(2001) 09 DEL CK 0038

In the Delhi High Court

Case No : CW No. 1716 and CM 2622/99

Shri R.K. Goyal APPELLANT

Vs

The Financial Commissioner and others RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Citation : (2001) 09 DEL CK 0038

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. J.P. Gupta, for the Appellant; Mr. Sudhir Nandrajog, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.

(1) Rule.

With the consent of the parties, the writ petition is taken up for disposal.

The petitioner has preferred this writ petition aggrieved by the dismissal of his appeal by the Financial Commissioner, vide order dated January 28, 1999. The appeal had been preferred against an award dated 21.11.1998 made by Mohd. Zubair, the sole Arbitrator. The arbitrator by the said award had awarded a sum of Rs. 1,27,257.61 to respondent No. 2, The Citizen Cooperative Bank Ltd. against respondents Nos.3, 4 and the petitioner. The award also carried future interest at 18 per cent plus interest @ 2% per annum to be compounded quarterly from 1.7.1998 till realisation in full.

(2) The Financial Commissioner while dismissing the appeal noticed that the appeal had only been preferred in this case by the petitioner. The principal borrower M/s S.S. Enterprises, respondent No. 3 and Sh. J.N. Aggarwal had not preferred any appeal. The Financial Commissioner found that the overdrafts, which had been given to respondent No.3, were cleared and carried the

signatures of the petitioner. He found no ground to interfere with the Award.

(3) The relevant facts may be briefly noted at this stage. Respondent No.3 had been sanctioned a cash credit account and an overdraft facility in the current account. Cash Credit limit was Rs. 20,000/- while the overdraft limit in the current account was Rs. 1,36,000/-. The overdraft facility in the current account was secured by an FDR. The petitioner who happened to be Chief Executive Officer, is stated to have tendered his resignation on 29.12.1993, which was accepted on 4.2.1994.

(4) Learned counsel for the petitioner Mr. J.P. Gupta, while assailing the award and the order passed in appeal, submitted that the petitioner is and innocent victim. Petitioner though designated as Chief Executive Officer was a glorified clerk and was merely carrying out orders. In fact, he duly carried out the orders passed by J.N. Aggarwal, respondent No.4, who was the Director in charge and has also been held to be liable jointly and severally along with petitioner and principal borrower. Learned counsel further submitted that as on 16.2.1994, the debit balance in the cash credit account was Rs. 12,646.57 which was well within the overall cash credit limit of Rs. 20,000/-. Mr. Gupta submitted that there was no evidence that any action of the petitioner was actuated by considerations of wrongful gain or in collusion with the others. he submitted that no proceedings for cheating or fraud had been initiated.

Another grievance of the petitioner is that the respondent Bank had failed to adjust the amount of the FDR at the earliest. The FDR was adjusted belatedly. Had the FDR been adjusted immediately after the resignation of the petitioner, the petitioner, would not have been burdened with this additional liability for interest. Mr. Gupta also submitted that the respondent had failed to properly prove the amount due before the Arbitrator.

(5) After having given my careful consideration to the submissions made and having perused the pleadings and documents in the writ petition, I am of the view firstly, it is not open for the petitioner to seek reappraisal of findings of fact, as reached by the arbitrator in these proceedings. This is especially after the same have been affirmed in appeal. There is neither any violation of principles of natural justice nor there is any error apparent on the face of the record which has been brought to my attention. As regards the petitioner''s plea with regard to debit balance, in the cash credit account being only Rs. 12,646/57, as being within the sanctioned limit, learned counsel for the respondent Bank stated that to cut the controversy short, he would not execute the award with regard to the cash credit account outstanding from the petitioner.

(6) There is no merit in the contention of learned counsel for the petitioner that merely because proceedings under the Indian Penal Code have not been initiated, it would show that the petitioner''s involvement was not there. Admittedly, amounts sanctioned by the petitioner and the Director in charge Shri J.N. Aggarwal, were contrary to and in excess of those approved by the

resolutions of the Bank. The learned Arbitrator had also found that the transactions had been initially after approval by the petitioner. In these circumstances, I find no ground to interfere with the impugned award or the order in appeal except the concession as recorded by respondent No.2 of not executing the award to the extent of the credit outstandings against the petitioner. Ordered accordingly.

(7)The writ petition is dismissed.

