(2014) 11 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7854/2014

Radhey Shyam — APPELLANT

Vs

Punjab and Sind Bank — RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 11 DEL CK 0042

Hon'ble Judges : V. Kameswar Rao, J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sanjay Jain and Ashok Jain, Advocate for the Appellant

Judgement

Sanjiv Khanna, J.—The challenge is to the order dated 20th August, 2014 passed by the Debt Recovery Appellate Tribunal (DRAT, for short) affirming the finding recorded by the Debt Recovery Tribunal (DRT, for short) in OA No. 15/2005 and SA No. 40/2008 vide order dated 22nd April, 2013.

2. Punjab and Sind Bank had initiated recovery proceedings in OA No. 15/2005 before the DRT against M/s. Leather Makers, sole proprietorship of one Arvind Kumar, Seema wife of Arvind Kumar as a guarantor and the petitioner herein-Radhey Shyam. Radhey Shyam, it was asserted had created an equitable mortgage by deposit of title deed of property No. 681, Pocket-II, Paschim Puri, New Delhi for the credit facilities granted to Arvind Kumar/M/s. Leather Makers. The said mortgage was confirmed by letter dated 2nd February, 2002. The total amount due and payable as claimed by the bank in the original application was Rs.25,45,042/-.

3. Arvind Kumar and Seema did not appear and contest the recovery proceedings, but the petitioner herein contested and claimed that he had not deposited the title deeds creating an equitable mortgage. He denied his signatures on the letter dated 2nd February, 2002.

4. The defence set up by the petitioner in the written statement was that he had

taken a loan in October 1998 from the Indian Overseas Bank, Janak Puri branch, New Delhi with the help of one of his relatives Rajpal, who also knew the said Arvind Kumar. The petitioner had deposited the original title deed of the property with Indian Overseas Bank, Janak Puri branch. The petitioner relied upon a private criminal complaint filed by him in the year 2004 against Rajpal, Arvind Kumar, Seema and the Manager of Indian Overseas Bank and the Manager of Punjab and Sind Bank making similar allegations. The Manager of the two banks, were not identified by name and other details. In the complaint proceedings, pre-summoning evidence was recorded and summons were issued by the Metropolitan Magistrate by order dated 12th February, 2008. The said order records that the complainant has levelled allegations regarding cheating, forgery, criminal breach of trust and criminal conspiracy and the Metropolitan Magistrate did not have any option but to accept the version of the complainant, i.e., the petitioner and his witnesses.

5. Learned counsel for the petitioner before us has submitted that the DRAT had erred in not referring to and relying upon the statement of witnesses recorded at the pre-summoning stage before the Metropolitan Magistrate. The DRAT has rejected and not relied the said statements on the ground that the evidence should have been led before the DRT. The aforesaid finding of the DRAT is correct and statement of witnesses recorded in another and different proceedings could not have been read and taken on record in the proceedings before the DRT. More so, as at pre-summoning stage, there is no right of cross-examination. These statements could have been confronted to the deponents, when their statements were being recorded, or used in the extraordinary circumstances like death etc., subject to satisfaction of certain conditions.

6. Nevertheless, to examine the contention raised and rule out any possibility of injustice, we have gone through the said statements. During the course of pre-summoning evidence, the petitioner had deposed as CW-4 and evidence of one retired Colonel V.K. Sharma was recorded as CW-2. CW-2 had deposed accepting that he had a bank account in Indian Overseas Bank, Janak Puri branch since 1996. On 14th October, 1998, he had issued a cheque bearing No. 347629 in favour of Arvind Kumar for Rs.1 lac. He, however, did not remember whether the said cheque was a bearer cheque or an account payee cheque. He had given the cheque amount to Arvind Kumar, who was facing financial crises. He claimed that he had never issued any cheque in favour of the petitioner herein. However, when the original cheque was shown to CW-2, he asserted that the date of the cheque, the cheque amount in figures as well as in words were in his handwriting. He had also crossed the cheque himself. However, the name of Radhey Shyam written on the cheque was not in his handwriting. He had handed over the cheque to Arvind Kumar. We do not think the aforesaid statement recorded at the pre-summoning stage in any way support or helps the petitioner to show and establish that the case set up by him is correct.

7. The DRAT and the DRT have rightly noticed the fact that the petitioner did not

have the original title deed with him. He claimed that he had entrusted the document to Rajpal and Arvind Kumar in 1998. The reason the petitioner states was the loan of Rs.1 lac by way of cheque and another amount of Rs.1 lac given to him cash by Indian Overseas Bank. The said narrative is imaginary and ingenious. It is not the case of the petitioner that he had made any payment to the Indian Overseas Bank towards repayment of alleged loan taken by him in October, 1998 till the OA was filed in 2005 or till 2004 when criminal complaint was filed by him before the Metropolitan Magistrate. The statement of retired Colonel V.K. Sharma (CW-2) would show that he had made a payment of Rs.1 lac at the behest of Arvind Kumar by way of a cheque. It was his personal cheque. It would not show or prove and establish that Indian Overseas Bank had granted any loan to the petitioner herein. Y.K. Sharma (CW-3), Assistant Manager posted with Indian Overseas Bank, Janak Puri branch in the pre-summoning evidence had produced relevant documents relating to encashment of the cheque issued by CW-2. He had deposed that the said bank did not have any account in the name of Radhey Shyam or M/s. Leather Makers with them. Thus, grant of loan by the Indian Overseas Bank, was not proved and established.

8. Learned counsel for the petitioner has drawn our attention to the letter dated 2nd February, 2002 and that a plot of land was mortgaged. The property in question it is submitted is a flat and not a plot. The document/letter dated 2nd February, 2002 (Annexure P-12) to the present writ petition, affirming deposit of title deed, the property mortgaged stands described as plot No. 681 in Pocket-2, Paschim Puri, New Delhi. The photocopy of the title deed, i.e., conveyance deed executed by Delhi Development Authority in favour of the petitioner is dated 5th June, 1998 and records particulars of the property conveyed as 681, Pocket-II, Janta Flat, Paschim Puri, New Delhi. In these circumstances, we do not think the description of the flat as a plot in schedule A in the letter dated 2nd February, 2002 would make any difference. It is noticed that the document dated 2nd February, 2002 bears signature of the petitioner. The petitioner had disputed his signature but the said defence has not been accepted by the DRT and the DRAT. The petitioner has also placed on record other letters purportedly signed by him and available in the records of the Punjab and Sind Bank.

9. The finding of the DRAT on the said aspects are factual in nature. We do not think that there are sufficient and good grounds to hold that the said findings require interference in exercise of writ jurisdiction under Article 226 read with Article 227 of the Constitution of India.

10. The writ petition is thus dismissed.

11. Learned counsel for the petitioner states that they will like to avail benefit of amnesty scheme, which has been introduced by Punjab and Sind Bank. In case any application is filed, the same may be considered as per law/scheme. We say nothing in this regard.

