

(2004) 03 OHC CK 0035

In the Orissa High Court

Case No : Misc. Case No. 259 of 2003 (Arising out of R.F.A. No. 51 of 2003, Order Dated 2.3.2004)

Sri Biswambhar Acharya

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 02-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)
Contract Act, 1872 — Section 171

Citation : (2004) 4 BC 426 : (2004) 97 CLT 408 : (2004) 1 CTLJ 627

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : V. Prithviraj, S.R. Jena and S. Patnaik, for the Appellant; P.K. Singh, G.R. Nayak and M. Das, for Res. No. 1/O.P No. 1 and P. Chhinchani, for R. Nos. 2 and 3/ O.P. Nos. 2 and 3, for the Respondent

Judgement

1. This is an application for a direction to opposite party No. 1 (respondent No. 1 in R.F.A. No. 51 of 2003) to release the STDRs with and/or the interest due on the STDRs.

2. Heard Mr. V. Prithviraj, learned counsel for the appellant and Mr. Das appearing for the respondent-opposite party No. 1 and Mr. P. Chhinchani appearing for respondent Nos. 2 and 3-Opposite party Nos. 2 and 3.

3. Respondent No. 1 filed T.M.S. No. 5 of 2000 in the Court of the learned Civil Judge, Senior Division, Koraput against the appellant and respondent Nos. 2 and 3 for recovering a sum of Rs. 3,99,940/-. The case of the respondent No. 1 is that respondent No. 2 enjoyed cash credit limit and the appellant and respondent No. 3 stood guarantors for the same and since the dues in the cash credit account totalling to Rs. 3,99,940/- were not repaid, respondent No. 1 Bank was entitled to set off the proceeds of the following Special Term Deposits of the appellant.

Particulars of the Special Term Deposits

Initial Face Value & Date Present Face Value after renewal & Date Accrued Interest upto which date Total Amount

1. 781469 Dt. 12.05.94 For Rs. 70000/- 845335 Dt. 11.2.95 for Rs. 74106/- 11.8.1995 Rs. 77.107/-

2. 351154 Dt. 31.1.94 For Rs. 1,25,000/- 845336 Dt. 2.2.95 2.8.1995 Rs. 1,40,093/-

Rs. 2,17,200/-

4. The appellant took a plea in the said suit that the respondent No. 1 Bank could not set off the aforesaid maturity value of Rs. 2,17,200/- of the Special Term Deposits of the appellant. By the judgment and decree dated 31.1.2002, the learned Civil Judge, Senior Division, Koraput held that the set off of Rs. 2,17,200/- by the respondent No. 1 bank was not legally tenable and decreed the entire claim of the respondent No. 1 bank for a sum of Rs. 3,99,940/- inclusive of interest calculated upto 8.2.1994 as per agreed rate and also for pendente lite and future interest. By the said judgment and decree while declaring the appellant and respondent Nos. 2 and 3 as jointly and severally liable to pay the decretal dues to the respondent No. 1, the learned Civil Judge ordered that the decretal dues shall be paid to the respondent No. 1 bank within a period of two months from the date of decree and in the event of non-payment, the respondent No. 1 bank shall put the hypothecated and mortgaged property for sale towards realization of the decretal dues. The learned Civil Judge further ordered by the impugned judgment and decree that the respondent No. 1 bank shall first put the suit unit to sale and in the event the sale proceeds are found inadequate the respondent No. 1 bank shall put Schedule-A properties to sale and in the event the sale proceeds too are found insufficient the respondent No. 1 bank shall put the Schedule-B property to sale and in the event the sale proceeds of all such immovable properties are found to be insufficient to meet the respondent No. 1 bank's dues, the respondent No. 1 bank shall thereafter apply to the Court for personal decree against the appellant and respondent Nos. 2 and 3 for realizing the balance outstanding dues.

5. Mr. Prithviraj, learned counsel for the appellant-petitioner, submitted that since the learned Civil Judge has by the impugned judgment and decree disallowed the set off of the maturity value of the S.T.D.Rs. amounting to Rs. 2,17,200/-, the respondent No. 1 bank has to refund the said amount to the appellant-petitioner forthwith with interest.

6. Mr. Das, on the other hand, submitted that the bank has a general lien u/s 171 of the Contract Act over the Special Term Deposits of the appellant and the interest accrued thereon and, therefore, no such direction can be given by this Court to refund the maturity value of the Special Term Deposits amounting to Rs. 2,17,200/- with interest. He cited the decision of the Supreme Court in *Syndicate Bank Vs. Vijay Kumar and others*, for the proposition that the Bank has the liberty to adjust from the proceeds of the F.D.Rs. towards dues of the Bank if

there was any balance left after such adjustment. He further submitted that after the bank receives the notice of the appeal, respondent No. 1 bank will file a cross-objection.

7. As the position stands today by the impugned judgment and decree the learned Civil Judge, Senior Division, Koraput has disallowed the set off of Rs. 2,17,200/- by the respondent No. 1 bank and the said judgment and decree has not been stayed by any Court. Hence, the respondent No. 1 bank has to respect the said impugned judgment and decree and refund the said sum of Rs. 2,17,200/- to the appellant petitioner.

8. Moreover, sufficient security by way of hypothecation and mortgage has been furnished by the borrower respondent No. 2 to respondent No. 1 for the outstanding amount and the learned Civil Judge by the impugned judgment and decree has ordered that the respondent No. 1 bank shall put the hypothecated and mortgaged properties to sale for realization of the dues in the order mentioned in the impugned judgment and decree.

9. In the circumstances, interest of justice and equity require that the maturity value of the S.T.D.Rs. amounting to Rs. 2,17,200/- be refunded by the respondent No. 1 bank to the appellant petitioner and we accordingly direct the respondent No. 1 bank to pay the said amount of Rs. 2,17,200/- to the appellant-petitioner within one month from today.

10. Regarding interest on Rs. 2,17,200/-, no judgment and decree has yet been passed by any Court granting such interest in favour of the appellant-petitioner and therefore we cannot direct the respondent No. 1 bank to pay any interest on the said amount of Rs. 2,17,200/- to the appellant-petitioner.

11. The Misc. Case is accordingly disposed of. Urgent certified copy of the order be granted as per rules.