(1999) 11 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19375 of 1998

Joginder Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : (2000) 2 CivCC 300 : (2000) 125 PLR 671 : (2000) 2 RCR(Civil) 80

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : D.V. Sharma, for the Appellant; Amar Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—Joginder Singh, the petitioner had raised a loan of Rs. 70,000/- for purchase of a tractor from the respondent No. 5, the Phagwara Primary Co-operative Agricultural Development Bank Limited (for short ''the bank'') during December, 1984. Similarly, Darshan Singh petitioner No. 2 had raised a loan of Rs. 12,000/- from the said bank for purchase of a trolley in January, 1985, Since the loan was not repaid, the bank initiated recovery proceedings in June, 1986. As soon as the recovery proceedings were started, the petitioner No. 1 filed a civil suit before the Sub Judge 1st Class, Phagwara in which it was claimed that the loan could not be recovered from him as neither the loan amount was given to him nor any tractor was ever delivered to him. This civil suit was dismissed on 27.10.1988. he thereafter, filed an appeal before the District Judge and the same was also dismissed vide order dated 9.8.1991. Against the order of the District Judge, he filed a regular second appeal in this Court which was dismissed on 20.1.1992 by the following order:-

"Appeal dismissed, as prayed for.

The appellant is at liberty to take any other appropriate proceedings, if so advised."

Thereafter, both the petitioners herein filed a reference of dispute u/s 55/66 of the Punjab co-operative Societies Act, 1961 (for short the Act) before the Deputy Registrar, Co-operative societies, Jalandhar, which was decided against the petitioners vide order dated 7.6.1991. the order of the Deputy Registrar was challenged in appeal u/s 68 of the Act before the Joint Registrar, the Joint Registrar remanded the case back to the Deputy Registrar vide his order dated 10.3.1993 to examine how a tractor, which had been exported to Uganda, could have been delivered to the petitioner No. 1.

2. On remand the Deputy Registrar once again went into the matter and found that the tractor in question had been manufactured in 1984 whereas it had been exported to Uganda on 9.4.1986. he also found that the cheque of the amount of loan had been given to M/s International Tractors under written instructions of the petitioners against a bill for sale of this very tractor and as such the loan stood proved. According to the Deputy Registrar, if the petitioners had any grievance against non-delivery of the tractor, they could only proceed against M/s International Tractors and not against the bank, consequently, the Deputy Registrar once again rejected the petition of the petitioners vide order dated 24.10.1994.

3. The petitioners filed an appeal against the order of the Deputy Registrar before the Registrar u/s 68 of the Act which was allowed by him vide order dated 17.7.1996 accepting the argument of the petitioners that the tractor exported to Uganda could not have been delivered to the petitioner No. 1 and that the loan to petitioner No. 2 advanced for purchase of trolley could not be justified against the bill showing sale of "implements". He, therefore, ordered that the amounts of Rs. 26,880/- and Rs. 2,032/-paid by the petitioners to M/s International Tractors as down payments against purchase of tractor/trolley be refunded to them. Not satisfied with the order of the Registrar, the bank filed a revision petition before the Financial Commissioner, who vide his order dated 4.7.1997 agreed with the detailed reasoning given by the Deputy Registrar and allowed the revision petition setting aside the appellate order dated 17.7.1996 passed by the Registrar. It is against this order of the Financial Commissioner that the present writ petition has been filed.

4. Learned counsel for the petitioners has contended that the petitioners were never given the delivery of the tractor or the trolley for which purpose the loan is alleged to have been advanced to them, it is claimed that the petitioners are illiterate and ignorant persons who were made to sign blank documents purported to be applications for loan and authorisation for payment of the same to M/s International Tractors. It is alleged that the partners and the managers of the firm M/s International Tractors had conspired with the bank officials and had played a fraud on the petitioners. Attention was drawn to the instructions dated 5.11.1981 issued by the Punjab State Co-operative land Mortgage Bank Limited to show that the Managers of the banks had been directed to check full

antecedents of the dealer firms and ensure that the machinery, for the purpose of which loans were being advanced, had been supplied to the loanees according to the specifications given in the bill. In the said instructions it was clearly mentioned that in case of any mis-utilisation of loan or non-delivery of machinery/implements, the liability would have to be fixed on the managers personally. Attention was also invited to the letter dated 25.7.1987 issued by Mohindera & Mohindera Ltd. stating that International tractor AD-3497 (the tractor against which loan was advanced) had been exported to Uganda and not delivered to any customer in India. Similarly, it was mentioned that although the loan to the petitioner No. 2 was for the purchase of a trolley yet the bill against the same showed sale of "implements". It was farther pointed out that before the loan could be actually disbursed, the tractor/trolley had to be produced before the Manager for his personal physical verification. The argument is that a tractor which had been admittedly exported to Uganda could not have been produced by the petitioner before the Manager. Similarly, the Manager could not possibly have verified of a trolley when the bill described the items sold as "implements". On the basis of these facts and circumstances, it was pleaded that the petitioners had been defrauded and the loan sought to have been advanced to them could not be recovered from them.

5. Shri Amar Singh, appearing on behalf of respondents, at the outset raised a preliminary objection that the petitioner No. 1 had already raised this issue before the Civil Court where his claim had been rejected by the Sub Judge, 1st Class, Phagwara and his appeal also dismissed by the District Judge. He, therefore, could not be permitted to raise it again in the present proceedings. It was pointed out that the order of the District Judge dated 9.8.1991 dismissing the appeal of the petitioner had become final and operated as res judicata against the petitioner No. 1. It was, therefore, argued that the present petition is liable to be dismissed on this score itself.

6. It was then contended that the present writ petition had become infructuous as the impugned orders Annexures P-5 and P-7 ordering the recovery of the amount of loan and interest due from the petitioners stand already complied with. Both the petitioners had since deposited the amount due from them to the bank on 16.1.1999 and 17.2.1999.

7. It was further pleaded on behalf of the bank that the transaction of loan was duly supported by the documentary evidence containing the signatures/thumb impressions of the petitioners. The petitioners had not only complied with the formalities for obtaining the loan but had also produced the bills showing purchase of tractor and implements from M/s International Tractors. They had given written instructions to the bank to make the payment of the amount of loan to the said party and had also made two down payments for the balance amount. It was, therefore, pleaded that if the petitioner''s claim that the tractor/ trolley was not delivered to them by M/s International Tractors, they could seek their remedy against the said firm and not against the bank.

8. We have heard the arguments on behalf of the parties and have also perused the records. It has been correctly pointed out that this very issue had been raised by the petitioner No. 1 before a civil Court which had recorded a finding against him after going through all the necessary documentary evidence. This finding had been upheld in appeal by the District Judge. The petitioner No. 1 had, thereafter, filed RSA No. 2380 of 1991 in this Court against the order of the District Judge which had been dismissed on the prayer of the petitioner No. 1. Thus, the order of the District Judge dated 9.8.1991 dismissing the appeal of petitioner No. 1 had become final. We, therefore, agree with the contention of the bank that the same operated as a res judicata against the petitioner No. 1 and as such he was precluded from raising the same issue in these proceedings.

9. Every otherwise the documentary evidence on record clearly shows that the petitioners had applied for the loan from the bank for which necessary applications had been submitted by them. It is also borne out from the record that the petitioners had authorised the bank to make the payment on their behalf to M/s International Tractors, Phagwara against the bills produced by them. It is further evident from the fact that the petitioners had also paid the balance price of the tractor/trolley to the said concern. In the face of this overwhelming evidence, it is not possible to accept a bald oral assertion of the petitioners that they had been made to sign blank forms and no tractor or trolley had been delivered to them. If this assertion, which is unsupported by any evidence, were to be believed as correct, there is no explanation as to why the petitioners made the payment of the balance price to M/s International Tractors. We also agree with the contention of the bank that merely because it has been found that the tractor purchased by petitioner No. 1 had been exported to Uganda, would not lead to an inference that no tractor had been purchased by the petitioner No. 1 or that this tractor had not been produced before the bank authorities. This issue had also been raised before the Sub Judge, Phagwara who had found that the tractor in question had been manufactured in 1984. Whereas the same was exported to Uganda on 9.4.1986. This tractor, therefore, could have been physically produced before the Manager in December 1984. The petitioner No. 1 had produced Bill No. IT/5-444/84-103 bearing Sr. No. AD3497 from M/s International Tractors which duly contains the engine number as well as the chassis number of this tractor. He had also produced the insurance certificate of this tractor. Under these circumstances no fault can be found with the conduct of the bank officials in issuing the cheque for the loan amount to M/s International Tractors for which written instructions had been issued by the petitioners. We also do not find any substance in the objection of the petitioner No. 2 that merely because the bill of M/s International Tractors described the item purchased as " Implements" instead of "trolley", some kind of fraud should be assumed on the part of the bank. The description in the bill was a matter between the loanee and the seller party. The entire documentary evidence, unequivocally points to the direction that the petitioners had raised the loans in question from the bank and, therefore, they could not absolved from its

repayment, thus, even on merits the petitioners have no case.

10. We also agree with the contention on behalf of the respondent bank that the dispute as projected by the petitioners is a matter between them and the seller party i.e. M/s International Tractors which was neither impleaded in the proceedings before the civil Courts nor in the present proceedings. They could possibly have no claim against the bank.

In the result, we find no merit in this writ petition which is hereby dismissed.