
(2001) 03 SC CK 0098
In the Supreme Court Of India
Case No : Civil Appeal No. 5746 of 19

Ramji Shukla

APPELLANT

Vs

M.D./Chairman Canara Bank

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Banking Regulation Act, 1949 — Section 5(o), 35B, 35B(b)
Companies Act, 1956 — Section 2(24)

Citation : (2002) 4 AWC 3040 Supp

Hon'ble Judges : G. B. Pattanaik, J; B. N. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.B. Pattanaik and B.N. Agrawal, JJ.—The plaintiff is the appellant against the judgment of the High Court in second appeal. The plaintiff had been appointed as an officer in a private Bank, Laxmi Commercial Bank. The services being terminated, he filed the suit. It transpires that the Laxmi Commercial Bank had been merged now with the Canara Bank of India. The Bank in the written statement took a positive stand that the order of termination of the plaintiff does not require the prior approval of the Reserve Bank of India in terms of Section 35B(b) of the Banking Regulation Act, inasmuch as the plaintiff was not a manager. The learned trial Judge, framed several Issues, and came to hold that the plaintiff has failed to establish that his order of appointment in the Bank was with the previous approval of the Reserve Bank of India. The trial Judge also further held that since the plaintiff was not a manager, the question of previous approval of an order of termination in accordance with Section 35B(b) would not arise. Having answered all other issues against the plaintiff, the plaintiff's suit was dismissed. Since we are not concerned with the other issues, it is not necessary for us to deal with the same. On an appeal being carried, the lower appellate court reversed the findings of the trial Judge, and came to hold that the plaintiff was a manager on the date of the termination, and therefore, the order of termination not having been passed with the previous approval of the Reserve

Bank of India, the order of termination is vitiated. The lower appellate court therefore allowed the plaintiffs appeal and decreed the suit. The Bank went in second appeal. The High Court in the second appeal, on examination of the different provisions of the Banking Regulation Act as well as the Companies Act, came to hold that it would be difficult to sustain the conclusion of the lower appellate court that the plaintiff had been appointed as a "manager" of the company on the date of the order of termination. Having come to the aforesaid conclusion, the High Court further held that since the plaintiff was not a manager, the question of any previous approval of the Reserve Bank of India would not arise. The High Court, therefore, allowed the second appeal and dismissed the plaintiffs suit.

2. Mr. Mehrotra appearing for the plaintiff-appellant seriously contends that the conclusion of the High Court that plaintiff was not a manager is wholly unsustainable in law. According to him, the expression manager has not been defined in the Banking Regulation Act, necessarily, therefore, one will have to look the provisions of the Companies Act. The definition of manager in the Companies Act is capable enough to Include the post which the plaintiff was holding on the date of termination, and therefore, the High Court erred in law in holding that the plaintiff was not a manager on the date of termination. Be it be stated that the positive finding of the trial Judge to the effect that at the time of appointment of the plaintiff, no previous approval of the Reserve Bank had been taken, had not been set aside by the lower appellate court. The question therefore, arises for consideration is whether the conclusion of the High Court that the plaintiff was not a manager on the date of the termination is in accordance with law or not. It is undoubtedly true that under the provisions of Section 35B of the Regulation Act, no appointment or reappointment or termination of appointment of a chairman, a managing director or whole time director, manager, or chief executive officer by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Reserve Bank. Section 5(o) of the said Banking Regulation provides that the words and expressions used in the Act but not defined but have been defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act. The expression manager has not been defined in the Banking Regulation Act, but in the Companies Act, it has been so defined. Sub-section (24) of Section 2 of the Companies Act is extracted below in extenso :

"Manager means an individual (not being the managing agent), who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not."

3. According to Mr. Mehrotra, even if the plaintiff would not come in the first part of the definition, but it would come within the second part of the definition, which

is an inclusive definition, and therefore, the High Court committed error in excluding the plaintiff from the definition of manager. We are unable to accept this contention. A definition of a word in the definition section may either be restrictive of its, ordinary meaning or it may be extensive of the same. When a word is defined to "mean" such and such, the definition is prima facie restrictive ; whereas where the word defined is declared to "include" such and such, the definition is prima facie extensive. Mr. Mehrotra's contention is that the definition should be extensive. But where the definition is in the form of "means and includes" it must be held to be exhaustive. So construed, and considering the second part of the definition clause, the expression "any other person occupying the position of a manager" would mean that such person satisfies the first part of definition, namely must be subject to the superintendence, control and direction of the Board of Directors and had the management of whole or substantially the whole of the affairs of the company.

4. In other words, such person must be subject to the superintendence, control and direction of the Board of Directors, and has the management of the whole, or substantially the whole of the affairs of a company. Obviously, the plaintiff has failed to establish this part of the definition clause so as to be treated as a manager of the company. In this context, it would be necessary to bear in mind that u/s 35B of the Banking Regulation Act, even the appointment of a manager has to be made with the previous approval of the Reserve Bank, and in the case in hand, the Bank itself has taken the positive stand in written statement that no previous approval of the Reserve Bank of India had been taken, and the plaintiff did not adduce any material to indicate any previous approval had been taken when he was appointed, and the trial Judge, therefore, while deciding and discussing issues 2, 3, 6 and 10 did come to a positive conclusion at that the appointment of the plaintiff had no previous approval of the Reserve Bank been taken. This is indicative of the fact that the post to which the plaintiff had been appointed was not a manager, but an officer of the Bank. In this view of the matter, we see no infirmity with the conclusion of the High Court requiring our interference.

5. This appeal is accordingly dismissed.