(2009) 02 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 867 of 1999

Atmanand Singh — APPELLANT

Vs

The Union of India and Others — RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Citation : (2009) 02 PAT CK 0076

Final Decision : Allowed

Judgement

A.K. Tripathi, J.—Petitioner wants a mandamus upon the respondent authorities specially management of Punjab National Bank to refund the money of the petitioner by honouring the ''agreement'' dated 27.5.1990 contained in annexure-5B to the writ application as well as to pay interest on the amount agreed upon between the parties.

2. The background to the filing of the present writ application is that the petitioner claims himself to an educated unemployed and was having two accounts at Punjab National Bank Branch at Haveli Kharagpur, in the district of Munger. In the year 1984 petitioner had taken financial assistance by way of loan of Rs. 10,000/- to run a business in the name of Sanjeev Readymade Store. Money came to be paid by the bank in two instalments of Rs. 4,000/- on 21.7.1984 and Rs. 6,000/- on 1.10.1984. This was a term loan of Rs. 10,000/- in account bearing No. TL-PA/2/66. This term loan with interest had added up to a figure Rs. 13,386/- up to 14.2.1990.

3. Petitioner was granted two cheques of Rs. 5,000/- each in the year 1989 by the Circle Officer of Haveli Kharagpur under what is known as earthquake relief fund. Those two cheques were deposited with the bank for encashment but the same were not credited in the savings account of the petitioner but was transferred to the term loan account for realization of the loan. This, according to the petitioner, was done without any authorization or direction of the competent authority.

4. Petitioner''s son was afflicted by cancer and required immediate treatment at All Indian Institute of Medical Sciences, New Delhi. It is alleged that when he was asked to arrange some lacs of rupees to meet the treatment, petitioner sold 406 bhars of gold jewellery of his wife''s ''istridhan'' and he received Rs. 14,93,268. Out of this amount he took Rs. 14,93,000/- to the Punjab National Bank branch on 4.8.1989 for issuance of two bank drafts, one in his name and another in his wife''s name. The then Accountant Mr. T.K. Palit showed his inability to prepare the draft on the ground of shortage of staff on that day. He requested the petitioner to deposit the amount in the savings account No. 1020 in the said branch. When this money was handed over, the aforesaid Mr. T.K. Palit illegally transferred this amount in the term loan account of the petitioner in a totally arbitrary and illegal manner. In other words, a total sum of Rs. 15,03,000/- was illegally transferred to the loan account of the petitioner for realization of outstanding dues of Rs. 13,386/- up to 14.2.1990. Petitioner made grievance of the above act of Mr. Palit to the Branch Manager. The complaints or the representations have been brought on record as annexure-2 series. When no action was taken by the bank authorities, petitioner moved the District Magistrate, Munger. One of the reasons for moving the District Magistrate was that even the money released by the State in favour of the petitioner as earthquake relief fund was illegally put in the term loan account by the bank.

5. A Misc. Case No. 4 (DW I) PNB/89-90 came to be registered by the District Magistrate who appointed the Circle Officer, Kharagpur to conduct an enquiry and report. The District Coordination Officer of the Punjab National Bank was also directed to conduct an enquiry on his own level. Enquiry came to be held. The basic assertion of the petitioner having been found in order, and the liability having been finally accepted by the respondent Bank it was reduced to an agreement dated 27.5.1990 (annexure-5B) between the parties. The agreement was signed by one and all in presence of the Circle Officer and the overall supervision of the District Magistrate. It was duly recorded in writing that the bank had received the deposit amounting to Rs. 15,03,000/- as per deposits made on 2.8.1989, 4.8.1989 and 4.10.1989. It was also recorded that the total term loan and the liability of the petitioner up to 14.2.1990 came to Rs. 13,386/- only and the amount of Rs. 14,89,614/- of the petitioner would be kept in the fixed deposit of the bank and shall be paid with interest by September 1997.

It may also be recorded that before reducing the above agreement the District Coordination Officer of the Bank also held a detailed enquiry and he found the allegation of the petitioner prima facie to be true. He also recommended that the payment to the petitioner be made by September, 1997 with prescribed interest rate and compensation. The above fact is borne out from the perusal of annexure-7 to the writ application.

6. The report of the District Coordination Officer was also forwarded to the Regional Manager of the Bank who categorically recorded in his observation dated 17.6.1990 that the Branch Manager and Accountant of the Branch had

admitted their lapses. The above endorsement of the Regional Manager has reflection in the noting of the Zonal Manager as would be evident from annexure-9 series to the writ application.

7. The Court also records with due fairness that the petitioner has brought statements of the Regional Manager of the Bank which are reflected on perusal of page 163 and 203 of the writ application. There is yet another dimension to the dispute. Since serious doubt was initially sought to be cast on the claim of the petitioner regarding source of money and the deposit of the same with respondent Bank, the Income Tax Officer of Munger was also asked to enquire about the money and its source from where the petitioner had obtained the same. The Income Tax Officer''s statement is there on record at page 232 of the writ application where authenticity of the statement made by the petitioner with regard to sale of ''istridhan'' of his wife and the money received therefrom having been deposited with the bank was found to be correct.

8. With all these materials finally being placed before the District Magistrate, Munger, the District Magistrate directed that the agreement dated 27.5.90 be duly honoured. Many a documents thereafter have been brought on record in support of what has been recorded in the earlier part of the order which may not be gone in detail.

9. When no payment after September, 1997 came to be made to the petitioner, petitioner decided to file representation before the bank authorities which are annexures 13 and 14 series to the writ application. When the same did not beget any response, even legal notices were sent to the Bank as would be evident from annexures 16 and 17. Finally the silence of the bank forced the petitioner to file the present writ application.

10. In the writ application the petitioner has prayed for a direction upon the bank not only to honour the so-called agreement but to refund his money which was illegally transferred or misaccounted by the bank or its employees. His submission is that respondent Bank being a public undertakings has a responsibility towards the citizen and its customers to, act in a fair and honest manner and to maintain the account of its customers with due diligence, fairness and honesty.

It is also submitted that the nature of the dispute and the background itself would show that the dispute crystalised after intervention of public authorities and the claim of the petitioner with regard to the money deposited by him was found to be in order. It is in this background that he is entitled to maintain the present writ application and demand a mandamus for failure of a public body to perform its obligations to the petitioner both as a citizen and as a customer.

11. Counter affidavit came to be filed by the respondent bank where they decided to deny the claim of the petitioner. They raised serious doubts with regard to the existence of the records of Misc. Case No. 4 (DW I) PNB/89-90. They took a stand that as per their knowledge no such records exist or is readily

available and therefore the claim of the petitioner cannot be accepted or acted upon. The counter affidavit has tried to cast serious doubts about the so-called proceeding having been conducted and even an agreement having been entered into by the parties. It is also urged that the writ application cannot be maintained because the Court can not direct enforcement of an agreement. It is also submitted that the District Magistrate had no power to adjudicate the matter and even if for the sake of argument there was an agreement, the petitioner ought to have sought its enforcement through common law and not waited for filing the writ application after many a years. It is also urged that these are disputed questions of fact which cannot be decided in the writ application.

12. Learned senior counsel appearing for the petitioner, however, submits that the counter affidavit is a dishonest statement with regard to the actual state of affairs. The respondent bank had been unfair to the petitioner in its conduct all through and when finally they were pinned down by the intervention of the District Magistrate and accepted the liability and took time for repayment they delayed honouring it and now want to disown it by legal semantics. The disputed questions which are alleged by the respondents are only for the sake of argument to get out of the present proceeding. Even otherwise it is well settled by the Hon''ble Supreme Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, , that even disputed questions can be gone into in a writ application. Writ application under Article 226 is no doubt a discretionary remedy but it is also well settled that if a writ application is admitted which has been done in this case way back on 5.1.2000 the same cannot be thrown out on the basis of existence of an alternative remedy. The learned senior counsel also submits that in the case of M/s. Hyderabad Commercials Vs. India Bank and others, , it has been held that writ applications are maintainable against a bank for maintenance of proper accounts and suit is not a remedy.

13. The Court has gone through the plethora of documents which have been brought on record in support of the pleading of the petitioner. If the documents which have been brought on record are read as a whole this Court does get a feeling that the respondent bank wants to wriggle out of a ticklish situation by raising technical objections with regard to the maintainability of the writ application. Such voluminous documents cannot be created or manufactured. Merely because the respondent bank is suffering from selective amnesia the Court is not willing to brush aside the materials which have been brought on record in support of the writ application. No serious effort has been made by the respondents to answer the submissions and the arguments made in the writ application. The annexures coupled with specific pleadings point to the fact that there was a serious grievance raised by the petitioner about misconduct or wrong banking procedure having been adopted by the employees of the Punjab National Bank in maintenance of the accounts of the petitioner. The writ application of the petitioner therefore cannot be dismissed on the technical objection made by the respondent bank.

14. In the given facts and circumstances noted above, the petitioner has succeeded in making out a case for interference and keeping the settled principle in this regard as noted above, the respondent Bank is hereby directed to take steps for payment of the money which had been quantified in terms of annexure-5B. It is clarified that order of payment is not for enforcement of agreement contained in annexure 5B but only a certification that the money of the petitioner must accrue to his account and must be paid back to him with due interest thereon as proper book keeping and maintenance of accounts of a customer is a public duty of the bank. The Court expects the respondent Bank to make payments within a period of three months from the date of communication/ production of a copy of this order.

15. The writ application stands allowed.

