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(2011) 01 PAT CK 0026

In the Patna High Court

Case No : CWJC No. 11619 of 2003

Nilambar Mahtha APPELLANT

Vs

Central Bank of India and Another RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:
Constitution of India, 1950 — Article 226
Legal Services Authorities Act, 1987 — Section 19, 19(5)

Citation : (2011) 59 BLJR 3395 : (2011) 3 PLJR 43

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Baidyanath Thakur and Shankar Kumar Thakur, for the Appellant; Bimlendu Mishra, for Bank, for the Respondent

Final Decision : Allowed

Judgement

Birendra Pd. Verma, J.—Heard the parties.

2. The present writ petition has been filed under Article 226 of the Constitution of India by the Petitioner, raising a grievance against the order dated 11.7.2003 (Annexure-2) passed in Title Suit No. 74 of 2002 (Nilambar Mahtha v. Central Bank of India and Ors.) by learned Sub-Judge-III, Darbhanga, whereby the aforesaid suit preferred by the Plaintiff-Petitioner for declaring the Award dated 21.1.2001/ 29.9.2001 by the Lok Adalat, Darbhanga, has been dismissed on the ground of want of jurisdiction in view of certain provisions under the Legal Services Authorities Act, 1987 (hereinafter referred to as "the Act").

3. Mr. Shankar Kumar Thakur, Learned Counsel appearing on behalf of the Petitioner, has submitted that one Raj Kumar Mahtha, brother of the writ Petitioner, had applied for cash credit facility before the Respondent-Central Bank of India, in the year 1989 and accordingly, Cash Credit Account No. 164 was opened on 9.3.1989 in the name of Raj Enterprises, Bela Chowk, Darbhanga. Mother of Raj Kumar Mahtha was the guarantor. Aforesaid ac-count was operated by aforesaid Raj Kumar Mahtha, brother of the Petitioner, and certain amount

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became due against him.

4. It is submitted by Learned Counsel that admittedly the Petitioner is neither loanee of the Respondent-Bank nor a guarantor for the loan amount sanctioned by the Respondent-Bank in favour of Raj Kumar Mahtha. Therefore, in his submission, no award could have been prepared by the Lok Adalat making the Petitioner liable to return the loan amount taken by his brother. Learned Counsel for the Petitioner has placed reliance on Section 19(5) of the Act, which is reproduced hereinbelow:

19(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

(1) Any case pending before; or

(2) Any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organized:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

5. According to Learned Counsel for the Petitioner, Lok Adalat would have no jurisdiction to determine or arrive at a compromise or settlement between the parties, if no case is pending before any court of law. He submits that the dispute between Raj Kumar Mahtha, the brother of the Petitioner and the Respondent-Bank could not have been brought before the Lok Adalat for a compromise/ settlement between the Petitioner and the Respondent-Bank. According to him, entire exercise by the Lok Adalat fastening the liability of the aforesaid loan amount against the Petitioner, was in contravention of the mandate of Section 19(5) of the Act and was a nullity in the eye of Saw. Therefore, it is submitted that learned Sub-Judge-3, Darbhanga was not justified in dismissing the suit mechanically without applying his judicial mind to the facts of the case.

6. Mr. Bimalendu Mishra, Learned Counsel appearing on behalf of Respondent Nos. 1 and 2, has tried to support the impugned order and, in his submission, the Petitioner cannot be permitted to challenge the validity and legality of a decree passed by the Lok Adalat, merely on technical ground. He submits that admittedly, Raj Kumar Mahtha, brother of the Petitioner, was a loanee and his mother was the guarantor. When the loan amount was not returned by aforesaid Raj Kumar Mahtha, then the Petitioner intervened in the matter and he gave an undertaking to return the entire loan amount. He also submits that though as per calculation of the Bank, loan amount became much higher, but due to intervention of the Petitioner some sort of agreement was arrived at and it was reduced substantially and, therefore, the Petitioner was obliged to return the entire agreed loan amount. How-ever, he has candidly admitted that no legal proceeding was pending before any court of law for realization of the aforesaid loan amount standing against Raj Kumar Mahtha, the brother of the Petitioner. He also admitted that award has not been prepared against the brother of the

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Petitioner, rather it has been prepared against the Petitioner himself, who was not a loanee of the Respondent-Bank. He submits that if the orders impugned are held to be not sustainable in the eye of law, then in that case Respondent-Bank may be given liberty to realize the loan amount from the original loanee, Raj Kumar Mahtha, brother of the Petitioner.

7. After having heard the parties and perusal of the material on record, this Court finds that award dated 21.1.2001/ 29.9.2001 prepared by Lok Adalat making the Petitioner liable to pay back the loan amount taken by his brother, Raj Kumar Mahtha was contrary to the mandate of Section 19(5) of the Act and, therefore, it was fit to be declared a nullity in the eye of law. Admittedly, the Petitioner is not a loanee of the Respondent-Bank, and no proceeding was pending before any court or any authority for recovery of the loan amount, and so the Lok Adalat could not have exercised its power u/s 19 of the Act against the Petitioner. Accordingly, the award is not sustainable in the eye of law. From the perusal of the impugned order dated 11.7.2003 (Annexure-2), it appears that learned Subordinate Judge has not applied his judicial mind to the facts and the legal provision involved in the present case. Consequently, by the impugned order dated 11.7.2003 he had dismissed the Title Suit No. 73 of 2002 in a mechanical manner.

8. For the reason recorded above, the impugned order dated 11.7.2003 passed in Title Suit No. 74 of 2002 by learned Subordinate Judge-3, Darbhanga is set aside and the matter is remitted to the learned court below for proceeding in the matter afresh in accordance with the provision of law.

9. Before parting with this order, it is relevant to mention here that original loanee Raj Kumar Mahtha is not a party in the present proceeding. He appears to be not a party in the proceeding before the Lok Adalat. It is not disputed that the loan amount was taken by aforesaid Raj Kumar Mahtha from the Respondent-Bank. There-fore, Respondent-Bank will be at liberty to take all legal recourse for realization of the entire loan amount from the aforesaid Raj Kumar Mahtha.

10. With the aforesaid observation/ direction, the present writ petition is allowed. No costs.

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