(1995) 04 AP CK 0039

In the Andhra Pradesh High Court

Case No : Second Appeal No. 316 of 1988

Canara Bank, Bhimavaram Branch — APPELLANT

Vs

Devi Metal Industries and Others — RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:
Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 4

Citation : (1995) 2 ALT 662 : (1995) 2 APLJ 117

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : P.V. Chowdary, for the Appellant; C.V.N. Sastry, for the Respondent

Judgement

S. Parvatha Rao, J.—The appellant-Bank has preferred this second appeal against the judgment dated 16-9-1987 of the learned District Judge, West Godavari in A.S.No. 55 of 1986 in so far as it is against it. The learned District Judge allowed the appeal in part granting decree for realisation of the suit debt at the contract rate of interest against the assets of the first defendant firm, first respondent herein and dismissing the appeal against the defendants 2 to 4, respondents 2 to 4 herein.

2. A.S.No. 55 of 1986 was preferred by the Bank against the judgment and decree of the learned Subordinate Judge at Bhimavaram dated 8-4-1986 in O.S.No. 14 of 1985 to the extent they are against the Bank. That suit was laid by the Bank for the recovery of Rs. 24,015.24 ps. being the balance of principal and interest due to the appellant-Bank from the defendants on account of two loans of Rs. 15,000/- and Rs. 25,000/- given to the first defendant firm on the security of plaint ''B'' schedule properties. A mortgage by deposit of title deeds has been created in respect of the said properties by defendants 2 and 4, the owners of the said properties. Defendants 2 and 3 are the partners of the first defendant firm. The defendants claimed that they were agriculturists and that therefore the interest claimed by the appellant-Bank had to be scaled down as per the provisions of Act 4 of 1938 i.e., the A.P. (Andhra Area) Agricultural Relief Act. The

trial Court accepted the said contention of the defendants and held that the defendants were entitled to the benefits of the said Act and that the appellantBank ought to have calculated the interest on the amounts as per the provisions of the said Act from the date of the inception of the loan. This was questioned by the Bank in A.S.No. 55 of 1986. Ground No. 10 in the said appeal is as follows:

"The lower Court should have seen that the defendants 2 to 4 are not independent borrowers and their liability is joint and several and their liability is co-extensive for all the amounts that are to be decreed against the firm - the first defendant as the firm is not an agriculturist."

The learned District Judge, while partly allowing the said appeal, observed in his judgment that the appeal was filed against the finding regarding scaling down of the interest and that it was contended in the appeal that the lower Court ought to have decreed the suit with costs as prayed for against the first defendant firm since it could not be said that the firm was an agriculturist. The learned District Judge held that, as contended by the learned Counsel for the appellant-Bank, the first defendant firm could not be deemed to be an agriculturist and that therefore it had to pay interest at the contract rate. The learned Judge further observed, "but respondents 2 to 4 being agriculturists they are entitled for the benefits of Act 4 of 1938" and in the result allowed the appeal in part, as noticed already.

3. The learned counsel for the appellant-Bank points out that at the time when the judgments were rendered by the lower Courts in the appeal as well as in the suit, the law as declared by a Division Bench of this court in Indian Bank, Alamuru v. M. Krishna Murthy 1983 (1) ALT 357 : 1983 (2) An.W.R. 90 : AIR 1983 A.P. 347 was holding the field wherein it was held that Section 4(e) did not apply to the Indian Bank because it was not a Corporation and because it was not formed in pursuance of an Act of British Parliament or in pursuance of any special Indian Law or Rule or Royal Charter or Letters Patent though it was created u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and that therefore debts due to it from agriculturists could not be refused to be scaled down. The learned counsel for the appellant-Bank points out that the Supreme Court in Bank of India Vs. Vijay Transport and Others, by its judgment dated 11-11-1987 overruled the decision of this Court in Indian Bank, Alamuru v. M. Krishna Murthy 1983 (1) ALT 357 : 1983 (2) An.W.R. 90 : AIR 1983 A.P. 347. and held that the Banki.ng Companies Act was a special Indian Law and that Section 4(e) of Act 4 of 1938 was applicable to a Bank nationalised under the Banking Companies Act. The appellant-Bank has also raised a ground in that regard in the memorandum of grounds in the present second appeal. In view of this decision, the learned counsel for the appellant contends that the learned District Judge was not right in observing that respondents 2 to 4, being agriculturists, were entitled for the benefits of Act 4 of 1938. The learned counsel for the respondent does not dispute this position but contends that in the lower appellate Court this question was not pressed and in

fact it was given up even though a ground might have been raised in that regard. He relies on the judgment of the Judicial Commissioner of Ajmer in Sheo Prasad v. Kanhiyalal AIR 1953 Raj 52, wherein it was held that if the point has not been urged before the first appellate Court, or if it has been deliberately abandoned, it cannot be raised in second appeal. He also relies on the judgment of the Supreme Court in Gauri Shanker Vs. Hindustan Trust (Pvt.) Ltd. and Others, wherein it was held that raising grounds in memorandum of appeal was not sufficient to show whether a particular point was actually argued or pressed before the Court and that if the Court expressly stated that only certain points had been argued and no other point had been argued, the statement in the judgment prima facie had to be accepted as correct and that it was open to the party questioning the said observation to file a proper affidavit, preferably of his counsel, who had argued the case, along with the memorandum of appeal, stating that the said point had been raised but the Court recording the concession had done so either wrongly or under some misaprenension. the learned counsel for the respondents points out that no such affidavit was filed in the present case.

4. The decision of the Supreme Court does not entirely support the case of the learned counsel for the respondent. The Surpeme Court in the above said case further held as follows:

"It is true that a question not agitated before the lower appellate Court or expressly given up there can be allowed to be raised if it is a pure question of law but in permitting the same to be done the Court has to consider whether in exercise of proper and judicial discretion such a point should be permitted to be agitated when it has been conceded or abondoned before the Court below. While giving permission to argue that point the Court has to look at all the facts and circumstances, the conduct of the parties seeking to raise that point is of great importance."

5. In the present case it cannot be disputed that the question raised by the appellant-Bank is a pure question of law and, as observed earlier, at the time when the lower Courts rendered their judgments, there was the decision of the Division Bench of this court in Indian Bank, Alamuru v. M. Krishna Murthy (1 supra) which was binding on the lower Court. In view of the subsequent decision of the Supreme Court overruling the view of this Court, the appellant- Bank can certainly be permitted to rely on the decision of the Supreme Court and contend that the finding of the lower Courts that respondents 2 to 4 were entitled to the benefits of Act 4 of 1938 being agriculturists is erroneous. Apart from this, I am also of the view that the learned counsel, for the respondents is not right in contending that the appellant-Bank had given up or abandoned this contention in that regard especially in view of the specific finding referred to above i.e., that respondents 2 to 4 being agriculturists are entitled to the benefits of Act 4 of 1938, which is sought to be questioned by the appellant-Bank in the present second appeal. I have also to note that a Full Bench of this Court in State Bank

of Hyderabad and Vs. Advath Sakru and another, following the decision of the Supreme Court in Bank of India v. M/s Vijay Transport (2 supra) held as follows: "Therefore, it is authoritatively ruled by the Supreme Court in the above decision that the debts due to the banks which are nationalised under the provisions of Banking Companies Act cannot be scaled down invoking the provisions of Act IV of 1938. Therefore, the judgments of P. Kodandaramayya, J. in Medikonda Satyanarayana and Another Vs. Andhra Bank Ltd., Eluru, as well as Andhra Bank case (1987 (1) ALT 447 : 1986(2) APLJ 165) to the extent they stated that the debts due to the Banks are liable to be scaled down under the provisions of Act IV of 1938 are no longer good law."

6. In the result, I have to allow this second appeal and hold that respondents 2 to 4 are not entitled for the benefits of Act 4 of 1938 and that there shall be a joint and several decree against respondents 2 to 4 as well in respect of the amount decreed against the first defendant-firm. The judgment and the decree of the lower Courts shall stand modified as indicated above. No costs.

