(2004) 04 GUJ CK 0100

In the Gujarat High Court

Case No : Special Civil Application No. 7493 of 1993

Pareshkumar Rameshchandra Thakkar APPELLANT

Vs

Vijay Commercial Cooperative Bank Limited RESPONDENT

Date of Decision : 07-04-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2004 Guj 271 : (2005) 4 BC 450 : (2005) 124 CompCas 311 : (2005) 1 GLR 310

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Yogesh S Lakhani, for the Appellant; D.M. Thakkar, for Respondent No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The petitioner herein has challenged the order of the Gujarat State Co-operative Tribunal, dated 19th April 1993 allowing the review preferred by the petitioner and also the judgment and order of the Tribunal dated 17th March 1992 at Annexure. B to the petition.

2. The short facts of the case are that, the father of the petitioner was proprietor of M/s. Anand Traders which had taken cash credit facilities from the respondent No.1 Bank. The petitioner as well as the mother of the petitioner, i.e. respondent No.2 herein stood as sureties.

2.1 Due to the default committed by the principal borrower in repayment of the said cash credit facilities, respondent No.1 Bank filed Arbitration Suit No.323 of 1984, which was instituted against the principal borrower as well as against the petitioner and respondent No.2 being sureties.

2.2 The contention raised by the petitioner in this petition is that during the pendency of the Arbitration Suit, the principal borrower had expired on 31st October 1990 and though this fact has been brought to the notice of the Court as well as to the plaintiff of the Suit, the plaintiff had failed to join the legal heirs of the deceased principal borrower as necessary party in the said Arbitration Suit and the Court passed the award in favour of the plaintiff Bank on 31st August 1991.

2.3 The petitioner has admitted that the sureties of the principal borrower are none other than the legal heirs and therefore, the legal heirs were already brought on record and they had the knowledge about the proceedings which were pending before the Board of Nominees. The only contention raised by the petitioner is that they were not joined as legal heirs of the principal borrower as required under Order 22 of CPC.

3. The petitioner has challenged the order of the Board of Nominees dated 30th August 1991 before the Tribunal, wherein the petitioner has not taken this contention. On the contrary, in paragraph 4 at page 16, the Tribunal has observed that, "on account of the death of Rameshchandra T. Thakkar, the proprietor of Anand Traders, the heirs of the deceased have been brought on record and they are the appellant, Paresh R. Thakkar (son) and respondent No.2, Kumud R. Thakkar (widow)". These observations of the Tribunal were deleted by the Tribunal in view of the review application preferred by the petitioner before the Tribunal, by order dated 19th April 1993. Therefore, this contention is raised by the petitioner for the first time, under Article 227 of the Constitution of India. The said contention is having no legal force inasmuch as the petitioner being the son, it is his pious duty to meet with the obligation of his father and apart from that, he was already a party to the proceedings before the Board of Nominees.

4. It may be noted that the review application was preferred by the petitioner himself and therefore, the petitioner could not have challenged the order of review and original order passed by the Tribunal dated 19th March 1992. The said order of Tribunal is challenged almost after one year and four months. This Court, while admitting the matter, has refused interim relief. However, in view of the facts stated hereinabove, the contention raised by the petitioner has no legal force inasmuch as he was party before the Board of Nominee as surety and as Hindu son, it is his pious duty to pay debts of his father and this contention was not raised before Board of Nominee nor before Tribunal, and therefore, the same is rejected.

5. In the result, this petition is dismissed. Rule is discharged. No order as to costs.

