

(2008) 08 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C) 7446 of 2007 and CMA 14184 of 2007

Durga Periwal

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Evidence Act, 1872 — Section 91, 92

Citation : (2008) 154 DLT 514

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Vibhu Bhakru Vikas Chandel and Shruti Ranjan, for the Appellant; Pankul Nagpal, for R-1 and Varun Singh, Proxy Counsel for Saran Suri, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The Petitioner herein is aggrieved by the order of DRAT dated 8th August, 2007 and he has confined his grievance to the denial of right of cross-examination. The right of cross-examination is claimed on the basis that a bank official had deposed that he saw the Petitioner sign the disputed documents. The DRAT has dealt with the above issue in the following terms:

8. In the case at hand, there is no cogent or convincing reason to permit the cross-examination of the witnesses of the Bank prayed for by the appellant herein (Defendant No. 4). There does not appear to be any anomaly or ambiguity. The contention that cross-examination is needed on the point of the Bank having charged penal interest or to have debited other impermissible charges cannot be upheld. The matter is of argument only. In case the interest charged or other charges debited by the Bank are against the settled norms, against RBI guidelines against the terms of loan agreement or against the case law, the appellant (Defendant No. 4) can point out the particular debit entries with the help of her calculation at the time of arguments. Similarly, the other two

points on which the necessity of cross-examination has been pressed by the appellant are such that can be argued out. There is no necessity of any cross-examination at all. It is a fact that Mr. Ravi Menon never brought in Rs. 27 crores. As per the Scheme sanctioned by the BIFR, it was specifically stipulated that the personal liabilities and guarantees given to the banks and financial institutions would be released after the amount of Rs. 27 crores was deposited with the Operating Agency. The appellant/defendant No. 4 has already come with this defence that the Bank was negligent and was in collusion with Mr. Ravi Menon who allegedly siphoned off all the assets of the Defendants 1 and 2, and further that the Bank did not take proper care of the valuable securities. She has to stand on her own legs to back her such defence and the Tribunal below would come to a conclusion after weighing the respective evidence of the parties. The Tribunal has rightly observed that in case the Bank is unable to prove its case according to the standard of legal proof, the benefit would accrue to the defendants.

2. The Hon^{ble} Supreme Court while upholding the validity of the Recovery Debts Due to Bank and Financial Institutions Act, 1993 has observed with regard

to oral examination of a witness as under:

...When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before them ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such cases, would not be sufficient.

3. In our view, Tribunal has rightly applied the aforementioned law and reached the correct conclusion that no exceptional circumstance had been made out to permit oral evidence particularly, when the oral evidence sought to be lead is contrary to a written document. Even otherwise, the Petitioner's request is contrary to the mandate of Sections 91 and 92 of the Indian Evidence Act, 1872.

4. Accordingly, we see no merit in the writ petition and the same is dismissed, but with no order as to costs.