(1999) 01 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 73 Of 1988

Central Bank of India APPELLANT

Vs

Rooplal Bansal RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 100 CompCas 805 : (1999) 9 SCC 254

Hon'ble Judges : D. P. Mohapatra, J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The respondent herein stood as a guarantor for the loans which had been advanced by the appellant herein to M/s. Mohanlal Proprietor, M/s, Mohanlal Ramdhandas and to Shri Pawan Kumar Kulwant Rai. The goods of these two firms were hypothecated. The respondent herein had accounts with the appellant-bank and it stood surety and guaranteed the repayment of the loans taken by the principal debtOrs.

2. It appears that there was a default in the repayment of the loans. The appellant herein raised a demand and wrote a letter dated October 7, 1986, to the respondent informing him that his account with the appellant-bank had been debited with a sum of Rs. 14,23,000 on account of appropriation towards the accounts of M/s. Mohanlal Ramdhandas and to Pawan Kumar Kulwant Rai, for which the respondent stood as their guarantor.

3. On August 17, 1987, the respondent filed a writ petition being Miscellaneous Petition No. 2465 of 1987 before the Madhya Pradesh High Court at Jabalpur. The challenge in this writ petition was to the said letter dated October 7, 1986. Before the petition came up for hearing for final disposal, the appellant bank on September 30, 1987, filed a civil suit before the District Judge, Bhopal, for recovery of amount due to it. It prayed for a decree of Rs. 14,75,429.25 which

was subsequently amended to a decree for Rs. 15,59,065.63 as principal plus interest thereon. The respondent herein was impleaded as defendant No. 2 being a guarantor in respect of the said loans.

4. When the writ petition filed by the respondent herein came up for hearing, it was, interalia contended by counsel for the appellant herein that the aforesaid suit had been filed and disputed questions of fact which have been raised in the writ petition should be decided in the said civil suit or in any suit which the respondent herein may choose to file.

5. The High Court did notice this contention having been raised but chose not to deal with the same. It proceeded to examine the contention of the respondent on the merits and while it upheld the right of the appellant-bank to retain the amount of money due to it to the extent which was initially agreed upon to have been given as loan, the High Court rejected the appellant's claim to hold the respondent's amount which was in excess of the limit which had initially been agreed to.

6. In our opinion, the High Court was not right in entertaining the writ petition. The transaction between the parties was purely a commercial one. Admittedly, the respondent had stood as guarantor in respect of the loans which had been advanced by the appellant. For the realisation of the amount, the appellant had filed a suit in a court of competent jurisdiction. If the respondent had any grievance in respect of the letter dated October 7, 1986, then the proper remedy available to the respondent was to file a civil suit and the High Court ought not to have entertained a writ petition under Article 226 of the Constitution especially when disputed questions of fact had to be gone into. On this ground alone, the judgment of the High Court is liable to be set aside.

7. We, accordingly allow this appeal and set aside the judgment dated November 2, 1987 of the Madhya Pradesh High Court passed in Miscellaneous Petition No. 2465 of 1987. The result of this would be that the said writ petition filed by the respondent would stand dismissed.

8. Inasmuch as the respondent is not represented, there will be no order as to costs.

