(2000) 09 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (C) No. 4864 of 2000

A. Bimala Singha APPELLANT

Vs

United Bank of India and Others RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:
Assam Recovery of Loans Act, 1976 — Section 2

Citation : (2001) 3 GLT 552

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : N.K. Singh, A. Roshid and R.K.D. Choudhury, for the Appellant; G.A. Assam, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—This is an application under Article 226/227 of the Constitution of India against the order dated 28.4.2000 passed by the Assam Board of Revenue, Guwahati in case No. 2 BA(C)/98.

2. The facts, in brief, leading to the present petition are that respondent United Bank of India, Sonai Branch at Sonai granted a bank loan of Rs. 20,000 to the present petitioner Smti. A. Bimala Singha under the self-employment for Educated Unemployed Scheme, 1988-89. For alleged non-payment of the said loan, the bank applied for and obtained a certificate under Bengal Public Demands Recovery act, for short, the Act. The petitioner filed a written objection stating inter alia that the claim is barred by limitation and the amount is not recoverable under the Act in the absence of any written agreement in between the parties. The Certificate Officer, Cachar, Silchar vide order dated 8.11.1996 passed the Certificate Case No. 1543/95-96 dismissed case by observing as follows :-

"C.D.''s engaged Lawyer present. C.H. absent without any step. Heard the advocate of the C.D. Also seen the order dated 25.10.1996. I perused the C.R.

and it appears that case is filed beyond the prescribed period of limitation and hence case is barred by limitations. Moreover there is no written agreement between the parties stating the amount is recoverable under BPDR Act. In view of the direction of Hon''ble Guwahati High Court reported in G.L.R. 1988 Vol II page-424.

Further it appears that the C.H. is not interested in contesting the case.

In view of the above discussion and order dt. 25.10.1996. The case is dismissed.

inform all concerned."

3. Feeling aggrieved the respondent United Bank of India filed a revision before the Assam Board of Revenue and vide impugned order dated 28.4.2000 the earlier order passed by the Addl. Deputy Commissioner/Certificate Officer, Silchar was set aside. Hence the present petition.

4. Heard Dr. N.K. Singh, learned counsel for the petitioner.

5. So far the plea of limitation is concerned, both the Certificate Officer and the Addl. Deputy Commissioner Cachar, Silchar did not apply their mind to come to a specific finding that the claim is barred by limitation. The Certificate Officer merely observed that it appears that the claim is barred by limitation. This not enough. The Certificate Officer is required to give a specific finding as to how the claim is barred by limitation. Hence it is open for the petitioner to raise the plea of limitation and the same shall be considered in accordance with law.

6. Learned counsel for the petitioner further submits that in this case there is no written agreement in between the petitioner and the United Bank of India and as such in view of the provision laid down in Section 9-A of Schedule I of the Act, the above amount is not recoverable as a public demand. Section 9-A reads as follows:-

"Any money payable to the Government or to an officer to the Government in payment of a loan in cash or in kind, in respect of which money, the person to whom the loan in cash or in kind was advanced, has agreed by written instrument that such money shall be recoverable as a public demand."

7. Learned counsel for the petitioner has also relied on the decision of this court in the case of Md. Anarulla v. Assam Board of Revenue reported in (1988) 2 GLR 424, wherein the claim by Public Works Department on account of incomplete works done by the petitioner was quashed in the absence of written agreement holding that it cannot be regarded as ''public demand'' as defined in the Act, So far the present claim is concerned I find that the claim is lodged by United Bank of India for recovery of loan granted by them to the petitioner and in order to provide for recovery as public demand, loan advanced by banks and other financial institutions, the State of Assam has enacted the Assam Recovery of Loans Act, 1976 and provision of the said Act provides that loans given by bank as defined in Section 2(b) of the said Act is a ''public demand'' and Section 3 of

the Act reads as follows: -

"Recovery of arrears of loan aft a public demand. Notwithstanding anything contained in any law for the time being in force or in any agreement, any amount due to a bank or a financial institution, from any person in respect of any amount advanced or granted under any scheme shall, apart from any other mode of recovery, be recoverable as an arrear of land revenue under the Bengal Public Demands Recovery Act, 1913 (Beg. Act III of 1913)."

8. In view of the specific provision contained under the Assam Recovery of Loans Act, 1976, I find that the existence of written agreement is not a must. The ratio laid down in Md. Anarulla''s case is not applicable to the facts of the present case. I, therefore, find that the impugned order passed by the Assam Board of Revenue needs no interference and there is no merit in the present petition. The petition is accordingly dismissed. The Certificate Officer, Cachar, Silchar is directed to proceed in accordance with law. Learned counsel for the petitioner at this stage, submits that the petitioner may be allowed to repay the entire amount in six instalments within a period of three years. The prayer shall be considered by the Certificate Officer.

