
(2013) 09 KAR CK 0014

In the Karnataka High Court

Case No : Criminal Revision Petition No. 384 of 2013

Dr. Rekha

APPELLANT

Vs

M/s. Vijaya Bank Ltd.

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13(2), 13(4)

Citation : (2014) 3 RCR(Civil) 793 : (2014) 3 RCR(Criminal) 163

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M.S. Rajendra Prasad, for the Appellant; Abubacker Shafi, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The complainant-Vijaya Bank had lent a sum of Rs. 7,27,93,585/- to the petitioner in Crl. RP. No. 385/ 2013 on the security of his house property. Petitioner in Crl. RP No. 384/2013 is the daughter of petitioner in Crl. RP No. 385/2013. The petitioner in Crl. RP No. 385/2013 did not repay the loan/installments. The complainant-bank took recourse to provisions of the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for short). When the officials of the complainant bank had gone near the secured house property to take possession of house property, petitioner in Crl. RP No. 385/2013 gave a cheque for a sum of Rs. 85,00,000/- drawn in favour of complainant. Petitioner in Crl. RP No. 384/2013 (daughter of petitioner in Crl. RP No. 385/2013) also gave a cheque for a sum of Rs. 85,00,000/- drawn in favour of complainant and requested the complainant to postpone the process of taking possession of secured house property in terms of Sections 13(2) and 13(4) of the SARFAESI Act. The complainant with a fond hope of realizing the amount for which cheques were issued, went back. But on presentation of cheques, they were dishonoured

for want of funds. Therefore, complainant lodged complaint u/s 138 of the Negotiable Instruments Act.

2. On consideration of evidence, the learned trial Judge convicted the accused for offence u/s 138 of the Negotiable Instruments Act. The accused were before the first appellate Court, however, without success. Therefore, accused are before this Court.

3. Sri M.S. Rajendra Prasad, learned senior counsel for petitioners would submit that, petitioner in Crl. RP No. 384/2013 i.e., Dr. Rekha was neither a principal borrower nor a guarantor. The officials of bank took a "cheque from her by holding out threat to dispossess her from the house. Therefore cheque was obtained under duress. The cheque was not issued to discharge legally recoverable debt or other liability. The officials of the complainant bank had gone to the house of petitioners on the date of engagement of second daughter of petitioner in Crl. RP No. 385/2013 and demanded to settle the amount at a stretch or to face consequences of dispossession from the house.

4. It is not in dispute and cannot be disputed that petitioner in Crl. RP No. 385/2013 had borrowed a sum of Rs. 7,27,93,585/- from complainant bank. The bank had obtained necessary order from the Deputy Commissioner to take possession of secured house property. The bank officials and Tahsildar had gone near the secured house property to take possession of the same. It is at this juncture, the petitioners issued two cheques for a sum of Rs. 85,00,000/- each.

5. When bank officials were acting pursuant to the orders passed by the Deputy Commissioner u/s 14 of the SARFAESI Act, it cannot be said that they had threatened petitioners. Therefore submission of the learned senior counsel for petitioners that cheques were obtained by complainant under duress, cannot be accepted.

6. The learned senior counsel appearing for petitioners submits that petitioner in Crl. RP No. 384/2013 was neither a principal borrower nor a guarantor. Therefore, cheque was not issued to discharge legally recoverable debt.

7. At this juncture, it is necessary to refer to Section 139 of the N.I. Act.

139. Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

8. In the case on hand, petitioner in Crl. RP 384/2013 had issued cheque to prevent complainant bank from dispossessing them from their house and also to discharge part of loan borrowed by her father. The cheque was not issued to discharge the debt. The cheque was issued to discharge the debt of her father which she took upon herself on behalf of her father. The cheque issued need not be necessarily to discharge the loan. The drawer of cheque may take upon the

liability of others and issue cheque to discharge such liability. Therefore, submission of learned senior counsel that petitioner in Crl. RP No. 384/2013 was neither a principal borrower nor a guarantor and cheque was not issued to discharge legally recoverable debt/liability, cannot be accepted.

9. The Courts below on proper appreciation of evidence, have recorded concurrent findings. This Court while exercising revisional jurisdiction, does not sit as a Court of Second Appeal. This Court can interfere with the impugned judgment if it is demonstrated that the Courts below have committed glaring errors in appreciation of evidence or errors of law resulting manifest injustice to petitioner. In the discussion made supra, I have considered the submission made by the learned senior counsel for petitioners and negated the submissions. There are no reasons to interfere with the impugned judgments. The petitions are dismissed.