(2007) 04 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Oriental Bank of Commerce APPELLANT

Vs

Mahabir Singh and Others RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:
Reserve Bank of India Act, 1934 — Section 2

Citation : (2007) 146 PLR 593 : (2007) 3 RCR(Civil) 695

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—This order shall dispose of Civil Revision Nos. 2793, 3739, 3740, 3741 of 1989 and Civil Revision Nos. 1139, 1140, 1141 and 1789 of 1999, as identical questions of law and facts are involved in all these revision petitions. However, for facility of reference, the facts are taken from Civil Revision No. 2793 of 1989.

2. The petitioner tiled a suit for recovery of the amount advanced to the respondents for the purchase of tractor. Since the respondents failed to make the payment of the loan advanced i.e. Rs. 49,900/- along with interest accrued thereon, the plaintiff-petitioner filed a suit for recovery of Rs. 79,749.30p. The said suit was decreed on 7.12.1987

3. On 25.3.1989, the petitioner filed an application for execution of the decretal amount, amounting to Rs. 91060.73p. In the said execution, the respondents filed objections that the execution is not maintainable in terms of Section 17(b) of the Haryana Relief of Agricultural Indebtedness Act, 1989 (hereinafter referred to as the Act''). The said objection has been accepted by the learned Executing Court after returning a finding that the decretal amount is not a debt within the meaning of Section 2(g) of the Act and the exceptions carved out in Sub-clauses (vii) and (viii) are not applicable in the present case. It is the said order, which is subject matter of challenge in the present revision petition.

4. The Act defines debt to mean all liabilities owing to a creditor including a

Bank, any cash or kind, secured or unsecured payable under decree or order of a Civil Court subsisting on the date of the commencement of the Act, whether due or not but does not include any debt which represents the price of any goods or property purchased by a debtor or any advance sum of money given by, or the property to be sold later on. However, such Act was amended firstly by Haryana Act No. 8 of 1991, whereby the debt was defined to mean loan taken for agricultural occupation mentioned in Clause (a) and includes constructions of a room for tubewell, purchase of van or cart etc. for transport of produce. Later vide Haryana Act No. 15 of 1993, Sub Clause (xii) and (xiii) have been notified in the exceptions of Section 2(g) of the Act, Relevant extracts of Section 2(g) of the Act read as under:

Section 2(g) "debt" means loan taken for agricultural occupations mentioned in Clause (a) and includes construction of room for tubewell, purchase of van or cart etc. for transport of produce and all liabilities owing to a creditor including a bank, in cash or kind, secured or unsecured, payable under a decree or order of a civil court-or otherwise whether due or not due but it does not include

x x x x x x

(vii) any debt which represents the price of any goods or property purchased by a debtor;

(viii) any advance of money given to the debtor by a person as the price of goods or property to be sold later on:

x x x x xx x xx

(xii) any debt due to a Scheduled bank as defined in Clause (e) of Section 2 of the Reserved Bank of India Act, 1934 and included in the Second Scheduled thereof;

(xiii) any debt due to the Haryana State Co-operative Apex Bank Limited, Chandigarh, the Central Co-operative Banks, the Primary Co-operative Agricultural Development Banks, and the Primary Co-operative Credit and Service Societies; registered under the Haryana Co-operative Societies Act, 1984.

5. The learned Executing Court has held that the loan advanced by the petitioner for purchase of the tractor is not price of goods as the price of goods means paid by the vendee to the vendor but in the present case, the relationship of vendor and vendee is not made out. It was held that to claim exemption in terms of Clause (vii) of Section 2(g) of the Act, the petitioner was to prove that the petitioner is a person who sold the goods to the Judgment Debtor.

6. However, I am unable to agree with the line of reasoning adopted by the learned Executing Court. Clause (vii) of Section 2(g) of the Act as reproduced above, excludes "any debt which represents the price of any goods or property purchased by a debtor". Admittedly, the loan was advanced by the petitioner for purchase of the tractor. Though enough material is not on record to find out

whether the loan was disbursed to the Judgment Debtor or paid directly to the dealer, but the fact remains that the loan was advanced for a specific purpose i.e. for purchase of the tractor. Therefore, the amount claimed by the petitioner represents the price of the goods to be purchased by the debtor out of the loan advanced by the petitioner.

7. Clause (viii) makes the things even clear as any advance of money given to the debtor by a person as a price of goods or property to be sold later on is also not a debt as defined u/s 2(g) of the Act. Even if the money advanced by the Bank was disbursed to the respondents, it was an advance of money given to an agriculturist for the purpose of purchase of the tractor. Neither Clause (vii) nor Clause (viii) supports the view that for the purpose of exclusion of a transaction from the definition of a debt u/s 2(g) of the Act, there should be a relationship of vendor and vendee between the Banker and agriculturist is not made out. What is required to be examined is the purpose and the objective for which the loan was advanced to the respondents. Therefore, the order passed by the learned Executing Court suffers from patent illegality or irregularity and thus, cannot be sustained in law.

8. The matter can be examined from another angle also. Vide Haryana Act No. 15 of 1993, any debt due to a Scheduled bank as defined in Clause (vi) of Section 2 of the Reserve Bank of India Act, 1934, is not a debt as defined u/s 2(g) of the Act, therefore, the loan advanced by the petitioner to the respondent is not a debt as defined u/s 2(g) of the Act in respect of which the execution before the Civil Court can be said to be not maintainable in terms of Section 17(b) of the Act.

9. This Court in Mangat Ram Vs. Oriental Bank of Commerce and another, , has considered the effect of amendment in the Act by Act No. 15 of 1993 and held that no vested or determined right of the borrower has been affected by virtue of the amendment in the Act, the order passed by the learned Executing Court cannot be sustained.

10. Consequently, the order passed by the learned Executing Court is set aside. The matter is remanded back to the learned Executing Court to proceed in accordance with law.

