
(1996) 07 KAR CK 0007
In the Karnataka High Court
Case No : WP. 2023/91

Ram Estate

APPELLANT

Vs

Corporation Bank and Others

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Citation : (1996) ILR (Kar) 3541 : (1996) 7 KarLJ 574

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Chaitanya Hegde, for the Appellant; Udaya Holla, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—This Writ Petition prays for a mandamus directing the first-Respondent-Bank not to collect any amount from the petitioner in connection with the guarantee fee payable to the third Respondent-Corporation under the Loans Guarantee Scheme 1971 and to refund to the petitioner the amount collected on that account till date.

2. With a view to develop an abandoned Coffee Estate, the petitioner submitted a scheme to the 2nd Respondent, seeking financial assistance. The scheme was approved for a sum of Rs. 73,309 lakhs, credit facilities to which extent were granted by the 2nd Respondent-Bank subject to the terms and conditions set out in the sanction letter as also the agreement and Deed of Hypothecation, executed in that regard.

3. During April 1990, the first-Respondent appears to have debited a sum of Rs. 85,213-30 to the petitioner's account. On being questioned about the said entry the Bank by its letter dated 28th May 1990, informed the petitioner that the amount debited represented the levy of guarantee fee paid by the Bank to the third-Respondent Corporation under the Deposit Insurance and Credit Guarantee Corporation - Small Guarantee Scheme - 1971. The petitioner protested against

the said debit entry and disputed the first-Respondent's right to collect the guarantee fee. Representations made in that regard were however rejected by the Bank by its letter dated 26th of July 1990 stating that the guarantee scheme having been made applicable to the priority sector advances all such advances are required to be covered and that the fee paid in connection with the said coverage had to be collected from the borrowers concerned. Subsequent debit entries also were on that basis made by the first-Respondent-Bank. Aggrieved by the collection of the guarantee fee, the petitioner has come up with the present Writ Petition for a mandamus as already indicated earlier.

4. The petitioner's case appears to be that the Small Loans Guarantee Scheme under which recoveries are being made was not applicable to the loan transaction in question nor had the same been extended to such loans on the date the loan facility was extended to it. The petitioner contends that the coverage provided by the said scheme to a lending Bank was for the benefit of the Bank itself and any expenditure incurred on any such coverage could not be legitimately passed on to the Borrower in the absence of a specific contract to that effect. It is also urged that the sanction letter dated 1st of April, 1989 and the General Terms and Conditions enclosed therein specifically excluded the guarantee scheme DICGCI, (Small Loans) "Small Loans (SSI) Guarantee Scheme, 1981". It is stated that since the scheme underlying the Deposit Insurance/Credit Guarantee Corporation Act, 1961 makes it optional for the Credit Institutions to avail of the facility provided by the third-Respondent Corporation, any such coverage taken under any such optional Scheme could not burden the Borrower with an additional charge.

5. In the counter-affidavit filed on behalf of the Respondent-Bank the recovery of the Guarantee fee from the petitioner has been stoutly defended. It is urged that the petition seeks to enforce a contractual right and is therefore not maintainable. Alternatively, it is urged that in terms of the provisions of Clause 5 of the Agreement, executed between the parties, and the deed of Hypothecation, the petitioner was liable to pay up all such service, incidental and other charges as were on the date of the transaction payable or may have become payable in future as per the Rules of business of the Respondent-Bank. It is stated that even though on the date of the loan transaction between the parties, the same was not covered by the 1971 scheme, yet since loans advanced in Priority Sectors like the one availed of by the petitioner were brought under the coverage of the said scheme, the Bank had taken a decision and issued directives to all its branches to invoke the, guarantee with effect from 31st of March 1989. The scheme it is contended having been admittedly made applicable to the loan transaction between the petitioner and the first-Respondent-Bank, the Guarantee fee payable thereunder, was rightly recovered and is recoverable from the petitioner even in future. Reliance is also placed by the Respondent-Bank upon the directives issued by the Reserve Bank of India vide its Circular dated 24th of May 1989, where under the Guarantee Fee payable on priority sector loans, is subject to certain conditions, allowed to be passed on to the borrowers. It is

urged that since the conditions stipulated by the Reserve Bank of India for passing on the liability on account of the fee payable were satisfied, the same has been rightly passed on to the petitioner-borrower.

6. I have heard the Learned Counsel for the parties.

7. On behalf of the petitioner, Mr. Hegde, argued that the coverage under the Small Loans Guarantee Schemes 1971 was optional with the result that if the Respondent-Bank decided in its own interest to avail of the protection under the said Scheme it could not in the absence of a contract to the contrary pass on the liability so incurred to the borrower. He urged that the Reserve Bank of India had not issued any directives making it obligatory for the Respondent-Bank to necessarily take coverage under the Scheme aforesaid and that the decision taken by the Corporation Bank for of its own benefit could hardly be a good justification for burdening the petitioner with an additional liability. Two questions fall for consideration. These are:-

1) Has the Reserve Bank of India issued any directions making it obligatory for the Respondent-Bank to take coverage under the Small Loans Guarantee Scheme 1971? and

2) Is there any contractual obligation upon the petitioner to pay the guarantee fee even when the Bank voluntarily takes coverage under the said Scheme?

8. As regards the first question, the only document placed on record by the Respondent-Bank is a Circular dated 24th of May 1989. A reading of the said Circular does not however support the argument advanced on behalf of the Bank that coverage under the said scheme was made obligatory by the Reserve Bank of India for it. The Circular advises the Banks, thus:

"In terms of para 4.5 of the guidelines for advances to priority sectors (of our circular No. RPCD.BC.29/PS.22-84 dated 16th March 1984) it has been stipulated that the guarantee premium payable to DICGC on advances granted to (i) "weaker Sections" in the priority sector, (ii) housing loans upto Rs. 5,000/- granted to SC/ST and economically weaker sections and (iii) pure consumption loans should be borne by the banks themselves and should not be recovered from the borrowers: in the case of other borrowers the guarantee premium was allowed to be passed on to the borrowers subject to the proviso that the guarantee premium together with the interest rate charged should not exceed the ceiling rate of interest which at that time was prescribed at 18 per cent per annum.

As you are aware, the ceiling rate on Bank credit has been discontinued with effect from 8th October 1988 and in its place a minimum rate of 16 percent per annum has been prescribed. The guarantee fee payable to DICGC has been enhanced with effect from 1 April 1989. In this context, we have received enquiries from Banks regarding the charging of guarantee fees. We have considered the matter and advise that Banks should issue the procedure

indicated below:

- (i) Banks will continue to bear the guarantee fees in respect of advances to weaker section, pure consumption loans etc., as hitherto;
- (ii) In the case of advances where the Bank charge interest of 16 per cent or more, the Bank will have to absorb the guarantee fees;
- (iii) In all other cases, the banks should consult that the lending rate as stipulated together with the guarantee fee, irrespectively of whether it is levied separately or not, does not exceed 15 per cent.

We shall be glad if you will please issue instruction accordingly to all your branches and controlling offices."

9. In so far as the controversy involved in this Writ Petition is concerned, para 3 of the instructions extracted above alone has any relevance. As per the said instructions, the Guarantee Fee may be passed on by the Bank to the borrower subject only to the condition that the said fee whether or not the same is levied separately does not exceed 16%. The Circular however does not make it obligatory for the Banks to pass on the Guarantee Fee to the borrowers as claimed by the bank. All that it says is that in case the fee is passed on, it shall ensure that the lending rate together with the amount of fee does not exceeds 16%. It is one thing to subject the recovery of guarantee fee to a limitation as to the rate upto which the recovery can be made but an entirely different thing to say that the passing on of the said liability has been made obligatory by the Reserve Bank of India. In the circumstances I find it difficult to hold on the basis of the above circular that the first-Respondent Bank was under an obligation to pass on the Guarantee Fee to its Borrower including the petitioner herein. My answer to the first question is therefore in the negative.

10. Coming then to the second question the Bank places reliance upon Clause-5 of the agreement executed between the parties which clause is verbatim reproduced in the Hypothecation deed also. The clause reads thus:-

"The borrower/s agrees/agree that all the rules of business of the bank that are now in force, or here after come into force shall in all respect be completely binding on the borrower/s. The borrowers agree to pay service charges, incidental charges and such other charges that, the bank may charge to its borrowers."

11. A bare reading of the clause shows that the same is very widely worded. It obliges the borrower to abide by all Rules of the business of the Bank that were in force on the date of the loan transaction or may come into force at any later date. The clause further obliges the Borrower to pay all charges including service, incidental and such other charges as may become payable or chargeable by the Bank from its Borrower. On behalf of the Bank, it was argued and in my opinion rightly so that if the Bank as a Rule took a decision to cover all such loan transactions as in the instant case under the Small Loans Guarantee Scheme

1971 such a decision must be interpreted to be a Rule of the business of the Bank. It is not in dispute that a decision to cover the Loans advanced in the priority Sector under the afore-mentioned Scheme was taken and the Scheme made applicable with effect from March 1989. That the Respondent-Bank has on that basis paid to the 3rd Respondent-Corporation Guarantee fee under the scheme is also not denied. What was argued by Mr. Hegde however was that a decision like the one taken by the Bank could not be interpreted to be a "Rule of business of the Bank so as to create any obligation for the Borrower to pay up the additional charge that may become due thereunder. The expression "Rules of Business of the Bank" has not been defined. It occurs in the agreement that stipulates the terms and conditions governing the loan transactions between the parties. It has therefore to be interpreted in the context of the possibilities that be set such a transaction. One of the possibilities that undoubtedly existed was the Bank's decision to extend the coverage available under the 1971 Scheme. If as a Rule such priority sector loans advanced by the Bank were brought under the coverage of the scheme it would certainly amount to a "Rule of the Business of the Bank." If that were so any liability flowing on the basis of any such decision could certainly be passed on to the petitioner in the light of the provisions of Clause-5(supra).

12. Mr. Hegde then argued that Clause-5 was an unconscionable stipulation contained in the contract inasmuch as it created a liability for the Borrower even when it did not really benefit out of the coverage. I see no merit in this submission either The fact that the Bank has actually paid the Guarantee Fee to the third-Respondent-Corporation, not being disputed there is nothing unconscionable about its demanding the amount that it has spent to keep the repayment of the loan secured. Merely because the Bank had obtained securities from the Borrower would also not make the recovery of the additional charge unconscionable.

13. The argument that the sanction order had excluded the small loans S.S.I. Guarantee Scheme 1081, is also of no avail to the petitioner. It is not disputed that what is being recovered is a Guarantee Fee under Small Loans Guarantee Scheme 1971, and not the scheme that was excluded on the sanction order. As a matter of fact, on the date of the sanction of the loan the 1971, Scheme had not been made applicable. The question of excluding the transaction from the application of the said Scheme would not therefore have arisen. In the totality of the circumstances therefore I see no reason to interfere. This Writ Petition has no merit and is dismissed but in the circumstances of the case without any orders as to costs.