courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2010) 09 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 1508 of 2005

Punjab National Bank — APPELLANT

Vs

Ramesh Kanhayalal Bathija, Ulhas Narayan Deosthale, Dinshaw Rustom Mody and Shiv Prakash — RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Citation : (2011) 3 BC 227 : (2011) 1 BomCR 150

Hon'ble Judges : P.B. Majmudar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Ram R. Jaluka, instructed by Pankaj Vijayan and Narayana Shenoy, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—This petition is filed by a Nationalized Bank and challenged the order passed by the Debt Recovery Appellate Tribunal in Misc. Appeal No. 73 of 2004. Respondent No. 2 preferred an application on the grounds that he cannot be said to be a debtor and the proceedings against him is not maintainable before the Debt Recovery Tribunal (DRT) under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, hereinafter referred to as the said Act). The Tribunal rejected the said application against which, respondent No. 2 preferred Misc. Appeal before the Debt Recovery Appellate Tribunal (DRAT). By the impugned order, the appeal filed by respondent No. 2 has been allowed.

2. As per the averments, respondent Nos. 1 and 3 were having the overdraft facility and FCNR account and NRE account with the petitioner''s bank. The basic allegation against respondent No. 2 was that he in collusion with respondent Nos. 1 and 3 cleared the liability and transferred the same amount in account of respondent No. 4 and thereafter, respondent No. 1 closed the said overdraft facility. A suit was filed in the year 1998 to recover the amount against the respondents. The suit was transferred to DRT and was numbered as Original

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/punjab-national-bank-appellant-hash…

Application No. 1368 of 2000, in view of the Act. The respondent No. 2 in his written statement challenged the jurisdiction of the DRT, basically on the ground that the claim against him is not covered by the definition of "debt". It was contested. By an order dated 10-12-2003, the said application was rejected, which as recorded above, ultimately allowed by the DRAT.

3. The learned Counsel appearing for the petitioner''s bank has strongly relied on the definition 2(g) "debt" of the Act. He has also relied upon a decision of the Supreme Court in the case of United Bank of India v. Debts Recovery Tribunal and Ors. : AIR 1991 SC 1381 and contended that expression ''debt'' is wide enough to include such claim of undetermined sum.

4. We are not impressed by this argument for the simple reason that the definition so relied upon, itself contemplates the liability which is due and payable by the person to the bank or financial institution, which need to be due to course of business activity undertaken by them. It also means there should be a creditor and/or debtor relationship between the parties. The debt also contemplates crystallized amount due and payable to the bank.

5. All these allegations are absent in the present case. There is no dispute that there was no transaction whatsoever entered into by the bank with respondent No. 2. The allegations of fraud or misappropriation of fund, if any, and specifically with regard to the so-called facilities provided or approved by him illegally, that itself cannot a sufficient reason and/or a case to invoke the provisions of this Act, along with the basic borrowers and creditors i.e. respondent Nos. 1, 3 and 4, who were admittedly, provided with these bank facilities, for which they entered into transaction with the bank. The recovery against them falls within the provisions of the said Act. For that itself, in our view, cannot be a reason and/or empower the bank to recover such alleged debt by filing such proceedings by invoking the provisions of this Act against the bank employee i.e. respondent No. 2. We are not considering and/or dealing with the claim of the bank against respondent Nos. 1, 3 and 4. We are not dealing with and/or deciding the allegations made against respondent No. 2, who was an employee of the bank at the relevant time. The remedy is elsewhere.

6. The judgment of the Supreme Court so relied, also nowhere concerned with such situation, as recorded above. The fact and circumstances are totally different. That was not a case and recovery proceedings against the bank employee on the finding of misappropriation and/or collusion with other borrowers/guarantors, if any. That judgment in our view, nowhere assist the petitioner''s bank to continue with the proceedings against respondent No. 2. In view of the above, the reasoning given by the Appellate Tribunal are just and proper and needs no interference.

7. In the result, the petition fails, which is dismissed accordingly. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/punjab-national-bank-appellant-hash…