
(2001) 06 KAR CK 0060
In the Karnataka High Court
Case No : Writ Petition No. 19782 of 2001

Resina Balakrishnan

APPELLANT

Vs

State Bank of Travancore and Another

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Citation : (2002) 109 CompCas 15 : (2001) 3 KCCR 2101

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Udaya Holla, for the Appellant; K.R. Balakrishnan, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—This petition is directed against the order dated December 21, 2000, passed by the Debt Recovery Tribunal (for short the "Tribunal") on IA-II in case O.A. No. 1303 of 1995, Annexure D and the order dated April 23, 2001 passed by the Debt Recovery Appellate Tribunal in M.A. No. 9 of 2001, Annexure E.

2. The petitioner is the daughter of the late Smt. Shyamala Bhanu, who was a party in the suit in O.S. No. 4871 of 1992. The said suit was filed against Epoxy Resins Pvt. Ltd. and also Smt. Shyamala Bhanu in her personal capacity as a guarantor. The Bank produced certain documents which bore the signature of Smt. Shyamala Bhanu as a guarantor. During the pendency of the proceedings, Smt. Shyamala Bhanu passed away. An application was filed by the Bank to bring the petitioner on the record as legal representative of Smt. Shyamala Bhanu. After coming on record, she filed an application seeking for an order to refer the original document stated to have been signed by Smt. Shyamala Bhanu to a handwriting expert for verification with the originals of the admitted signature found in other documents. According to her a forgery has been played in the case on hand. The matter was contested. The Tribunal rejected the said application by its order dated December 21, 2000, Annexure D. An appeal was

filed against the said order which also came to be dismissed. It is these two orders that are challenged before me by the petitioner.

3 The respondent has entered appearance. The matter is taken up for final disposal.

4. Counsel for the petitioner invites my attention to the facts and grounds raised in the petition. In addition, the petitioner's Counsel states that the present set of facts require my interference in this petition.

5. Per contra, learned Counsel for the respondent supports the impugned order. He also refers to a judgment of the Supreme Court in *Murarilal v. State of M.P.* AIR 1980 SC 531.

6. Admittedly, a suit came to be filed not only against the company but also against the guarantor in her personal capacity with regard to the recovery of the loan amount by the Bank. The guarantor has died and her legal representative has come on record. She has filed an application seeking for an order to refer the original documents to a handwriting expert for verification of the signature in IA-II. She has stated that the documents in Sl. Nos. 1-9 are not signed and have been forged. The Tribunal has dismissed the same by holding that the second defendant has accepted the documents and, therefore, no purpose will be served by referring the documents to the handwriting expert. According to the Tribunal, the managing director and other directors have admitted the execution of the documents and hence there is no necessity to refer the documents to an expert. The appellate Judge also has accepted the same reasoning in the order dated April 23, 2001. After applying my mind to the material facts, I find that both the orders require my interference. Admittedly, the present suit has been filed not only against the company but also against the guarantor Smt. Shyamala Bhanu. When the guarantor's rights are involved in a proceeding, the request to refer at the instance of a legal representative cannot be rejected on the sole ground that the managing director has accepted the execution of the documents. The acceptance of the managing director cannot be an acceptance by the guarantor in her individual capacity. Therefore, the reasoning of the Tribunal that the documents have been signed by the managing director as well as defendant No. 2 cannot be accepted. The managing director signs in his capacity for the company and defendant No. 4, namely, the late Shyamala Bhanu has signed as a guarantor. Her guarantee affects the rights of the petitioner. Therefore, the petitioner, rightly in my view, sought for a direction to refer the documents to an expert, the same cannot be rejected on the ground of acceptance by the managing director. When the very signature is disputed as forged, the Tribunal is not justified in my view in rejecting the request by holding that the documents have been signed by the managing director and defendant No. 4. When this matter was taken in appeal, the learned appellate Judge has also accepted the reasoning of the Tribunal that the managing director admitted the execution, and therefore, there is no need for any further reference. This finding also in my view, in the light of the liability on the part of the guarantor now likely to be

passed on to her legal representative, is unsustainable. The judgment of the Supreme Court in Ishwari Prasad Mishra Vs. Mohammad Isa, , cannot be made applicable now and that judgment is applicable only after receipt of the evidence of the handwriting expert. Looking from any angle, the matter requires my interference.

7. The judgment relied on by Counsel in Murarilal v. State of M.P. (supra), is also a judgment requiring consideration after evidence of the expert is obtained. Now, the parties are at the threshold and at this stage, these two judgments have no bearing on the facts of this case. One other reason noticed by the Tribunal is of delay on the part of the petitioner. Insofar as delay is concerned, I see that the records were received from the Civil Court by the Tribunal in the year 1996. Smt. Shyamala Bhanu has died during the pendency of the proceedings. It is in these circumstances, this application is filed. Delay can be compensated by awarding costs to the Bank.

8. In these circumstances, taking into consideration an overall view of the matter, I deem it proper to set aside both the impugned orders in this petition to meet the ends of justice. I direct the Tribunal to allow the application filed by the petitioner by imposing costs of Rs. 5,000/- on the petitioner with a further direction to the handwriting expert to submit her report within a time schedule to avoid delay in completing the proceedings.

9. In the result, this petition stands allowed in the above terms. Parties to bear their respective costs.