(2016) 08 SC CK 0267

In the Supreme Court Of India

Case No : Civil Appeal No.8263 of 2016 (Arising Out of Special Leave Petition (Civil) No.18838 of 2013)

Central Bank of India APPELLANT

Vs

Kailash Chandra Gaur RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2016) 9 Scale 73

Hon'ble Judges : Ranjan Gogoi and Prafulla C. Pant, JJ.

Bench : Division Bench

Advocate : Mr. Raju Ramachandran, Senior Advocate, Mr. O.P. Gaggar, Mr. Aditya Gaggar, Ms. Mythili Vijay Kumar, Thallam, Mr. Vikram Aditya Narayan, Advocates, for the Petitioners; Mr. H. Chandra Sekhar, Advocate, for the Respondents

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The sole respondent herein, who, at the relevant point of time, was a Director of one M/s Movers Private Limited (hereinafter referred to as "the Company"), had executed two personal guarantees against a financial accommodation made available by the appellant bank to the Company in question. This was on 7th June, 1983 and 8th August, 1983 respectively. On 6th July, 1984 the respondent resigned from the Board of Directors of the Company and informed the appellant - Bank with a request to discharge the present respondent from the guarantees executed by him. The Bank intimated the present respondent that the matter was being examined at the appropriate decision making level. Sometime in 1985, one Mr. V. Nandakumar came in as a Director of the Company in place of the present respondent and he also executed two personal guarantees which were accepted by the Bank. As there was default in payment of the loan amount the Bank instituted a suit for recovery in the year 1992 which got transferred to the learned Debts Recovery Tribunal at Bangalore (hereinafter referred to as

"Tribunal") upon enforcement of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The learned Tribunal by order dated 21st November, 2003 decreed the application of the Bank but restricted the liability of the present respondent to the amount of the two guarantees in question.

3. Aggrieved the present respondent filed an appeal before the learned Debts Recovery Appellate Tribunal, Bangalore (hereinafter referred to as "Appellate Tribunal") which was allowed. One of the grounds that prevailed upon the learned Appellate Tribunal to allow the appeal of the present respondent was that the action of the Bank in accepting the personal guarantees of Mr. V. Nandakumar (the new Director) amounted to exoneration of the present respondent from the guarantees executed by him. The aforesaid order of the learned Appellate Tribunal is dated 21st July, 2005 and was challenged by the Bank before the High Court by filing Writ Petition No.9590 of 2006 out of which the present appeal has arisen. The said writ petition was dismissed by the High Court by the impugned judgment and order dated 3rd January, 2013 again, primarily, on the above said ground, namely, the induction of Mr. V. Nandakumar as a new Director and the personal guarantees executed by him exonerated the respondent herein. Aggrieved the present appeal has been filed.

4. We have heard the learned counsels for the parties.

5. In the suit filed by the Bank which was transferred to the learned Tribunal the present respondent was impleaded as defendant No.6 and Mr. V. Nandakumar (the new Director) who came in place of the present respondent was impleaded as the defendant No.7. The decree passed by the learned Tribunal made both the defendant Nos. 6 and 7 jointly liable, however, for the amounts of the guarantees executed by them. It transpires that against the order of the learned Tribunal while the present respondent herein had filed an appeal i.e. R.A.No.7/2005, the defendant No.7 in the suit (Mr. V. Nandakumar, the new Director) filed a separate appeal i.e. R.A.-8/2005. While R.A.No.7 filed by the respondent herein was decided by the learned Appellate Tribunal on 21st July, 2005, the appeal filed by the defendant No.7 (Mr. V. Nandakumar) was decided on 31st August, 2005. Against both the separate orders passed by the learned Appellate Tribunal, the Bank had filed two separate writ petitions i.e. Writ Petition No.9590 of 2006 against the order of the learned Appellate Tribunal dated 21st July, 2005 and Writ Petition NO.24303 of 2005 against the order of the learned Appellate Tribunal dated 31st August, 2005. By the impugned judgment and order dated 3rd January, 2003, while the Writ Petition No.9590 of 2006 filed by the Bank against the present respondent was decided, we are told that the Writ Petition No.24303 of 2005 filed by the Bank against Mr. V. Nandakumar (the new Director) is still pending consideration before the High Court and is awaiting the outcome of the present appeal.

6. The cardinal issue in the writ petition (Writ Petition No.9590 of 2006) out of which the present appeal has arisen being what has been noticed, namely, that the induction of Mr. V. Nandakumar (the new Director) and the execution of the

personal guarantees by him exonerated or discharged the present respondent from the bank guarantees which were furnished by him made it imperative that both the writ petitions i.e. Writ Petition No.9590 of 2006 and Writ Petition No.24303 of 2005 should have been heard together. Whether the guarantees executed by the two Directors i.e. defendant Nos. 6 and 7, both, continue to remain in force or the acceptance of the one would work as exoneration of the other could not have been decided in the writ petition filed by the Bank against the respondent herein without taking into consideration the writ petition filed by the Bank against Mr. V. Nandakumar (the new Director). We do not know and the said issue need not detain the Court as to why the High Court did not decide both the writ petitions together. However, it is our considered view that for a fuller and complete adjudication of the matter the two writ petitions should have been heard together so that the individual or the joint liability of the two defendants i.e. defendant Nos. 6 and 7 could be properly adjudicated.

7. In any event, the decision of this Court in the present appeal filed by the Bank against the present respondent would virtually foreclose the writ petition pending in the High Court filed by the Bank as against Mr. V. Nandakumar (the new Director) and any opinion expressed by this Court would work either to the prejudice or to the benefit of the said defendant i.e. Mr. V. Nandakumar against whom the writ proceeding instituted by the Bank is presently pending.

8. In the light of the above fact we are, therefore, of the view that we ought not to decide the present appeal on merits but request the High Court to decide both the writ petitions together. We accordingly set aside the order of the High Court on the above stated grounds and request the High Court to act accordingly, namely, decide Writ Petition No.9590 of 2006 and Writ Petition No.24303 of 2005 together as expeditiously as its business would permit. We also make it clear that the High Court is free to decide the matter in a manner as may be considered appropriate by it and we have expressed no opinion on the contentions of either of the parties before us.

9. The appeal consequently is disposed of in the above terms and the order of the High Court is set aside.