(1997) 08 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 660 of 1995

Challa Venkata Subbayya APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Banking Regulation Act, 1949 — Section 21A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1(2), Order 21 Rule 1(4), Order 21 Rule 1(5)

Citation : (1998) 1 ALT 749 : (1998) 94 CompCas 803

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Judgement

R. Bayapu Reddy, J.—This revision petition is filed questioning the orders of the Subordinate Judge, Nuzvid, dated November 7, 1994, passed in E.A. No. 275 of 1987, in E.P. No. 19 of 1986.

2. The respondent, which is the Union Bank of India, Vijayawada, had obtained a money decree against the petitioner herein in O.S. No. 6 of 1974, on the file of the Sub-Court, Vijayawada. Later on, the respondent filed E.P. No. 19 of 1986, before the Subordinate Judge, Nuzvid, for executing the abovesaid decree and some amount was paid by the petitioner to the respondent in those execution proceedings. Subsequently, the petitioner, who is judgment debtor No. 1 in the E.P. filed E.A. No. 275 of 1987, under Order 21, rule 1 of the Civil Procedure Code, 1908, and section 19 of the Madras Agriculturists Debt Relief Act IV of 1938, contended that he had discharged the entire debt in instalments that by mistake, he made excess payment to a tune of Rs. 30,000; that he is an agriculturist and as such, the debt due from him shall be scaled down as per the provisions of the Madras Agriculturists Debt Relief Act IV of 1938, and that when the debt is thus scaled down, it is found that he made such an excess payment of a payment of about Rs. 30,000 to the respondent and the said amount shall be refunded by the respondent. The respondent decree-holder contested the petition contending that there was no excess payment made by the petitioner;

that the decree-holder is entitled to appropriate the open payments made by the petitioner from time to time towards the costs of the suit and interest accrued on the principal amount at the first instance and then adjust the balance amount paid by the petitioner towards the principal; that in view of such appropriation made by the respondent, there was no excess payment as contended by the petitioner and the petition may, therefore, be dismissed.

3. Both the parties filed separate calculation memos along with their written arguments before the lower court and after hearing both sides and on the basis of the material placed before it, the lower court came to the opinion that interest cannot be scaled down as per the provisions of the Madras Agriculturists Debt Relief Act IV of 1938, as contended by the petitioner in view of the provisions of section 21A of the Banking Regulation Act, 1949, which came into force with effect from February 15, 1984; that the respondent is entitled to appropriate the amounts paid by the petitioner towards interest and suit costs in the first instance and then alone appropriate the balance amount towards principal and that in view of such circumstances and in view of the admitted payments made by the petitioner from time to time, it is found that there is an excess payment of only Rs. 1,945.85 made by the petitioner and that the respondent is liable to refund such amount to the petitioner with interest at 12 per cent. per annum till the date of payment. Aggrieved by such orders, the petitioner has filed the present revision. The respondent, which is the bank, has not chosen to question the above said order of the lower court.

4. Heard both the counsel.

5. The first contention of learned counsel for the petitioner is that the interest is liable to be scaled down under the provisions of the Madras Agriculturists Debt Relief Act IV of 1938. Such contention was negatived by the lower court in view of the provisions of section 21A of the Banking Regulation Act, 1949, which came into force with effect from February 15, 1984, and by relying upon the Full Bench decision of this court in State Bank of Hyderabad and Vs. Advath Sakru and another, , and the decision of the Supreme Court in Bank of India Vs. Vijay Transport and Others, . In the decision of the Supreme Court it is held that the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, is a special Indian law and the provisions of section 4(e) of the Madras Agriculturists Debt Relief Act IV of 1938 are applicable to all banks which are nationalised under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, that in view of section 4(e) of the Madras Agriculturists Debt Relief Act IV of 1938, the question of scaling down the debts due to such banks under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, does not arise and that, therefore, the debts due to the nationalised banks cannot be scaled down by invoking the provisions of the Madras Agriculturists Debt Relief Act IV of 1938. The said view was followed in the above cited Full Bench decision of this court.

6. The contention of learned counsel for the petitioner, however, is that section

21A of the Banking Regulation Act, 1949, came into force only with effect from February 15, 1984 that the transactions concerned in the present proceedings are prior to February 15, 1984, and as such, the provisions of section 21A of the Banking Regulation Act, 1949, cannot be given retrospective effect so as to make them applicable to the present case. But such contention cannot be accepted as clearly laid down in the above said Full Bench decision of this court reported in State Bank of Hyderabad and Vs. Advath Sakru and another, , wherein it is specifically observed that section 21A applies to all transactions entered into between the banking company and its debtor whether the transaction was entered into prior to its commencement or afterwards. Therefore, the above said contention of learned counsel for the petitioner, cannot be accepted.

7. The next contention of learned counsel for the petitioner is that in view of the amended provisions of Order 21, rule 1 of the Civil Procedure Code, 1908, the respondent is not entitled to appropriate the amounts paid by the petitioner towards interest at the first instance and that the said amounts shall be appropriated towards the principal amount at the first instance with effect from February 1, 1977, when the amendment was effected to Order 21, rule 1 of the Civil Procedure Code, 1908. But this contention also cannot be accepted in view of the law laid down by the Supreme Court in decision in Meghraj and Others Vs. Mst. Bayabai and Others, , and also in the recent decision of the Supreme Court reported in Mathunni Mathai Vs. Hindustan Organic Chemicals Limited and another, . In the decision of the Supreme Court in Meghraj and Others Vs. Mst. Bayabai and Others, , it is observed in para. 8 of the judgment as follows (headnote) :

"Where the mortgagors made no payments under the decree directly to the mortgagees but from time to time made deposits in the court under Order 21, rule 1 and in depositing some of the amounts they stated that the payments were towards the principal due, but there was no evidence on the record that the mortgagees were informed that the amounts were deposited towards the principal due, nor was there evidence that the mortgagees accepted the amount towards principal, the amounts so paid could be appropriated first towards interest and then towards principal due. Unless the mortgagees were informed that the mortgagors had deposited the amount only towards the principal and not towards the interest, and the mortgagees agreed to withdraw the money from the court accepting the conditional deposit, the normal rule that the amounts deposited in court should first be applied towards satisfaction of the interest and costs and, thereafter, towards the principal would apply. It is for the mortgagors to prove an agreement, contrary to normal rule. It cannot also be said that it is the privilege of the debtor to impose conditions subject to which any payment is to be made by the mortgagor, and the mortgagee is bound to accept the condition."

8. In another recent decision of the Supreme Court in Mathunni Mathai Vs. Hindustan Organic Chemicals Limited and another, , also the same view was

expressed by their Lordships by referring to the above said earlier decision of the Supreme Court and some other decisions. It is observed by their Lordships of the Supreme Court in the said decision after referring to the above cited earlier decision, that in the absence of any intimation as required by sub-rule (2) of Order 21, rule 1 of the Civil Procedure Code, 1908, and indication of the manner of appropriation, the payment could not be deemed to have been appropriated towards the principal unless the decree-holder admits it to be so and that the reasoning of the High Court that since the deposit was made in pursuance of the orders of the Supreme Court it would be deemed that the deposit was towards principal, does not appear to be correct. It was further observed by their Lordships that when the amount is deposited in the absence of any notice and intimation that it was being deposited towards principal, it was for the decree-holder to appropriate it towards the dues in the manner he likes. Their Lordships also referred in their judgment to the amended sub-rule (2) of Order 21, rule 1 of the Civil Procedure Code, 1908, and observed as follows regarding the effect of such amended provisions (page 1574) :

"The amended sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree-holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression either through court directly or by registered post acknowledgement due'' is that the judgment-debtor should not only give notice of payment but he must ensure that the decree-holder has been served with the notice. The ratio laid down in Meghraj and Others Vs. Mst. Bayabai and Others, , applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-rules (4) and (5) added in 1976 to protect the judgment debtor provide for ceasure of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) take place not by payment alone but from the date of service of the notice referred to in sub-rule (2)."

9. The same view was also expressed by this court in the recent decision reported in Sukhder Pershad v. Kishanlal (B.) [1996] 1 ALD 561. It is clear from the views expressed by the Supreme Court in the above cited decisions that the payments of all decretal amounts paid by the judgment debtor must first be appropriated towards interest and then to the principal in the absence of any notice and intimation to the decree-holder by the judgment debtor. The same view holds good even after the amendment effected to Order 21, rule 1 of the Civil Procedure Code, 1908. It is seen from a perusal of the judgment of the lower court that the learned Subordinate Judge has categorically observed after perusing the calculation memo filed by the respondent that the amount paid by the petitioner was correctly appropriated as per the provisions of Order 21, rule 1 of the Civil Procedure Code, 1908. In view of such circumstances, there are no valid reasons to interfere with the orders of the lower court.

10. The revision petition is, therefore, dismissed. No costs.