

(2001) 05 DEL CK 0096

In the Delhi High Court

Case No : Civil Writ Petition No. 3738 and CM. 5688 of 2000

Shri Rajiv Jain

APPELLANT

Vs

Citizen Cooperative Bank Ltd. and Others

RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 60, 61, 76
Negotiable Instruments Act, 1881 (NI) — Section 36, 37
Penal Code, 1860 (IPC) — Section 120

Citation : (2001) 59 DRJ 628

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. S.K. Mittal, for the Appellant; Mr. Sudhir Nandrajog and Mr. J.P. Gupta, Mr. A.K. Dutt, for the C.B.I., for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner in this writ petition assails order dated 6.7.2000 of the Financial Commissioner, dismissing the appeal against the arbitral award dated 29.7.1999. Petitioner challenges the impugned order on the following grounds:

(i) Petitioner Rajiv Jain was simply the authorised signatory and representative of M/s. Arihant Enterprises, the sole proprietor concern of Mr. Vijay Jain Petitioner, in the absence of any privity of contract with the respondent could not be fastened with any personal liability.

(ii) The proceedings under the Delhi Cooperative Societies act against the petitioner as a member, were not maintainable since the borrower was M/s. Arihant Enterprises through its sole proprietor Mr. Vijay Jain. M/s Arihant Enterprises was also not a member.

(iii) The claim petitioner under Sections 60-61 of the Delhi Cooperative Societies Act, was barred by limitation as even the legal notice was issued as far back as 24.3.1993.

(iv) The petition u/s 60 of the Act was for non-joinder and mis-joinder of necessary parties, as Mr. Vijay Jain, sole proprietor of M/s. Arihant Enterprises had not been impleaded while petitioner had been impleaded as authorised representative of M/s. Arihant Enterprises.

2. Learned counsel for the petitioner, Mr. S.K. Mittal, elaborated the above grounds and urged that petitioner was not a borrower from the bank. No liability could be fastened against him merely because he was the authorised signatory of M/s. Arihant Enterprises for operating the account with the respondent bank. He submitted that petitioner could not be made liable simply because he had introduced M/s. Arihant Enterprises for the purpose of opening of the account. The proceedings before the Arbitrator were vitiated on account of non-impleadment of Mr. Vijay Jain, sole proprietor of M/s. Arihant Enterprises as a necessary party even though the initial legal notice was served on him also. On the contrary the respondent bank chose to proceed against the petitioner and other employees/officials of the bank. There could be no liability fastened on the petitioner in the absence of M/s. Arihant Enterprises through its sole proprietor. Learned counsel also urged that the reference of the claims, u/s 60 of the Delhi Cooperative Societies Act, was bad since M/s. Arihant Enterprises were not a member and petitioner in his personal capacity had liability.

3. Mr. Sudhir Nandrajog, counsel for the respondent bank, submitted that the writ petition did not deserve to be entertained since petitioner was guilty of perpetrating a fraud on the respondent bank. It was submitted that M/s. Arihant Enterprises was merely a facade that had been set up by the petitioner. The so-called sole proprietor of M/s. Arihant Enterprises, Mr. Vijay Jain, was none other than an employee of the petitioner. Petitioner himself operated the account and managed M/s. Arihant Enterprises.

4. From a perusal of the impugned award, the pleadings and the documents placed on record., it is seen that petitioner had issued cheques drawn on Jammu and Kashmir Bank and Oriental Bank of Commerce, from the account of his other proprietary firms, M/s. Jain Steels and M/s. Shipra Steel in favor of M/s. Arihant Enterprises. The petitioner, it is claimed, in conspiracy with the Chief Executive Officer of the Bank, Mr. R.K. Goel, filled in pay-in-slip, representing the said cheques as demand drafts. As a result of the conspiracy to defraud the bank, the cheques were purchased by the respondent bank and the account of M/s Arihant Enterprises was credited after deducting the commission thereon. Petitioner, thereafter, as the authorised signatory of M/s. Arihant Enterprises, withdrew the said amounts totalling Rs. 8 lacs for his own benefit. The Arbitrator awarded a sum of Rs. 13,16,234/- inclusive of interest up to 30.8.1998 together with costs of Rs. 1,03,718/- and future interest at the rate of 18 per annum plus penal interest of 2%.

5. In this context, learned counsel for the petitioner attempted to urge that the transactions were a case of over-draft and loan for M/s. Arihant Enterprises. Hence, it was M/s. Arihant Enterprises only against whom the bank could

proceed. Counsel also claimed that accounts had been tampered with and there were errors and irregularities. These are findings of fact by the arbitrator, based on evidence, which cannot be assailed in these proceedings.

6. At this stage, it may be noticed that this Court, taking note of the pleas of the respondent bank of the fraud practiced on the Cooperative bank, vide order dated 17.7.2000, had issued notice to the Director, Central Bureau of Investigation to investigate the matter as public money of small depositors was involved. Such funds could not be allowed to be frittered away. The Court, Therefore, directed the CBI to probe the transaction between the petitioner and M/s. Arihant Enterprises. It may be noted that CBI has conducted its preliminary investigations and, as a result of the said preliminary investigations, a report has been submitted to the Court, which is on record. Pursuant to the investigation, a charge-sheet dated 30.12.2000, had been filed u/s 420/645/477/471/120-B, IPC against the petitioner, Shri Rajiv Jain, Shri R.K. Goel and others.

7. The respondent Bank has also produced on record the copies of pay-in-slip, where the said cheques have been represented to be pay-orders. It is the respondents bank's cases that the said cheques were purchased as a result of the conspiracy by the petitioner with other co-accused to cheat and defraud the bank. The record also shows that the account of M/s. Arihant Enterprises was duly credited while the cheques which had been drawn on the account of petitioner's own concerns were dishonoured. It is sufficient in these proceedings to note that, prima facie, as case of fraud has been made out against the petitioner and others, who are being prosecuted. It is not necessary to delay on merits on this aspect as the law will take its own course in the criminal proceedings.

8. Learned counsel for the respondent bank also pointed out that as a result of the collusion and conspiracy, for a considerable period of time, the amount of the dishonoured cheque had been kept in the suspense account. It was only during the audit that it was discovered that the dishonoured cheques related to the account of M/s. Arihant Enterprises and the account was so debited. This is sought to be explained as the reason for the delay in the institution of the proceedings u/s 60 of the Act.

9. The issuance of cheques by the petitioner in favor of and in the name of M/s. Arihant Enterprises and their presentation is not disputed. The Arbitrator in his award has found that the cheques had been purchased as against the petitioner's case of over-draft or of loan being sanctioned to M/s. Arihant Enterprises. The arbitrator gave the award against M/s. Arihant Enterprises through its authorised representative, Mr. Rajiv Jain, the petitioner herein.

10. There is no merit in the contention of the petitioner that proceedings could not have been initiated against him u/s 60 of the Delhi Cooperative Societies Act. Undoubtedly, petitioner was the drawer of the cheques that had been purchased by the respondent bank. The respondent bank being a holder in due course,

could proceed under Sections 36 and 37 of the Negotiable Instruments Act, against the petitioner who happened to be the drawer of the cheques. Petitioner is, undoubtedly, a member of the respondent bank. Hence, in these circumstances, the dispute would fall within the ambit of Section 60 of the Delhi Cooperative Societies Act.

11. There is yet another reason not to entertain the present writ petition. The award was made by the arbitrator on 29.7.1999. The appeal against the same before the Financial Commissioner was preferred on 31.5.2000/June 2000. The appeal, u/s 76 of the Act, is required to be preferred within a period of 60 days. The Financial Commissioner, Therefore, justifiably held that the appeal was barred by limitation. Admittedly, as per petitioner's own showing, he received the Award in January 2000, yet he did not choose to prefer an appeal till end May or June 2000. The Explanation given is that petitioner was under the bonafide impression that the Award passed was against M/s. Arihant Enterprises and not him. The petitioner had duly participated in the proceedings before the Arbitrator and was fully in the knowledge of the same and could not have nurtured such an impression.

12. In view of the foregoing discussion, the writ petition, apart from being devoid of merit, does not deserve to be entertained on the ground of fraudulent, conduct attributable to the petitioner. The writ petition is, accordingly, dismissed.