

(1998) 11 CAL CK 0014

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 8527 (W) of 1997

Nagendra Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 CALLT 327

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Mr. L.C. Bihani and Ms. Suchandra Mukherjee, for the Appellant; Mr. Debabrata Das, for the Respondent

Judgement

S.B. Sinha, J.—The petitioner in this writ application has, inter alia, prayed for issuance of a writ of or in the nature of Mandamus directing the respondents to release the additional guarantee furnished by the petitioner in respect of the term loan sanctioned in favour of the respondent No. 6 and hand over the registered Sale deed with regard to Plot No. 229 appertaining to Khatlan No. 737, Tangra, J.L. No. 5, Touzl No. 1298/2833. P.S. Tiljala, measuring 8 cattahas 3 chittaks.

2. The fact that the petitioner stood as a guarantor of respondent No. 6 is not in dispute. It is also not in dispute that the petitioner furnished an additional security. According to the petitioner, from the letters dated 2.3.94 and 8.3.94 as contained in annexures "A" and "B" to the writ application respectively It would appear that the respondent Bank was clearly informed that the said additional guarantee was valid for a period of one year from date. The petitioner further contends that by a letter dated 7th December, 1994 as contained in annexure "C" to the writ application the respondent Bank intimated the petitioner that credit facilities are given to M/s. Fine Art Export to the tune of Rs. 684.15 lacs whereas according to the petitioner he stood guarantor only for a sum of Rs. 15 lakhs. The petitioner in terms of his letter dated 21.12.94 informed the respondent

Bank that as his liability was for one year only, his guarantee has come to an end on the expiry of the said period and the respondent Bank in terms of the letter dated 15.3.96 as contained in annexure "E" to the writ application was this requested to hand over the Title Deeds to the petitioner.

3. An affidavit-in-opposition has been filed on behalf of the respondent Bank wherein in has annexed two documents, namely, Deed of Guarantees executed by the petitioner on 11.3.94 and a letter dated 14.2.95 as contained in annexure "A" and "B" respectively thereto.

4. Mr. Bihani, learned counsel appearing on behalf of the petitioner relying on the decisions of the apex court in the case reported in AIR 1971 SC 1091 and in the case of *Al/s. Hyderabad Commercials v, Indian Bank* reported in 1991 (2) SCC 340 contends that in the instant case not only the respondent is bound by the doctrine of estoppel but also being nationalised Bank it must act honestly to serve its customers and in this view of the matter, this writ application is maintainable.

5. Mr. Das, learned counsel appearing on behalf of the respondent Bank on the other hand submits that from the documents appended to the affidavit-in-opposition it would be evident that the contentions raised in the writ application are not correct.

6. It is true that the affidavit-in-opposition has been filed but this court may record the submission of Mr. Bihani, learned counsel for the petitioner, to the effect that his client does not appear to have executed the documents annexed therewith. Keeping in view the fact that there exists a serious disputed question as to whether there existed another letter of guarantee dated 11.3.94 apart from the letter of guarantee dated 8.3.94 and further whether the petitioner extended his additional guarantee for a period of further three months apart from the initial period of 1 year being a serious disputed question of fact cannot be gone into by this court in this writ application.

7. In the case of *Century Spinning & Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council* reported in 1971 SC 1021 the court was concerned with the dismissal of a writ application in limine where the fact stated in the writ application although gave rise to a cause of action the petitioner had been asked to take recourse to alternative remedy. In that situation, the apex court observed;

"The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is Judicial; if the petition makes acclaim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary Jurisdiction, the court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise

any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reasons and on a consideration of the averments in the petition and the materials placed before the court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried."

8. In the instant case, the writ application has not been dismissed in limine.

9. So far as the case of Hyderabad Commercial (supra) is concerned, it appears that therein an admission in writing had been made. In view of clear admission in writing made by the respondent Bank, the apex court came to the conclusion that there was no question of determination of disputed fact. Therein a plea of oral instruction was raised by the Bank which was held by the apex court as afterthought and against the banking practice. In that situation, the apex court observed :

"The facts as noted earlier make it amply clear that the bank had transferred the disputed amount of Rs. 12.95 lacs from the appellant's account to the account of respondent--M/s Unimech Appliances. Here is, further, no dispute that the bank admitted that it had made the transfer in an unauthorised manner without obtaining any instruction or authority from the appellant and it accepted its liability to re-credit the amount to the appellant's account. On such admission the bank which is an instrumentality of the State was under a legal obligation to pay back the disputed amount to the appellant. Initially the bank accepted its mistake and admitted its liability and assured the appellant to credit the amount to its account but later on it resiled and raised a strange plea of oral authority simply with a view to defeat the appellant's claim. It is difficult to believe that a sum of Rs. 12.95 lacs could be transferred to the account of another person on oral instructions, without taking care to obtain authority or instruction in writing for the same. The plea of oral instruction, justifying transfer of such large amount is an afterthought which does not inspire any credence. The Bank's conduct is reprehensible. We are constrained to observe that such functioning of a nationalised bank is detrimental to public interest and If it follows the practice of transferring money of its customers to some other persons' amount on oral authority, people will lose faith in the credibility of bank".

10. Such is not the position here. In the instant case there existed a serious dispute as regard execution of a letter of guarantee by the petitioner. The respondent Bank has relied upon a document in writing. This court in exercise of its Jurisdiction under Article 226 of the Constitution of India cannot embark into a question as to whether the said documents bears the signature of the petitioner or the same are forged documents or not, such a question can be decided in the competent civil court upon adduction of oral evidence. The civil court may also take recourse to examination of hand-writing expert.

11. For the aforementioned, I am of the opinion that no public law element is

involved in this writ application. However keeping in view the fact that the writ application has been filed in the year 1997, in the event the petitioner files a suit in the appropriate civil court, it is expected that the same would be disposed of as early as possible and preferably within a period of six months from the date of filing of the suit.

12. It is stated by the learned counsel for the respondent Bank that the respondent has already filed suit. It is stated by Mr. Blhanl, learned counsel, that no notice of the said suit has yet been served upon the petitioner.

13. If the petitioner in the said suit has been impleaded as a party, the Tribunal should dispose of the said suit as expeditiously as possible wherein the petitioner shall be entitled to raise all contentions raised in this writ application.

14. The writ application is disposed of with the aforementioned observations.

Let a plain copy of the operative part of this order be given to the learned counsel for the parties on usual undertaking,

15. Application disposed of