

(2007) 09 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No. 13341 of 2007

Sri B.P. Nagaraj Shetty

APPELLANT

Vs

The Manager, Urban Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Citation : (2007) 4 KCCR 343 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.B. Sadasivappa, for the Appellant; K.G. Sadashivaiah and G. Chandrashekaraiyah, AGA, for the Respondent

Judgement

N.K. Patil, J.—Petitioner, questioning the correctness of the impugned order dated 17th September 2004 passed by third respondent in Dispute No. 508/2002-03 vide Annexure A and the order dated 29th June 2007 passed in Appeal No. 1139/2004 on the file of the Karnataka Appellate Tribunal at Bangalore vide Annexure B, has presented the instant writ petition.

2. The grievance of petitioner in the instant writ petition is that, he had borrowed a sum of Rs. 20,000/-from the first respondent - Urban Co-operative Bank (hereinafter called "Bank") and that, he has already repaid the said principal amount of Rs. 20,000/-However, to the shock and surprise of the petitioner, he received the notice from third respondent in Dispute No. 508/2002-03 raised by first respondent - Bank before the third respondent After receipt of the said notice, petitioner has appeared personally before the third respondent and sought for copy of necessary documents relating to the dispute including the copy of the dispute filed by first respondent, to enable the petitioner to file the objections to the same. But, the said document has not been supplied and the third respondent has proceeded to record the statement of the representative of the first respondent - Bank and passed the impugned award on 17th September 2004, holding that, petitioner is liable to pay a sum of Rs. 02,53,843/- with 21% interest. Assailing the correctness of the impugned award passed by third

respondent dated 17th September 2004 in Dispute No. 508/2002-03 vide Annexure A, petitioner herein filed the appeal on the file of the Karnataka Appellate Tribunal (hereinafter referred to as Tribunal") in Appeal No. 1139/2004. The said matter had come up for consideration before the Tribunal on 29th June 2007 and the Tribunal, in turn, has dismissed the appeal, confirming the award passed by the Arbitrator - third respondent herein, holding that, the award passed by third respondent is based on the documentary and oral evidence and that, there is no justification for interference in the award passed by the third respondent. Therefore, the Tribunal held that, they do not find any merits in the appeal filed by petitioner, and accordingly, dismissed the same. Being aggrieved by the impugned award passed by third respondent vide Annexure A and the order passed by Tribunal vide Annexure B, petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.

3. I have heard learned Counsel appearing for Petitioner and learned Counsel appearing for respondents 1 to 3.

4. After careful perusal of the award passed by the third respondent as well as the order passed by the Tribunal and after going through the stand taken by the respondents in their objections including the documents produced along with the objections vide Annexures R1 -R7, it emerges that, the Arbitrator as well as the Tribunal have committed grave error and material irregularity in as much as both the authorities have proceeded to pass the impugned award and the order without conducting proper enquiry. It is the case of first respondent - Bank that, petitioner has filed the application for sanction of loan of a sum of Rs. 02 Lakhs and the said amount has been paid in two instalments, first they have paid a sum of Rs. 20,000/- and the remaining sum of Rs. 01,80,000/- on 23rd January 2005 and the petitioner in turn has executed necessary deeds and also filed the affidavit and thereafter, he has drawn a sum of Rs. 02 Lakhs by issuing cheque to Savings Bank A/c. No. 1669. In the light of these material documentary evidence produced by the first respondent - Bank before the Arbitrator, the Arbitrator has rightly passed the award, holding the petitioner liable for the sum mentioned in the award and no error or illegality as such has been committed by the said authority. However, it is significant to note from the order passed by the Arbitrator vide Annexure A that, petitioner has orally requested the said authority to supply the copy of the Dispute filed by first respondent - Bank including the other documents and sought for some reasonable time to enable him to go through the same and file his reply/objections. Thereafter, it is mentioned in the award that, the entire documents have been sent to the petitioner along with notice and in addition to that, another copy has been given to the petitioner at the time of enquiry and accordingly, rejected the request of petitioner and proceeded to pass the impugned award on the basis of the material made available by first respondent - Bank. However, there is no whisper as to the type of material produced by first respondent - Bank except stating that, the representative of the first respondent has submitted that, petitioner has borrowed a sum of Rs. 02 lakhs as on 23rd May 2001 and the interest accrued as

on 8th January 2003 is Rs. 53,753/-, notice fee of Rs. 100/-and totally it comes to Rs. 02,53,853/-(but wrongly mentioned as Rs. 2,53,843/- in the award). Placing the said statement made by the representative of first respondent - Bank on record, the third respondent has proceeded to pass the impugned award. From the same, it indicates that, the third respondent has not conducted proper enquiry and not afforded reasonable opportunity to the petitioner, resulting in gross violation of the principles of natural justice. If several documents were produced by the Bank authority before the third respondent, the minimum requirement for the Arbitrator before passing the impugned award was to have referred specifically as to the date of application filed by petitioner for availing the loan, documents executed by petitioner at the time of availing loan, the amount of loan rendered by Bank to the petitioner, the amount of loan, if any, repaid by petitioner etc. From a perusal of the impugned award, none of the aforesaid ingredients are coming forth from the same. Therefore, in view of non conduct of proper enquiry by the Arbitrator before passing the impugned award, the award passed by third respondent cannot be sustained and the same is liable to be set aside.

5. Further, it can be seen that, the appellate authority has also committed grave error and material irregularity in proceeding to pass the impugned order vide Annexure B, by accepting the reference made by the third respondent in his award, at paragraph 10 and observed that, the petitioner has not put forth any justification in support of the grounds urged by him and to counter the documents produced by Bank like pro-notes and the Account Statements and that, the petitioner has not denied the loan transaction of Rs. 02.00 lakhs and came to the conclusion that, the award passed by Arbitrator is based on documentary and oral evidence and there is no justification for interference in the award passed by Arbitrator, which is made without conducting proper enquiry. Therefore, in view of non conduct of proper enquiry and for not affording reasonable opportunity to petitioner to put forth his case resulting in total violation of the principles of natural justice, I am of the view that, the impugned order passed by the appellate authority also cannot be sustained. Hence, it is liable to be set aside and the matter requires reconsideration of the matter afresh and to take appropriate decision, after affording opportunity to petitioner.

6. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is disposed of as follows:

I] The writ petition filed by petitioner is allowed in part;

II] The impugned award passed by the third respondent dated 17th September 2004 passed in Dispute No. 508/2002-03 vide Annexure A and the order dated 29th June 2007 passed in Appeal No. 1139/2004 by the Karnataka Appellate Tribunal at Bangalore vide Annexure B are hereby set aside;

III] Matter stands remitted back to third respondent to reconsider the matter in accordance with law, after affording reasonable opportunity to petitioner and first

respondent and dispose of the same as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order;

IV] Petitioner herein and the first respondent - Bank are directed to submit their written submission along with enclosures to the third respondent within three weeks from the date of receipt of a copy of this order;

V] In case such written submission is filed by petitioner and/or by first respondent -Bank, the third respondent is directed to receive the same and pass appropriate order in accordance with law and to proceed further in compliance of the directions issued above.