

(2003) 08 MAD CK 0171
In the Madras High Court
Case No : Writ Petition No. 34329 of 2002

Palat Achuthan

APPELLANT

Vs

Management, Citibank N.A. and Another

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2

Citation : (2004) 2 BC 46 : (2003) 117 CompCas 716

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : R. Yashod Vardhan, for the Appellant; P. Raghunathan, for T.S. Gopalan and Co., for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner prays for the issue of a writ of prohibition prohibiting the second respondent/Debt Recovery Tribunal, Chennai-2, from proceeding with the adjudication of the claims made by the first respondent.

2. The petitioner was appointed as a management trainee in the year 1987. Subsequently he earned his promotion stage by stage and was promoted as a Vice-President on January 1, 1991. He was subsequently terminated from service with effect from March 31, 1998, and according to the petitioner the action of the respondents was illegal and hence he had filed an appeal u/s 41 of the Shops and Establishment Act. The Appellate Authority however, dismissed the appeal as not maintainable due to lack of jurisdiction arising out of absence of any cause of action within Chennai. Aggrieved by the same, the petitioner has filed a writ petition in W. P. No. 10655 of 2000, seeking to quash the same and the said writ petition is also disposed of along with this writ petition.

3. While so, the respondents had approached the Debt Recovery Tribunal, Chennai, in O. A. No. 337 of 2002 claiming a sum of Rs. 58,93,284,74 with

interest. The said amount is allegedly due from the petitioner towards various loans sanctioned in his favour while he was in service of the bank. The petitioner had received various amounts towards purchase of many household articles, car, apartment at Chennai and a property at Ernakulam District, Kerala State. According to the petitioner the said amounts were received only by way of availing of loan facilities extended to the employees of the bank and that the same was not towards any business activity or transaction of the bank with the customers of the bank. The amounts due to the bank cannot be termed as a loan or debt within the meaning of the provisions under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called "the Act"), so as to approach the Debt Recovery Tribunal. Hence, the Debt Recovery Tribunal has no jurisdiction to adjudicate on the said claims.

4. The respondent contends that they were involved in banking business with 1,550 employees in India. The bank provides very good pay and allowances for its employees. Various other claims were also made by the employees which were made available to the employees under the loan schemes. Such schemes are very attractive because they carry a concessional rate of interest repayable over a long duration than which are made available to the public. Such loans are subject to the condition that the borrower continues to be an employee of the respondents/bank. If the borrower ceased to be an employee, the bank is given the option to recall the loan or to continue the loan subject to such terms and conditions including higher interest. The bank also has personal loan schemes for its officers who are confirmed in service. The said scheme was discontinued now. Under the said scheme loans were granted for the purchase of furniture, home appliances, repair/modification of the house, purchase of car and two wheeler, marriage of the children of the employee, etc. The loan was repayable with interest at the rate of 4.12 per cent, per annum. The respondent/bank also extends various other facilities providing air-conditioned car to its employees. The maximum value of the car is linked with specific period of lease which an officer chooses. When once the officer chooses the lease, he should express his choice to the respondent/bank and the bank would request the leasing company to purchase the said car and lease it to the officer. The officer opting for such a scheme, will have to necessarily retain the car and pay the lease termination value when he ceases to be an employee.

5. The petitioner during his employment, had sought for loans and two housing loans aggregating to Rs. 30,00,000 were sanctioned. He made use of the proceeds to purchase two apartments at Chennai. He made use of the second housing loan and purchased certain land and building at Chowra village, Ernakulam, Kerala State. He agreed to repay the loan on his retirement. Till such time he was required to pay only monthly interest calculated at the rate of 2.06 per cent, per annum on the amount of loans. The bank was also authorised to deduct the interest from his monthly emoluments. The petitioner has also agreed that if the respondents did not opt to continue the loan, the petitioner is also liable to pay the entire loan with interest and if he fails to repay the loan he

should vacate the premises and deliver vacant possession of the property.

6. In the counter, the respondents have given further details of the various loans given to the petitioner. The petitioner did not pay the amounts as claimed by the bank after his services were terminated with effect from March 31, 1998. The failure on the part of the petitioner to do so was contrary to the specific agreement between the petitioner and the bank. As the petitioner failed and neglected to pay despite repeated requests, the respondent/bank had no other alternative except to initiate recovery proceedings to preserve and protect and enforce its security and realise the debts due to the bank. The bank also denies the contention of the petitioner that the bank cannot invoke the jurisdiction of the Debt Recovery Tribunal. The amounts due to the petitioner would satisfy the expression "debt" u/s 2(g) of the Act. The loans granted to the employees are not different from the loans granted to the other individuals/customers of the bank. Therefore, the Debt Recovery Tribunals have ample jurisdiction to decide whether the dues amounted to "debt" and including the issue of its own jurisdiction. Therefore, the petitioner was not entitled to seek for the issue of a writ of prohibition.

7. Learned counsel for the petitioner contends that the Debt Recovery Tribunal cannot have jurisdiction to claim the amounts due to the bank. The amounts due from the petitioner cannot be termed as a debt. It is not a liability arising under any commercial or business activity with the bank, but only service benefits which had accrued to the petitioner under the terms of employment. Any recovery thereon would arise only as against the salary of the employee before the civil court and not before the Debt Recovery Tribunal. The amounts lent to the petitioner are only part of the emoluments and allowances payable to the petitioner. Loans and advances are made available as per the banks beneficial welfare schemes.

8. Per contra, learned counsel for the first respondent/bank, refers to various provisions under the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 (hereinafter called "the Act"), and contends that the amounts lent to the petitioner are nothing more or less than the bank granting loans to its customers and it does not cease to be a business transaction with the bank. The fact that concessions are shown in the rate of interest or mode of recovery cannot convert it into a non-business transaction. The petitioner had in fact executed promissory notes for the discharge of the amounts due and hence recoverable under the Act and before the Tribunal. Learned counsel also relies on some of the rulings of the Supreme Court which will be dealt with later.

9. I have considered the submissions of both the sides. A perusal of the claims of the bank discloses that various loans have been received by the petitioner for the purchase of household materials like carpet, paintings, furniture, refrigerator, radio, camera, curtains and other appliances, an apartment located at Chennai, a property of an extent of 86 cents at Aluwa, Ernakulam, Kerala State and a car.

10. A perusal of the terms under which loans have been sanctioned in favour of the petitioner discloses that they are not much different from the terms and conditions on which loans are sanctioned to the customers of the bank. After sanction of a housing loan, disbursement is made subject only to approval by the superiors of the petitioner and subject to the bank's policy on documentation and the disbursement of the amount to the vendor. As a security, apart from the retiral benefits the borrower is directed to provide additional contribution to the provident fund and also to provide securities. Though in the declaration which is received from the employee at the time of granting loan, it is stated that the loan was being granted only in consideration of the applicant being an employee of the bank, the declaration itself positively states that in the event of his discharge, retirement or resignation, the bank shall have absolute and unfettered rights to offset the due amounts thereon. It is also seen that the defendant had executed a demand promissory note for a sum of Rs. 4,65,000 when he secured loan for purchasing the property at Ernakulam. The bank had issued demand drafts to the vendor for the purchase of the property at Chennai, and the petitioner had executed a promissory note for a sum of Rs. 7,00,000. In all these cases, special power of attorney was executed in favour of the senior branch officer and other usual documentation is also executed as in the case of other customers of the bank.

11. The nature of the transaction is thus a simple case of advance or grant of loan by the bank to any of their customer public. The fact that some concession is shown in the rate of interest or payment schedule to the employees, will not render the transaction a non-business transaction of the bank. The transaction is not different from other transactions with the general public who transact with the bank.

Therefore, I am unable to view the transaction as a simple grant by the employer to the employee which could be termed as due under the service condition of the employee. The bank's action to recover the amount from the petitioner is not a claim towards any excess payment of salary or allowances or such other amounts like provident fund, gratuity, bonus, incentive payment etc., which are referable to the service conditions of an employee. The amounts which are sought to be recovered is due towards the loans obtained from the bank by the petitioner. The expression "debt" is defined in section 2(g) of the Act is as follows ;

"2. (g) "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on and legally recoverable on the date of application."

12. The above expression has to be given a very wide meaning and amplitude as applicable to any transaction with a bank, financial institution, bearing in mind

the objects of the Act, viz., the need to recover dues to these institutions which deal with money and assets of the depositors and the customers of the bank. The money belonging to a bank or a financial institution is not to be compared with an asset of a company being the property and asset of the company and can dispose of the assets at its pleasure to its employees as loans and advances. Money at the disposal of these institutions belongs to the various depositors and it is only to protect their interest, the Act was enacted. The fact that the loan or advances are given by the bank to the employees cannot convert the nature of the loan transaction and place it beyond the scope of the Act. Such an interpretation would violate the objects of the Act. In fact, such undue concession shown by the banks and finance companies to their employees are highly questionable as they affect the interest of the depositors and also the corresponding heavier burden which is placed on the borrowing customers of the bank. Therefore, the attempt on the part of the employee/ petitioner to treat the loans and amounts received by him as not a "debt" due to the bank, cannot at all be permitted.

13. In *United Bank of India Vs. The Debts Recovery Tribunal and Others*, , the Supreme Court held that the expression "debt" has to be given a widest amplitude and objects of the Act have to be taken into consideration to interpret the provisions of the Act. In the proceedings before the Supreme Court the claim by the bank was towards damages arising out of a breach of contract with the bank.

14. In *State Bank of Bikaner and Jaipur Vs. M/s Ballabh Das and Co. and Others*, , the respondents under the export credit facility, had obtained advances from the bank against pre-shipment and post-shipment export of certain categories of goods. The foreign buyers defaulted in payment due to the bank. The bank filed two suits against the respondents and during the pendency of the suit, the Act came into force and suits were transferred to the Tribunal. The Supreme Court held that the expression "alleged as due" has to be taken note of and what was necessary to be considered was whether the bank had alleged in the suits that the amounts are due to the bank from the respondents and that the liability of the respondents had arisen in the course of their business activity. The Supreme Court held that prerequisite for the liability to be called a "debt" as contemplated under the Act was satisfied.

15. In *M/s. G.V. Films Limited, 4, Seshadri Road, Alwarpet, Chennai-600 018 Vs. Unit Trust of India, Chennai-600 001 and another*, the question arose as to whether the payment made by the Unit Trust of India, being a financial institution, to the defendants, of the dividend amounts payable to the second defendant could be recovered under the provisions of the Act. The Division Bench of this court held that the expression "debt" would mean any liability which is due from a person to a financial institution in the course of any business activity undertaken by the financial institution and held that the claim of the Unit Trust of India will be entertainable under the Act.

16. Therefore, having regard to the aforesaid reasons, the contention of the petitioner that the amounts due to the bank cannot be termed as a "debt", is not sustainable.

17. In the result, there are no grounds to entertain the above writ petition and the same is dismissed. No costs.