

(2011) 09 GUJ CK 0122

In the Gujarat High Court

Case No : Special Civil Application No. 12186 of 2002

Pravankumar R Agrawal

APPELLANT

Vs

Suprabhat Sahakari Bank Ltd and 2

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 227

Citation : (2011) 09 GUJ CK 0122

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : PJ Kanabar for Petitioners 1, for the Appellant; Vibhuti Nanavati for Respondent(s) 1, Rule Served for Respondent(s) 2 - 3, for the Respondent

Judgement

Honourable Mr. Justice MD Shah

1. The Petitioner has filed this petition with a prayer to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned judgment and award dated 17.5.1999 passed by the learned Board of Nominees, Ahmedabad in Lavad Suit No. 2135 of 1992 and the judgment and order dated 5.9.2002 passed by the Gujarat State Co-operative Tribunal, Ahmedabad in Appeal No. 421 of 1999.

2. The facts giving rise to this petition are as under:

2.1 The Respondent No. 1 - Suprabhat Sahkari Bank Limited filed a Lavad Suit No. 2135 of 1992 before the Board of Nominees Court at Ahmedabad against the Petitioner and Respondents No. 2 and 3 and the guarantors for a recovery of Rs. 2,53,693=12ps. The Board of Nominees Court, Ahmedabad vide its judgment and award dated 17.5.1999 allowed the said suit and directed the Petitioner and Respondents No. 2 and 3 to pay the suit amount to the Respondent - Bank with interest and costs. The Board of Nominees Court, Ahmedabad, however, has not passed any order against the guarantors.

2.2 Being aggrieved and dissatisfied with the same, the Petitioner preferred an appeal before the Gujarat State Co-operative Tribunal at Ahmedabad (hereinafter referred to as "the Tribunal") being Appeal No. 421 of 1999 u/s 102 of the Gujarat Co-operative Societies Act, 1961. The Tribunal vide order dated 27.7.1999 has granted stay against the judgment and award of the Board of Nominees Court, however after hearing the parties the stay was not extended after 26.11.1999.

2.3 Thereafter the Petitioner preferred Special Civil Application No. 9575 of 1999 before this Court. This Court (Coram: A.M. Kapadia, J.) vide order dated 15.12.1999 allowed the said petition and stayed the order recorded below Exh.4 in Appeal No. 421 of 1999 qua the Petitioner only and on condition that the Petitioner shall deposit Rs. 30,000/- with the Respondent - Bank within a period of two weeks, failing which stay shall stand vacated. Thereafter the Petitioner had deposited Rs. 30,000/- with the Respondent Bank on 24.12.1999. The tribunal, after hearing the parties, vide its judgment and order dated 5.9.2002 has dismissed the appeal of the Petitioner.

2.4 It is submitted that the Petitioner was never the partner of the Respondent No. 2 firm. The affairs of Lavad suit was being handled by respondent No. 3 herein and the Respondent No. 3 filed the written statement before the Board of Nominees Court in the original suit in which though the Petitioner was not partner of the Respondent No. 2 firm and it was wrongly mentioned that the Petitioner is a partner of the said firm. It is also submitted that the Petitioner thereafter realised about the fraud being played by Respondent No. 3 against the Petitioner in collusion with the Respondent - Bank, when he received notice of execution of the order passed by the Board of Nominees Court. It is, therefore, requested that the impugned judgment and award and order passed by the both the authorities are illegal, improper, perverse and the same are required to be quashed and set aside.

3. Heard learned advocate Mr. Kanabar for the Petitioner.

4. It is vehemently argued by learned advocate Mr. Kanabar that though the present Petitioner was not partner in the firm of Respondent No. 2 (original Defendant No. 1), the decree was passed by the Board of Nominees in Lavad Suit No. 2135 of 1992. It is submitted that the decree was obtained by fraud by Defendant No. 2 Shivkumar Agrawal, and this fact is not considered by the tribunal, and by that the tribunal has committed grave error in dismissing the appeal filed by the present petitioner. It is also vehemently argued by learned advocate Mr. Kanabar that the present Petitioner has submitted application under Order 41 Rule 27 of the CPC for production of the documents which clearly shows that the Petitioner was not partner in the said firm and therefore the tribunal has committed error in dismissing the appeal of the present Petitioner.

5. Learned advocate Mr. Thomas for learned advocate Mr. Vibhuti Nanavati for the Respondent No. 1 submitted that, before the Board of Nominees Court by

filing written statement, the present Petitioner has admitted the fact that he was partner of the said firm and the Board of Nominees Court has not committed any error in decreeing the suit. It is also submitted that the tribunal, after considering all the evidence on record, has rightly dismissed the appeal and so this petition deserves to be dismissed.

6. This Court has gone through the impugned judgment and award passed by the Board of Nominees Court as well as the judgment and order passed by the tribunal. It is not alleged by the present Petitioner that the decree is not obtained by fraud by Respondent No. 1 - original Plaintiff Suprabhat Sahkari Bank Ltd., but the fraud was committed by Respondent No. 3 - original Defendant No. 2 Shivkumar Agrawal. It is also pertinent to note that the written statement was signed by present petitioner and the same was placed on record through the learned advocate before the Board of Nominees Court, and in written statement it is admitted by present Petitioner that he is partner of the said firm, and so in light of this admission the question does not arise for the Plaintiff to produce any documents or to lead any evidence to prove that whether present Petitioner is partner of the said firm or not. It is also pertinent to note that before the Board of Nominees Court this point was never raised by present Petitioner though appeared through learned advocate that he was not partner of the said firm. So, in the opinion of this Court, the Board of Nominees Court has rightly passed the decree against the Defendant firm along with partners of the firm. This Court has also gone through the order passed passed by the tribunal in appeal. It is rightly held by the tribunal that, at the time of filing of the appeal, no such document is produced with the appeal memo. But after completion of the argument of the appeal and the matter was kept for judgment, the present Petitioner by Exh.17 has submitted an application under Order 41 Rule 27 of CPC for production of the documents. No satisfactory or plausible explanation has been submitted by the present Petitioner before the tribunal that why these documents was not produced at early stage or before the Board of Nominees Court. Except these bare words, no document is produced or nothing is come out on record to show that the decree was obtained by fraud by original Defendant No. 3 who was alleged to be the partner of the said firm. As soon as when it is come within the knowledge of the present Petitioner that fraud is committed by Defendant Shivkumar Agrawal then the Petitioner ought to have take appropriate legal steps under the provisions of law against him, but the Petitioner did not choose to take legal steps against the Defendant No. 3 Shivkumar Agrawal, and for first time it was submitted before the tribunal that the original Defendant No. 3 Shivkumar Agrawal has obtained his signature in written statement Exh.18 produced before the Board of Nominees Court by fraud. It is not the case of the Petitioner that he has not signed in the written statement but only allegation is made that the signature in the written statement was obtained by fraud. Except these bare words, as discussed above, nothing is produced by the present Petitioner to show that the Defendant No. 3 has committed fraud. As far as other contentions are concerned, both the courts below have decided in light of the evidence produced

by the parties and also discussed the citations relied upon by the parties and come to the conclusion that the Plaintiff is entitled to get decree as prayed for, and in the opinion of this Court, no error is committed by both the courts below, and so under Article 227 of the Constitution of India, the Petitioner is not entitled to get any relief and the petition deserves to be dismissed. In the opinion of this Court, no jurisdictional error has been committed by both the courts below and hence the petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, granted earlier shall stand vacated.

(M.D. SHAH, J.)

FURTHER ORDER

After pronouncement of the judgment, learned advocate Mr. Kanabar for the Petitioner sought to suspend this judgment and to continue the interim relief granted earlier by this Court. Looking to the facts and circumstances of the case, the judgment pronounced today is suspended for a period of four weeks and the interim relief granted earlier shall stand extended for a period of four weeks.