(2004) 05 CAL CK 0013

In the Calcutta High Court

Case No : M.A.T. No. 4325 of 1998

Kalpana Das — APPELLANT

Vs

Contai Co-operative Bank Ltd. and Others — RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Citation : AIR 2005 Cal 95 : (2004) 3 CHN 305 : (2005) 1 CTLJ 514

Hon'ble Judges : Ashok Kumar Mathur, C.J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : K.D. Mukherjee, for the Appellant;Swadesh Ranjan Bhunia and Ashim Kumar Roy, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The appellant applied for loan in Contai Cooperative Bank Limited, respondent No. 1. Accordingly, the bank agreed to grant credit facilities. Accordingly, an agreement of hypothecation of goods were entered into for Rs. 50,000/- (Rupees fifty thousand only) on December 19, 1988. A Deed of Hypothecation was also entered into for Rs. 5,20,000/- on April 27, 1988. Accordingly, loan was disbursed. The appellant could not repay the said loan. As a result of which the bank terminated the agreement and demanded repayment of outstanding dues.

2. The appellant raised disputes before the Assistant Registrar, Co-operative Society u/s 95 of the West Bengal Co-operative Societies Act, 1983. According to the appellant, the bank was supposed to grant further credit facilities in terms of the scheme submitted by the writ petitioner for a total investment of Rs. 1566448/-. Since the bank did not release the balance part of the loan they were not entitled to recover the loan and demand the amount due therefor. Ultimately, the writ petitioner claimed disbursement of the balance amount of Rs. 5,11,296/-. The Additional Registrar, Co-operative Society published an award directing release of Rs. 66,436/- towards the Plant and Machinery as well as for release of a sum of Rs. 3.00 lacs for cash credit.

3. Being aggrieved by and dissatisfied with the said award the bank preferred an appeal before the Co-operative Tribunal. The Tribunal dismissed the appeal and affirmed the award of the Assistant Registrar, Co-operative Society.

4. Being aggrieved by and dissatisfied with the order of dismissal of the Cooperative Tribunal the bank filed the instant writ petition which was disposed of by the learned Single Judge by His judgment and order dated December 1, 1998 wherein considering the various decisions of the Apex Court as well as of this Court His Lordship allowed the writ petition. Hence, this appeal.

5. Mr. K.D. Mukherjee, learned Counsel appearing in support of the appeal contended that since there are two concurrent decisions of the statutory forums the learned Judge should not have allowed the writ petition by setting aside the award. Mr. Mukherjee also contended that since the scheme was approved by the party they were bound to release balance sum in terms of the said scheme and the said scheme only. By releasing a part of it the bank committed breach which entails the appellant to claim the balance amount under the said scheme.

6. Mr. Mukherjee in support of his contention cited three Supreme Court decisions reported in--

(i) Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.,

(ii) State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others,

(iii) Khanna Improvement Trust Vs. Land Acquisition Tribunal and Others,

7. Citing the aforesaid decisions Mr. Mukherjee contended that the bank was bound to release term loan and cash credit loan in favour of the appellant according to the scheme duly vetted by DIC, Midnapore. Mr. Mukherjee drew our attention to pages 162 and 167 of the paper book in this regard. Lastly he contended that the award should be upheld and the order of the learned Single Judge should be set aside.

8. Mr. Swadesh Ranjan Bhunia, learned Counsel appearing for the respondent bank, contended that the plea of promissory estoppel would not be applicable in the instant case as the parties were bound by the contract entered into by and between them. In the instant case the appellant executed Deed of Hypothecation for a term loan of Rs. 5.20 lacs which was duly disbursed by the bank and as such they were not entitled to compel the bank to release further amount under the said scheme. Mr. Bhunia contended that since the appellant did not adhere to the terms and conditions under the agreement the bank was entitled to issue notice of demand which was well within their right. Mr. Bhunia lastly contended that subsequently the bank instituted the recovery proceeding which ultimately culminated in the judgment on appeal by the Co-operative Tribunal dated February 14, 2002 dismissing the appeal of the constituent and upholding the award of the arbitrator dated December 19, 2000 wherein the arbitrator awarded the claim of the bank together with interest. The said order of the Tribunal was

not challenged by the appellant herein and as such the appellant was precluded from urging the identical issues which was barred by principles of res judicata and/or contructive res judicata and/or principles of analogous thereto.

9. Mr. Bhunia distinguishing the decision of the Apex Court in the case of Gujarat State Financial Corporation (supra) contended that the said decision of the Apex Court was distinguished by the Apex Court in the case reported in Chingleput Bottlers Vs. Majestic Bottling Company, Mr. Bhunia also contended that the said decision was also considered by the Division Bench of our Court in the case reported in C.V. Enterprises Vs. Braithwaite and Co. Ltd. and Others, Lastly he contended that the facts of this case did not warrant application of the principle of ratio laid down in the case of Gujarat State Financial Corporation (supra). Mr. Bhunia prayed for dismissal of the appeal.

10. To decide the present issue in hand let us first discuss the case law on the subject.

(i) Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., : The appellant corporation in the instant case sanctioned loan to a private company for setting up of a hotel. The respondent accepted the terms and conditions. Acting on the promise for grant of loan, the respondent created an equitable mortgage in favour of the appellant securing the loan and also incurred other expenditure and suffered liabilities to implement and execute the project. On a second thought, the appellant refused to disburse the loan. The High Court on a writ petition issued a writ of mandamus directing disbursement of the promised loan. The Apex Court dismissed the appeal of the appellant holding that since the incumbent altered his position on the basis of the solemn promise of the appellant the doctrine of promissory estoppel would come into play by estopping the corporation from backing out of its obligation arising from the said solemn promise.

(ii) Chingleput Bottlers Vs. Majestic Bottling Company, : In para 20 of this judgment the Apex Court distinguished its earlier decision in the case of Gujarat State Financial Corporation (supra). The Apex Court held that the decision in Gujarat State Financial Corporation on the doctrine of promissory estoppel is clearly distinguishable.

(iii) C.V. Enterprises Vs. Braithwaite and Co. Ltd. and Others, . : The Division Bench of our Court held that there is no question of any promissory estoppel in respect of a concluded contract. It applies only in case where there is no concluded contract. When the promise has been made out by one party while tending to create legal relation and thereafter attempting to come out of the said promise, the principle of promissory estoppel will then apply.

(iv) State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, : Paragraph 28 of this judgment was relied upon by the appellant. This paragraph relates to the scope of judicial review as enunciated by the Apex Court.

(v) Khanna Improvement Trust Vs. Land Acquisition Tribunal and Others, : Here the Apex Court held that High Court for exercising jurisdiction under Article 226 of the Constitution of India should not assume suo moto jurisdiction of Appellate Court and attempt to correct mistake of their own.

11. We have considered the rival contentions of the parties. We have perused the decision of the learned Judge. In our view, the learned Judge rightly allowed the writ petition by setting aside the award. The appellant applied for loan in term of the scheme, it was for the respondent bank to react to the said scheme and grant loan in accordance with the scheme. However, a lesser amount was sanctioned by the bank. The appellant accepted the same by executing necessary deed of hypothecation and other related documents and thereby accepting the loan sanctioned by the bank. At that stage the writ petitioner never approached the Court. Hence, we are not to look back as to what was the actual scenario prior to the execution of the concluded contract between the parties. Once a contract is entered into by the parties, the parties are to act in terms of the contract and the contract only. The doctrine of promissory estoppel cannot have any application there. If there is any violation of the contract then the parties would be at liberty to take steps for violation of the said contract. The doctrine of promissory estoppel would not in any way help the complainant. In our view, the decision of the Division Bench of our Court in the case of C. V. Enterprise (supra) would become applicable in this case instead of the decision of the Apex Court in the case of Gujarat State. Financial Corporation.

12. In the result the appeal fails and is hereby dismissed. The judgment and order of the learned Single Judge is affirmed.

13. There would be however no order as to costs.

14. Urgent xerox certified copy would be given to the parties, if applied for.

Ashok Kumar Mathur, C.J.

15. I agree.

