(2009) 08 BOM CK 0079

In the Bombay High Court

Case No : Criminal Appeal No''s. 6 and 7 of 2009

Goa State Co-operative Bank Ltd. APPELLANT

Vs

Mohan Surya Naik RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 08 BOM CK 0079

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.R. Rivonkar, for the Appellant; Asha Dessai, for the Respondent

Final Decision : Allowed

Judgement

N.A. Britto, J.—Both these appeals can be conveniently disposed of by this common Judgment. The only point involved is regarding limitation on the basis of which the Learned Magistrate has dismissed the complaints filed against the accused u/s 138 of the Negotiable Instruments Act, 1881.

2. The appellant/complainant is a Co-operative Bank now governed by the Multi-State Co-operative Societies Act, 2002. The respondent/accused had obtained a loan from the complainant bank on 17.9.02 in the sum of Rs. 25,000/-as per loan agreement Exhibit 32 (at page 64 in Criminal Appeal No. 6 of 2009). The said loan was payable in 36 equal monthly installments alongwith interest with quarterly rests. The respondent/accused is a member of the said Bank. The accused paid a sum of Rs. 2,000/-on 15.3.03 and that was the last installment paid by him. The accused gave to the Bank towards the payment of the loan two cheques which were the subject matter of two complaints filed by the Bank against the accused and from which the present appeals arise. The first cheque is dated 20.4.06 for Rs. 20,000/-and the second cheque is dated 25.4.06 for Rs. 18,000/-. Both the cheques were dishonoured, when presented for payment. A notice was sent but the same was not complied with and therefore the complaints were filed on account of dishonour of the said two cheques.

3. The Learned Magistrate acquitted the accused relying upon a Judgment of this Court in the case of Smt. Ashwini Bhat v. Jeevan Divakar Lolienkar 1999 (1) G L.T. 408. The Learned Magistrate held that the last installment was paid by the accused on 15.3.03. Thus, acknowledging the debt during the subsistence of the debt but thereafter there was no payment made. The Learned Magistrate also referred to sanction letter Exhibit 33 and stated that the complainant had even issued a letter to the employer of the accused to deduct the amount due from the salary of the accused but the accused committed default in paying the subsequent installments which was due on 15.4.03. As per the Learned Magistrate the period to file a suit ought to have been reckoned from 16.4.03 as prior to that also the accused had committed default and since a period of three years had lapsed before both the cheques were issued, the complainant was precluded from recovering the loan amount advanced to the accused. The Learned Magistrate held that since the debt was not legally enforceable, the accused was not liable u/s 138 of the said Act and proceeded to acquit the accused.

4. Shri Rivonkar, the Learned Counsel on behalf of the complainant has drawn my attention to Section 85 of the Multi-State Cooperative Societies Act, 2002, and has submitted that under ordinary circumstances and in terms of Clause (b) to Sub-section 1 of Section 85 of the Act of 2002, the period to recover the loan would have been six years and not three years as held by the Learned Magistrate. Learned Counsel further submits that even if the Limitation Act was made applicable, even then the period of three years had to be reckoned from 6.9.05 being the last date of the last installment which the accused was required to pay and therefore the complainant was still within time to take coercive steps to recover the amount due by the accused towards the loan advanced to the accused, under the Act of 2002.

5. Ms. Dessai, the Learned Counsel appearing on behalf of the accused has endorsed the view of the Learned Magistrate and has submitted that the issue of limitation has been correctly decided by the Learned trial Court and in that regard has placed reliance on another Judgment of this Court in the case of Jagadamba Parisar Sahakari Pat Sanstha Maryadit v. Shravan Ajinath Ukirde and Anr. 2007 (1) Bom CR 185. This was a case where the loan was advanced on 11.2.02 and the cheque in repayment thereof was issued on 31.7.05 and considering the said facts it was observed by this Court that time barred debt cannot be said to be a legally enforceable debt or liability and therefore the provisions of Section 138 would not be attracted to the case.

6. The view held by this Court in Jagadamba (supra) is in conformity with the view held in Smt. Ashwini Bhat (supra) and other decisions in that regard, but the same in my view are not applicable to the facts of this case. In the case at hand, although the loan was advanced on 17.9.02 the same was repayable by 36 monthly installments and the last installment due was on 16.9.05 and if we were to go by the provisions of the Indian Limitation Act, the complainant would have

had three years to initiate recovery proceedings from 16.9.05 and viewed thus it could not be said that the cheques were issued towards repayment of a loan amount which was time barred. That apart, Section 85 of the Act of 2002 makes a special provision for settlement of disputes between a Multi-State Co-operative Bank and its members. The dispute is to be decided in terms of Sub-section 4 of Section 84 and special period of limitation has been provided in terms of Clause (b) of Sub-section 1 of Section 85 of the Act. Looked from whatever angle, both the cheques issued by the accused were issued in repayment of the loan before it could be said that it had become time barred.

7. In the light of the above discussion, the accused could not have been acquitted. Consequently the appeal deserves to succeed. Both the Judgments of the Learned Magistrate in Criminal Case Nos. 439/OA/2006/B and 395/OA/2006/B are hereby set aside and the accused convicted u/s 138 of the Negotiable Instruments Act, 1881.

8. Counsel on behalf of the accused submits that the accused has always been willing to pay the amount to the complainant but has been unable to raise the necessary finances. Shri Rivonkar on behalf of the complainant submits that in case the accused pays the amount of the cheques, the entire amount of Rs. 38,000/-, within 15 days from today on behalf of the complainant no further sentence would be pressed for. Considering the concession made on behalf of the complainant, the accused is hereby directed to pay the said sum of Rs. 38,000/- to the complainant within a period of 15 days and in default undergo S.I. for six months.

