 6% interest and considering the fact that huge payments were made on several occasions by the appellants which was adjusted towards interest, the amount which is presently quantified and payable to the Indian Bank would be seven or eight times over and above the principal sum.

j) The amount of Rs.96 lakhs was paid by the Anubhav Plantations Ltd., long back, out of total sale consideration of about Rs.1.80 crores and we intend to protect the Indian Bank rather than Anubhav Plantations Ltd., with regard to the claim of interest is concerned, since the Indian Bank is dealing with the public money.

k) Since the present litigation has commenced as early as in the year 2000, and some of the proceedings were pursued upto the level of Apex Court, in order to give a quietus to the entire matter, it would be just and necessary to pass an order so as it should bring the entire litigation to a logical end.

23. For the aforesaid reasons and in the interest of justice, the sum of Rs.2.70 crores should be apportioned in the following manner:-

a) Indian Bank/Respondent-1 - a sum of Rs.1.40 crores (Rupees One Crore and Forty Lakhs only).

b) The Administrator representing the Anubhav Plantations Limited is entitled to receive a sum of Rs.1 crore (Rupees One Crore Only), out of which amount, he shall draw the expenses incurred by him as per the memo filed before the Court.

c) The Official Liquidator is entitled to withdraw the incidental expenses such as the payment of Rs.20,000/- from the Punjab National Bank, which was paid to the previous bidder as per our order dated 3.10.2005 and other expenses.

d) After adjusting the payments under the heading a,b and c, the appellants are entitled for the remaining amount.

e) The EMD which was ordered to be deposited in the Indian Bank shall be adjusted towards the amount payable to the Indian Bank.

f) The concerned bank viz., Punjab National Bank, wherein the amount is lying in deposit pursuant to the earlier order of this Court, shall disburse the amount, as indicated above, to the appellants as well as the Anubhav Plantations Ltd represented by Administrator, the Official Liquidator and Indian Bank within a period of ten days from today. The Official Liquidator shall send necessary communication by calculating the amount payable to all the parties concerned on or before 13.10.2005.

24. In view of the order passed as above, it is made clear that the bank shall not pursue its claim as against the appellants in the proceedings initiated against them before the Debt Recovery Tribunal and the above payments should be treated as a full and final settlement towards the entire amount payable to the Indian Bank.

25. In the light of the above, the highest bid offered by Indus City Scapes is confirmed and the Official Liquidator is directed to initiate further action including execution of the sale deed in favour of the highest bidder. The Indian Bank is also directed to hand over all the original title deeds to the

highest bidder within a period of seven days from today. The appeals are disposed of in the above terms. No costs. Consequently, connected CMP is closed.

26. In the course of hearing, we had requested the Reserve Bank of India Officer to remain present and assist in the hearing of the matter. We place on record our appreciation for the invaluable services rendered by such Officer as well as the counsel appearing for the Reserve Bank of India. Reserve Bank of India Officer's presence is discharged.

Internet : Yes.

Index : Yes.

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