
(2009) 03 AHC CK 0164
In the Allahabad High Court

Kashi Nath Mishra

APPELLANT

Vs

Debt Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3

Citation : (2009) 85 AWC 1907 : (2009) 2 AWC 1907 : (2010) 7 RCR(Civil) 31 : (2009) 2 UPLBEC 1228

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Shri Umesh Narain Sharma, the learned senior counsel, assisted by Shri R. C. Singh, the learned Counsel appearing for the petitioner and Shri Siddharth, the learned Counsel for respondent No. 3.

2. The petitioner's industry was sanctioned a credit facility of Rs. 7.5 lacs in 1998 by Canara Bank with regard to its working capital and term loan against the hypothecation of the raw material. The petitioner stood as a guarantor, and an agreement to this effect was executed. The Company and its Partners/Directors availed the credit facility, but failed to regularise their Accounts, as a result of which, the Bank initiated recovery proceedings of Rs. 14.40 lacs by filing a claim application before the Debt Recovery Tribunal. It transpires that an ex parte order was passed allowing the claim of the Bank. When the petitioner came to know about the ex parte order, he filed a restoration application, which was rejected, against which, the petitioner preferred Writ Petition No. 10774 of 2002, which was eventually allowed vide judgment dated 10th August, 2004 and the ex parte order dated 12th of March, 2001 and the order dated 25th of February, 2002, passed on the restoration application, were quashed.

3. Upon remand, the petitioner filed his written statement denying that he was a guarantor or had executed any agreement and contended that his signatures on the deed of guarantee were forged. The Debt Recovery Tribunal, after

considering all aspects of the matter, rejected the contention of the petitioner and allowed the claim of the Bank. The Tribunal found that only bald allegations were made by the petitioner and that an affidavit of the Senior Manager clearly indicated that the petitioner had signed and executed the agreement in his presence and gave particulars of his immovable property in the guarantee agreement. The Tribunal, therefore, found that the petitioner was a guarantor and was liable to pay the amount as a guarantor. The petitioner, being aggrieved, filed an appeal before the Debt Recovery Appellate Tribunal and contended that an expert's opinion should have been taken on the question whether his signatures are genuine or forged. The petitioner also took a stand that the recovery from the guarantor could not be proceeded with till the property of the principal debtor was first sold. These two contentions did not find favour with the appellate Tribunal, and consequently, the appeal was rejected. The petitioner, being aggrieved, has now filed the present writ petition and the same two grounds have been raised in the present writ petition.

4. Having heard the learned Counsel for the parties and having perused the record and the documents annexed in the writ petition, the Court finds that only a bald allegation was made by the petitioner with regard to his signatures being forged. This allegation was not supported by any documentary proof. No opinion of the expert was filed nor these allegations were made on an affidavit. On the other hand, an affidavit of the Senior Manager of the Bank was filed, in which it was clearly stated that the petitioner had signed the guarantee agreement in his presence gave particulars of his immovable property, This affidavit has not been controverted by the petitioner.

5. In view of the aforesaid, this Court is of the opinion that an expert's opinion at the instance of the petitioner was only a device to delay the proceedings. Consequently, the finding on this aspect given by Debts Tribunal cannot be interfered with.

6. The learned Counsel for the petitioner submitted that the property of the principal borrower should be sold off first before proceeding with the property of the guarantor. In support of his submission, the petitioner relied upon a decision of the Supreme Court in Pawan Kumar Jain Vs. The Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Others, The learned Counsel further submitted, in the alternative, that the raw material of the company was pledged with the Bank, and therefore, such raw materials should be sold off first, and thereafter, the balance amount, if any, may be proceeded with the other assets of the company or from the original borrowers, and thereafter, from the petitioner.

7. It is a settled law that the liability of the guarantor is coextensive with the principal borrower and there is a catena of judgments holding that it would be open to the creditor to proceed with the principal borrower or against the guarantor since the liability is joint and coextensive. This Court finds that the judgment of the Supreme Court in Pawan Kumar Jain's case (supra) is not

applicable to the case of the petitioner. The Supreme Court interpreted the provision of Section 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972 and held that where a creditor makes an application u/s 3 of the said Act, then, in that case, recovery is first to be made from the assets of the principal borrower, and thereafter, it may proceed to recover from the other persons. In the present case, the recovery has not been initiated under this provision and, in fact, a claim application was filed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which permits the creditor to recover the amount from the principal borrower as well as from the guarantor. In view of the aforesaid, the stand taken by the petitioner does not find any merit and is rejected.

8. Insofar as the plea of selling the raw material is concerned, which was hypothecated, this Court finds that this plea has been raised for the first time in the writ petition, and no such plea was taken by the petitioner before the Tribunal or before the appellate Tribunal. Further, no such plea has been raised that the raw material is still existing. In view of the aforesaid, this Court is not inclined to entertain this plea at this stage. This Court does not find any merit in the writ petition and is dismissed.