(1998) 01 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4900 of 1997

Ease Sanitation Private Ltd. APPELLANT

Vs

Bareilly Corporation Bank Ltd. and Others RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 171
State Financial Corporations Act, 1951 — Section 29

Citation : (1998) 120 PLR 139 : (1998) 4 RCR(Civil) 353

Hon'ble Judges : V.K. Bali, J;M.L. Singhal, J

Bench : Division Bench

Advocate : S.C. Nagpal, Ashok Jagga, S.K. Pabbi, Kamal Sehgal and R.S. Chahar, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Singhal, J.—The land, plant and machinery of the petitioner Company was mortgaged with respondent No. 5-Haryana Financial Corporation (to be referred as Corporation). Annexure P1 is communication dated 14.2.1992 sent by respondent No. 3 (Bank of Baroda) to the petitioner Company communicating their decision sanctioning the credit facilities to them (petitioner Company). In August, 1994, the petitioner Company submitted the revised plan/proposal to respondent No. 3 which was necessitated for its rehabilitation because respondent No. 4 (Bank of Baroda) began tightening noose around the neck of the petitioner company. Respondent No. 4 went on becoming harsh in banking dealings with the petitioner Company and respondent No. 3 bank informed the petitioner Company that they will not discount on their hundies drawn on EAPL. On 13.12.1994 the Petitioner Company informed the Bank of Baroda vide communcation Annexure P.3 that the Bank of Baroda should take over the total loan of HFC and thus, take over the first charge on the land, building plant and machinery and the bank should thereafter release the plot of Shri S.K. Gupta, Managing Director of the petitioner Company so that he could sell the plot and utilize the sale proceeds in the payment of overdues of the bank. Petitioner Company made other proposal as well with a view to improve the account position of the petitioner Company with the Bank of Baroda. Bank of Baroda (respondent No. 4) backed out of the proposal. On 3.5.1995 the bank gave a decision after a period of five months. On 8.4.1996, the petitioner Company gave second compromise proposal namely Annexures P-4 and P-5. On 19.4.1996 and 3.5.1996, other compromise proposals were submitted as the bank was trying to create problems on every proposal (Annexure P-6 and P-7). On 10.2.1997, the petitioner company entered into an agreement to sell land and building with respondent No. 6 which was lying mortgaged with H.F.C. The said agreement of sale is Annexure P8. In pursuance of this agreement to sell, a sum of Rs. 12,98,742.80 poise was paid by respondent No. 6 which was kept in the current account of the company with respondent No. 2 M/s Bareilly Corporation Bank Ltd. On 9.1.1997 the petitioner company wrote a letter Annexure P-9 to H.F.C. enclosing a cheque of Rs. 50,000/- against payment. On 15.2.1997, without the knowledge and consent of the petitioner company and contrary to all banking norms, respondent No. 2 transferred/remitted the total sum of Rs. 11.35 laces which was lying in the current account of the petitioner with them. This amount was illegally transferred in favour of respondent No. 3 (Bank of Baroda). On 22.2.1997, the petitioner company wrote letter to respondent No. 2 protesting the illegal transfer of the money. On 21.2.1997, letter Annexure P-13 was received from the H.F.C. by the petitioner company whereby the H.F.C. threatened to take over the Unit u/s 29 of the State Financial Corporation Act, 1951. On 21.2.1997, vide letter Annexure P-12, the petitioner Company made proposal to the Bank of Baroda with a view to settle the H.F.C. loan and to keep the Unit alive. On 28.2.1997, registered legal notice was sent by the petitioner company to respondents No. 1 and 2 with copy to other respondents. Annexure P-16 is the reply to the legal notice received from the counsel for respondent No. 2 Bank. On 26.2.1997, legal notice Annexure P-17 was received by the petitioner company from respondent No. 3 Bank. On 3.2.1997 vide Annexure P-18, the petitioner company gave reply to the legal notice to respondent No. 4 Bank. Through reply Annexure P18 the petitioner company requested the Bank of Baroda to remit the amount back to respondent No. 2 which was illegally got transferred without the knowledge and consent of the petitioner company and con- trary to the Banking norms and allowed the petitioner Company to settle the liability of H.F.C. and regularise the accounts of Bank of Baroda. Case of the petitioner company is that respondents No. 1 and 2 had no legal authority or right to unilaterally, without the knowledge of the petitioner company and against his wishes to transfer the amount lying-in his current account maintained with respondent No. 2 Bank in favour of respondent No. 3 thereby creating problems, which rightfully belonged to the purchaser, respondent No. 6 and meant to be paid in the event of the completion of the sale to respondent No. 5 Haryana Financial Corporation who had the first and paramount charge over the land and building which is subject matter of sale. Petitioner Company seeks the issuance of a writ in the nature of mandamus, certiorari or direction to respondents Nos. l to 4 to retransfer the amount of money to the tune of Rs. 11.35 lacs illegally got transferred by respondent No. 3 from respondent No. 1 unilaterally, without the permission, knowledge, consent of the petitioner company and against the Banking norms and principles of natural justice, equity and law and the action is against the instructions/guidelines of the Reserve Bank of India. Petitioner Company has prayed that either the payment be made in favour of the petitioner Company or in favour of respondent No. 6 to whom it belongs so that the petitioner Company can take up the matter for the sale of the land, building with respondent No. 5 and honour the commitment made to respondent No. 6.

2. Respondents 3 and 4 (Bank of Baroda) contested the writ petition, urging that the petitioner requested them for the grant of certain credit facilities for the purpose of his business. Credit facilities were accordingly given to the petitioner company. The petitioner Company availed the credit facilities but failed to adhere to the financial discipline of the Bank and the outstandings in all the facilities far exceeded the sanctioned amount. By exceeding the limit, the petitioner made himself unable to come to the Court. Petitioner disposed of drastically and clandestinely the security rather prime-securities of respondent No. 4 bank without depositing the proceeds in the account. The whole of the amount has become fully overdue and irregular. Petitioner clandestinely attempted to sell his property/factory premises in Panchkula and received a sum of Rs. 11.00 lacs and instead of depositing the amount to the outstanding it deposited the amount with the respondent No. 2 which is a subsidiary body of respondent No. 3. Respondent No. 2 is as good as a part of respondent No. 3 when it came to the notice of respondent No. 4, it felt shocked as to how the petitioner could even open such account against the spirit of the instructions of the Reserve Bank of India. There is specific guide-line of the Reserve Bank of India restraining virtually the opening of another account in the wake of current and pending account of borrower with one bank. Respondent No. 4 in exercise of a general lien of Bankers as envisaged u/s 171 of the Indian Contract Act requested respondent No. 2 to remit the amount to the former. The right of the bank to exercise its general lien is a statutory recognised right under the Indian Contract Act and in the circumstances, is an act of prudence, the breach of contract if any on the part of respondents 1 and 2 vis-a-vis the petitioner or that of respondents 3 and 4 vis-avis the petitioner can be well adjudicated in a Civil Court. Since the petitioner was not making payment of the outstandings without any reasons and the respondent No. 4 filed the application for the recovery of its dues before the Debt Recovery Tribunal as well, the petitioner can agitate before that Tribunal and can seek an appropriate order. Whenever there are contractual rights and claims, they cannot be enforced under Article 226 of the Constitution of India and civil suit alone is competent.

3. Respondents 1 and 2 contested this petition urging that the petitioner malafide neither paid his dues to respondent No. 4 nor to respondent No. 5. Clandestinely, he entered into a deal with respondent No. 6 and received an

amount of Rs. 11.00 lacs and deposited the same with respondent No. 2 in a newly opened account. The petitioner concealed the fact of outstanding amount and opened the account with respondent No. 2 and thereby entered into an account of banker and a customer. Bank of Baroda as a body corporate is holding/ controlling the respondent No. 2 to the tune of over 90%. When respondent No. 4 learnt about it, instead of paying his dues to the respondents 3 and 4 which happens to be a Nationalised Bank, they wrote a letter to respondent No. 2 asking him to remit the amount and respondent No. 2 on receipt of instructions from the holding Company, remitted the amount to respondent No. 4. Petitioner has got irregular account with respondent No. 4 in which there are huge outstandings and respondent No. 4 had to knock the door of the Debt Recovery Tribunal. Respondent No. 4 which is Nationalised Bank has effected the recovery of its dues which is a lawful Act.

4. Respondent No. 6 also contested the writ petition urging that he is non-resident Indian. He agreed to purchase one plot No. 290, Industrial Area, Phase I, Panchkula from the petitioner. He executed agreement Annexure P-2 on 10.2.1997 to this effect and paid a sum of Rs. 12,50,000/- to the petitioner through demand draft etc. as earnest money. The said amount is lying in the account of the petitioner in the bank of the respondents 1 and 2. As per the agreement, the petitioner was to execute the sale deed in his favour by 28.2.1997, after obtaining permission from the Estate Officer, HUDA, Panchkula. The petitioner has failed to perform his part of the contract. It seems that the petitioner has connived with respondents Nos. 1 to 4 in defrauding him and robbing him of his money. The petitioner is merely a trustee of that money on his behalf till the sale of plot is completed. The petitioner is not entitled to that money till the sale is completed. He deposited a sum of Rs. 12,98,742.80 paise as part payment towards consideration of sale with respondent No. 2 at Panchkula in the current account of the petitioner. Respondent No. 6 prayed that respondents Nos. l to 4 be directed to refund him the amount which was lying deposited in the account of the petitioner in the Bank of respondent No. 2.

5. Respondent No. 5 also opposed the writ petition.

6. We have heard the learned counsel for the parties and have gone through the record.

7. In our opinion, this petition should succeed as the amount of money to the tune of Rs. 11.35 lacs was got transferred by respondent No. 1 unilaterally without the permission, knowledge and consent of the petitioner. Petitioner had availed the loan facilities from Haryana Financial Corporation for purpose of financing land, building, plant and machinery of the Company. H.F.C. has first charge over the said land, plant and machinery of the company and the immovable assets of the company are mortgaged to H.F.C. Chief Manager of respondent No. 4 sanctioned credit facilities namely cash credit, Bill discounting to the tune of Rs. 10 lacks and 13 lacks respectively. Respondent No. 6 paid a total sum of Rs. 12,98,742.80 paise as part payment towards the consideration

of sale spelt out in the agreement Annexure P-8. This amount was deposited with respondent No. 2 at Panchkula in the current account of the petitioner company bearing No. 346. This amount could not be transferred to respondent No. 5 as this amount was to remain in trust with the petitioner company. In the event, the sale was completed the entire amount was meant to be deposited with HFC who had the first and paramount charge on the land and building. Respondent No. 4 could not have asked respondent No. 2 to transfer the amount lying in the current account No. 346 of the petitioner with respondent No. 2. Respondent No. 2 Bank could not have remitted the amount of Rs. 11.35 lacks to respondent No. 4 on 15.2.1997, when the first and paramount charge on the land and building was that of the HFC. Even otherwise the amount was lying in the account of the petitioner company with respondent No. 4 Bank. Respondent No. 4 Bank could not have asked the transfer of the amount lying in trust in the account of the depositor to it, without the knowledge and consent of the depositor. So, this writ petition is allowed and writ in the nature of mandamus is ordered to be issued directing respondent No. 4 Bank to refund the amount in the current account No. 346 maintained by the petitioner with respondent No. 2 and respondent No. 2 shall release, this amount to respondent No. 5 but only if the agreement to sell has been through and has succeeded and matured into sale, if agreement to sell has not been through and sale deed not executed, this amount shall be remitted by respondent No. 2 to the respondent No. 6.