

(2015) 02 KAR CK 0446

In the Karnataka High Court

Case No : Writ Petition No. 12877/2012 (GM-DRT)

Srinivasa Desai

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19, 2(g)

Citation : AIR 2015 Kar 65 : (2015) 2 AKR 497 : (2015) 3 BC 190 : (2015) ILR Kar 1029 : (2015) 2 KCCR 1643

Hon'ble Judges : K.L. Manjunath, J;S. Sujatha, J

Bench : Division Bench

Advocate : S.P. Kulkarni, for the Appellant; T.P. Muthanna, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the Debt Recovery Appellate Tribunal, Chennai dated 21.03.2012 passed in R.A. No. 30/2009 is called in question is this petition.

2. Heard Mr. S.P. Kulkarni, learned counsel for the petitioner and Mr. T.P. Muthanna, learned counsel for respondent No. 1.

3. The facts leading to this petition are as hereunder:

"The Canara Bank, Benson Town Branch of Bengaluru, filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, hereinafter referred to as the "Act"), for recovery of Rs. 22,28,260/- with interest accrued thereon at 16.25% p.a. to be compounded quarterly inclusive of 2% penal interest from the date of filing of the application till the date of realization of the entire claim amount and to issue a Debt Recovery Certificate against defendants 1 to 5. The appellant herein was defendant No. 4."

4. It is the specific case of the Canara Bank that the first defendant Mr. G.P. Venkatesh Murthy approached the Bank for grant of housing loan and made an application to the Bank. The defendant No. 3 - Mr. Y.N. Shenoy, Mr. Srinivasa Desai - the writ petitioner herein and defendant No. 5 - Mr. Gururaj processed the loan application. Accordingly, a loan of Rs. 17,50,000/- was sanctioned. The second defendant Mr. Prabhu Gurupur stood as a guarantor. As a collateral security, the first defendant mortgaged Apartment No. 7 constructed on property bearing No. 25/5, 7th Main, 11th Cross Road, Malleswaram, Bengaluru - 03, as an equitable mortgage by deposit of title deeds of the property in favour of the Bank. The loan was required to be repaid in 180 monthly installments at the rate of Rs. 20,880/- commencing from 11.04.2002.

5. The first defendant did not make any payment. Later on, it was learnt that the defendants 3 to 5 without following the procedure laid down for grant/application of housing loan, the loan was sanctioned against a non-existing property. The defendants 3 to 4 did not even inspect the property and did not report that such a property was not in existence and the original title deeds of the property were also not verified. Contending that the defendants 3 to 5 hand in glove with defendants 1 and 2 made the Bank to suffer a loss and that the defendants 3 and 5 are also liable to pay the amount payable by defendant No. 1 on account of their omission and commission, the suit was filed by the officials of the Bank.

6. The Debt Recovery Tribunal (for short, DRT), Bengaluru, in O.A. No. 177/2005 allowed the application filed by the Bank, only against defendants 1 and 2 and claim against the writ petition and others were dismissed on the ground that they cannot be considered as debtors within the meaning of Section 2(g) of the Act.

7. Aggrieved by the same, the Bank filed an appeal before the Debt Recovery Appellate Tribunal (for short, DRAT), Chennai in R.A. No. 30/2009. The DRAT came to the conclusion that the defendants 3 to 5 are also liable to be considered as debtors since the Bank sanctioned the loan to the first defendant based on the recommendation of the defendants 3 to 5, in respect of a non-existing building and that they have committed fraud and therefore, the Tribunal came to the conclusion that they are also required to be considered as debtors. Accordingly, the appeal filed by the Bank came to be allowed. Aggrieved by the order of the DRAT, the present petition is filed.

8. Mr. S.P. Kulkarni, learned counsel for the writ petitioner submits that the DRAT has committed an error in considering the writ petitioner as one of the debtor's of the Bank since he was only an employee processed the papers on the instructions of his superior Mr. Y.N. Shenoy, defendant No. 3 before the DRAT. According to him, defendant No. 3 Mr. Y.N. Shenoy was the sanctioning authority and on account of his negligence, the Bank had initiated disciplinary proceedings against all the officials and that the Bank has already dismissed the writ petitioner from service, which is questioned by him separately. He also submits that based on the criminal complaint lodged by the Bank, the petitioner has been

convicted and the appeal is pending before the Appellate Court against the Judgment of conviction. He further submits that the retirement benefits payable to the petitioner has also been with-held, therefore, the question of making him as an additional defendant in the recovery proceedings would not arise at all. To support his arguments, he has relied upon the judgment of Bank of India Vs. Vijay Ramniklal Kapadia and Others, AIR 1997 Guj 75 : (1997) 89 CompCas 534 : (1996) 3 GLR 481 and he submits that the aforesaid judgment has also been incidentally referred to by the Hon"ble Apex Court in the case of Eureka Forbes Limited Vs. Allahabad Bank and Others, (2010) 3 BC 1 : (2010) 3 CompLJ 342 : (2010) 5 JT 144 : (2010) 159 PLR 758 : (2010) 4 SCALE 625 : (2010) 6 SCC 193 : (2010) 1 UJ 2327 : (2010) AIRSCW 7159 : (2010) AIRSCW 3429 : (2010) 5 Supreme 39 : (2010) 6 Supreme 769 . Relying upon these two judgments, he submits that the Appellate Tribunal ought not have considered him as a debtor within the meaning of Section 2(g) of the Act.

9. Per contra, Mr. T.P. Muthanna, learned counsel for respondent No. 1 submits that the word "debt" has to be given the widest amplitude to mean any liability which is allegedly as due from any person by a Bank during the course of any business activity, undertaken by the Bank, either in cash or otherwise whether secured or unsecured, whether payable under a decree or under a mortgage and subsisting on, and legally recoverable on the date of the application. Relying upon the judgment of United Bank of India Vs. The Debts Recovery Tribunal and Others, AIR 1999 SC 1381 : (1999) 96 CompCas 602 : (1999) 2 CTC 58 : (1999) 2 JT 574 : (1999) 122 PLR 1 : (1999) 2 SCALE 485 : (1999) 4 SCC 69 : (1999) 2 SCR 496 : (1999) AIRSCW 1057 : (1999) 4 Supreme 1 , he contends that it was the primary duty of the defendants 3 to 5 to process the papers properly and based on the papers processed by defendants 3 to 5, third defendant being a sanctioning authority has sanctioned the loan and before processing the papers, the writ petitioner was required to inspect whether such a property is in existence or not? Whether the papers produced by the defendants 1 and 2 were genuine or not? Knowing fully well that the said property is not in existence, if the writ petitioner has processed the papers and based on the same, if the third defendant has sanctioned the loan, all the employees of the Bank who are involved in the scam are liable to be treated as debtors within the meaning of Section 2(g) of the Act as the amount disbursed by defendants 3 to 5 are legally recoverable by the Bank, from them on account of their omission and commission. Since all the defendants are directly involved in the fraud. Therefore, he requested the Court to dismiss the petition.

10. Having heard the learned counsel for the parties, the only point arises for our consideration is, "whether the petitioner can be considered as a debtor within the meaning of Section 2(g) of the Act, and when he is primarily responsible for processing of the loan papers and if a person has wrongly processed the papers in respect of non-existing property, whether the Bank can file an application for recovery of debt against its employee"s along with principal borrower?

11. In order to appreciate the rival contention, it would be proper for us to consider the word "debt" as defined under Section 2(g) of the Act, which reads as hereunder:

"debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application".

12. Admittedly, the first defendant had approached the Bank for sanctioning the housing loan. The papers have been processed by the writ petitioner and also the writ petitioner in the connected petition and later third defendant has sanctioned the loan. In the usual practice, if the writ petitioner in both the writ petitions had inspected the property and verified about the existence of such property and verified the title deeds and if they have acted bona fide and there is no negligence on their part in processing the papers and based on such bona fide acts, if the loan had been sanctioned in the usual course we would have certainly accepted the contention of Mr. Kulkarni that such employees of the Bank cannot be construed as debtors but if the Bank employees fraudulently and knowing fully well that they are processing the papers for sanctioning the loan in respect of a non-existing property and has no title, and are parties to the fraud with an intention to sanction the loan to favour the borrower and they are also beneficiaries directly or indirectly, then it has to be construed that such debts are legally recoverable debt from the employees of the Bank. In such circumstances, if the Bank has filed an application before the DRAT along with the borrower, this Court cannot find fault with the order of the DRAT because it is the writ petitioner's and the third defendant alone are responsible for causing loss to the Bank and since the fraud has been committed by defendants 3 to 5 on the Bank in disbursing the loan in favour of defendant No. 1 in respect of a non-existing property, such employees are also liable to be treated as debtors under the meaning of Section 2(g) of the Act. The writ petitioner has been dismissed from the service and on the same allegations, he has also been convicted by the Court; for criminal offence and these two aspects are not in dispute in this case. Therefore, we would like to refrain ourselves from discussing anything about the Judgment of conviction since the same may prejudice interest of the writ petitioner in the criminal appeal. It is no doubt true that the Gujarat High Court in the Bank of India v. Vijay Ramniklal Kapadia has taken a view that the misappropriation of amount by the bank employee cannot be construed as a debt and therefore, came to the conclusion that recovery of amount does not lie before the Tribunal under the Act. While coming to such a conclusion, with respect to the Gujarat High Court, the definition of Section 2(g) has not been fully interpreted.

13. The said judgment has also been referred to by the Hon"ble Supreme Court in Eureka Forbes Ltd., v. Allahabad Bank and others under a different context. Their Lordships have held that the judgment of Gujarat High Court was not applicable to the facts therein. In a similar circumstances, the Hon"ble Supreme Court in Union Bank of India v. Debts Recovery Tribunal and others has ruled that the entire averments made in the plaint has to be looked into while deciding whether the claim can be adjudicated upon by Tribunal constituted under the Act. It is held as under:

"15. In the case in hand, there cannot be any dispute that the expression "debt" has to be given the widest amplitude to mean any liability which is alleged as due from any person by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any Court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint have to be looked into and then find out whether notwithstanding the specially created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such tribunal is ousted. With the aforesaid principle in mind on examining the averments made in the plaint, we have no hesitation to come to the conclusion that the claim in question made by the plaintiff is essentially one for recovery of a debt due to it from the defendants and, therefore, it is the tribunal which has the exclusive jurisdiction to decide the dispute and not the ordinary Civil Court. In this view of the matter, the High Court was in error to hold that the dispute in question is not entertainable by the tribunal under Section 17 of the Act. We, accordingly set aside the impugned order of the Calcutta High Court and direct that the suit in question which stood transferred to the tribunal, constituted under the Act and was registered as Transferred Application No. 163 of 1996 be disposed of by the tribunal in accordance with law. These appeals are allowed but in the circumstances, without any order as to costs".

14. In the instant case, we have perused the pleadings of the Bank filed before the DRT. In the application, it is clearly stated by the Bank, the manner in which fraud has been committed by the Bank employees including the writ petitioner and how the papers have been processed to sanction a housing loan in respect of a non-existing property and without even verifying the title deeds and existence of the property. The Bank has also stated that the employees of the Bank by hand in glove with the original borrower/first defendant has played fraud on the Bank. In such circumstances, relying upon the decision of the Hon"ble Supreme Court in Union Bank of India case, we are of the view that the manner in which loan is extended, considering the background of each case we have to hold that such person need not be a direct borrower to bring such persons under the definition of debtor. In the result, we do not see any merits in this petition.

Accordingly, the writ petition is dismissed.

15. The appeal filed by the writ petitioner against the sentence and conviction passed by the Special Judge shall be disposed of on merits and in accordance with law without being influenced by any of the observations made in this order.