(2016) 01 DEL CK 0037

In the Delhi High Court

Case No : W.P.(C) 11879 of 2015

Sandeep Gupta — APPELLANT

Vs

Punjab National Bank & Ors. — RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 228 DLT 5

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Karan S. Thukral with Naresh Sharma and Rohit Yadav, Advocates, for the Appellant; Pranav Kumar Jha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J. - The petitioner, upon ceasing to be a partner of respondent no.2 partnership firm viz. M/s Allied Fibre Industries, seeks mandamus to the respondent no.1 Punjab National Bank to release the title deeds of the property of the petitioner and to discharge the petitioner from the guarantee furnished by the petitioner, (as the then partner of the respondent no.2) for repayment of the dues of the respondent no.2 to the respondent no.1 Bank.

2. It has been enquired from the counsel for the petitioner as to how, till the petitioner makes the respondents no.3and4 (new/continuing partners of the respondent no.2) furnish fresh guarantee for repayment of the dues of the respondent no.1 Bank, the respondent no.1 Bank can be directed to release the security and guarantee furnished by the petitioner.

3. The counsel for the petitioner refers to Section 32 of the Indian Partnership Act, 1932 but which also provides for discharge only by an agreement between the outgoing partner, the creditor of the firm and the new/continuing partners of the firm. There is admittedly no agreement.

4. The counsel for the petitioner however states that the agreement is implied from the respondent no.1 Bank continuing to deal with the respondents no.3and4 as partners of the respondent no.2 firm.

5. In this regard, it is the plea of the petitioner in the petition that the petitioner has already instituted a suit against the respondents no.3and4 claiming specific performance of the agreement contained in the deed of reconstitution of partnership to have the security furnished by the petitioner substituted.

6. The counsel for the petitioner on enquiry states that the respondent no.1 Bank is also a party to the said suit.

7. The said suit was admittedly instituted prior to the institution of this petition. The petition is not maintainable on this ground alone. The petitioner cannot maintain a petition under Article 226 of the Constitution of India for the relief for which the petitioner, prior to instituting the writ petition, has already availed of the relief under the civil law.

8. Supreme Court in Jai Singh v. Union of India, (1977)1 SCC 1 held that the appellant therein having filed a suit in which the same question as the subject matter in the writ petition was agitated could not be permitted to pursue two parallel remedies in respect of the same matter at the same time. Similarly in Bombay Metropolitan Region Development Authority, Bombay v. Gorak Patel Volkart Ltd., (1995) 1 SCC 642 finding that the writ petitioner had availed of the alternative statutory remedy it was held that the writ petition should not have been entertained. Yet again in S.J.S. Business Enterprises (P) Ltd v. State of Bihar, (2004) 7 SCC 166 it was held that if a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the court to entertain the writ petition. This rule was held to be based on public policy. Reference in this regard can also be made to K.S. Rashid and Son v. Income Tax Investigation Commission, AIR 1954 SC 207, Madura Coats Limited v. Union of India (UOI), 112 (2004) DLT 622, Lal Harsh Deo Narain Singh v. State of U.P., Major Jasbinder Singh Bala S/o Sri Bachan Singh Bala v. IInd Additional District Judge and D.D Shah and Brothers v. The Union of India (UOI).

9. Even otherwise, the respondent no.1 Bank which is the trustee of public monies cannot be left high and dry by granting the relief of releasing the security of the outgoing partners without the continuing/new partners substituting the said security. The petitioner prior to signing the deed of reconstitution of firm ought to have ensured that the security furnished by him is released, if that was the agreement with the respondents no.3and4.

10. The counsel for the petitioner has also drawn attention to George v. State Bank of Travancore, AIR 2002 Kerala 214 but which is also in relation to a suit and not in exercise of powers under Article 226 of the Constitution. It entails disputed questions of fact, whether the respondent no.1 Bank by conduct has so discharged the petitioner or not.

11. No ground is thus found for entertaining the petition.

12. Dismissed.

13. No costs.

