

(2014) 12 DEL CK 0016
In the Delhi High Court
Case No : LPA No. 763/2014

STL Global Ltd.

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 AD 733

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : T.K. Ganju, Sr. Advocate and Manish Kumar, Advocate for the Appellant; S.S. Lingwal, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 29th September, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.7354/2013 preferred by the appellant. We heard the senior counsel for the appellant at length on admission and reserved judgment.

2. The writ petition from which this appeal arises was filed to:

(i) Direct the respondents No.1 and 2 Oriental Bank of Commerce and United Bank of India to give to the appellant at the cost of the appellant the certified copy of the complete file in respect of the loan granted by the said Banks to the respondent No.3 RPS Infrastructure Ltd.

(ii) Direct the respondents No.1&2 Banks to ensure the full compliance of the terms and conditions of the sanction of the loan.

(iii) Appoint any Government / Bank approved valuer and / or any Local Commission to visit the land admeasuring 23504 sq. yds. belonging to the appellant and adjoining land ad-measuring 13219 sq. yds. belonging to M/s. Reckon Industries Ltd. (not a party to the writ petition or to the appeal) situated at 12/6, Milestone, Mathura Road, Faridabad with respect where to the appellant and the said M/s. Reckon Industries Ltd. had entered into a Collaboration

Agreement dated 22nd May, 2007 for the respondent No.3 to raise construction thereon of a commercial complex named as "RPS Oxy Park" and to report of the extent and valuation of the construction carried out thereon.

(iv) To direct the respondents No.1&2 Banks to secure payment of excess amount of the loan released to the respondent No.3 in violation of the terms and conditions of the sanction of the loan, by taking additional security from the respondent No.3.

(v) to save the land, rights and interest aforesaid of the appellant.

3. It is inter alia the case of the appellant / writ petitioner that:

(a) It had entered into the Collaboration Agreement aforesaid with the respondent No.3.

(b) As per the terms of the said Collaboration Agreement, the respondent No.3 was permitted to raise loan of upto Rs.100 crores on security of the land and to utilize the said loan for the sole purpose of construction on the said land of a commercial complex (project).

(c) On the basis of the aforesaid, the respondents No.1&2 Banks sanctioned a loan of Rs.100 crores for the purpose of construction by the respondent no.3 on the said land and the appellant deposited the original title deeds in their favour with respect to the said land in favour of the respondents No.1&2 Banks to secure the said loan.

(d) One of the terms of the sanction of the loan is that the Banks will disburse the amount required from time to time only when the respondent No.3 had already invested in the ratio of 100:176 on the project.

(e) Thus the respondents No. 1 and 2 Banks were required to ensure the worth of the construction carried out on the land before disbursement of the loan.

(f) The respondent No.3 used the loan for its other projects / purposes and the Banks disbursed loan much in excess of the amount spent by the respondent No.3 on the construction.

4. It appears that the learned Single Judge initially entertained the writ petition; however upon the Banks filing an affidavit to the effect that the amount of the loan disbursed was in terms of the sanction and not in excess, the learned Single Judge dismissed the writ petition observing that the statement of the Banks could not be readily doubted as it is expected that they would have evaluated the construction at site before making such a statement and that hence disputed questions of fact arise which could not be entertained in a writ petition.

5. We have at the outset only enquired from the senior counsel for the petitioner whether not the appellant, in the garb of this appeal and the writ petition from which this appeal arises, was seeking either to enforce the Collaboration Agreement with the respondent No.3 or whether not these proceedings are

intended to arm twist the respondent No.3.

6. The senior counsel for the appellant of course vehemently protested and contended; i) that the construction on site is only 15% of the total planned construction; ii) that the banks ought to have disbursed the entire loan of Rs.100 crores only after satisfying themselves that the respondent No.3 itself had already invested Rs.176 crores in the project and which the respondent No.3 has not invested; and, iii) that the officials of the Banks are in connivance with the respondent No.3.

7. The argument is purported to be matched by producing photographs of the site showing little construction and by contending that more than 80% of the construction planned is still left. It is further argued that the learned Single Judge erred in holding that disputed questions of fact arise. It is contended that there was / is no disputed question of fact inasmuch as loan already disbursed by the Banks is a matter of record, the construction carried out can be easily evaluated and if the same is not found to be in the ratio of 100:176, the appellant / writ petitioner would be entitled to the relief. It is yet further contended that the respondents No. 1 and 2 Banks have been lax in safeguarding their interest by disbursing loan without satisfying themselves of the amounts spent by the respondent No.3 till then in the project, feeling secure because of holding equitable mortgage of the land of the appellant is worth much more than Rs.100 crores. Reliance in this regard is placed on Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, where it was observed that what facts are in dispute and what are admitted could only be determined after an affidavit in reply was filed " instead the writ petition was dismissed in limine observing that disputed questions of facts arise. It is further argued that there is no absolute bar to entertain a petition under Article 226 of the Constitution of India even where disputed questions of fact are involved and it is only on a finding that the said disputed questions of fact cannot be appropriately tried in a writ petition, would the High Court be entitled to dismiss the writ petition on the said ground.

8. We have further enquired from the senior counsel for the petitioner whether not, the appellants by claiming the reliefs aforesaid are seeking to renege from their agreement, of standing as guarantor to the loan sanctioned and disbursed by the respondents No.1&2 Banks to the respondent No.3 and as to how the writ petition would lie. It was pointed out that the case of the appellants at best could be that the Banks having themselves violated the terms and conditions of sanction on which loan was granted and in consideration of which terms and conditions the appellant had agreed to guarantee the said loan, the appellant as guarantor stood discharged. It was yet further enquired as to how the question whether the respondent Banks were entitled to recovery of the loan amount from the appellant as guarantor or were required to seek their remedy against the respondent No.3 only could be adjudicated in the writ petition.

9. The senior counsel for the appellant continued to highlight the predicament in

which the appellant had been placed i.e. on the one hand construction on its land being held up and on the other hand it also having become liable to the respondents No.1&2 Banks, all due to the respondent No.3.

10. Though, if what is argued is correct, we have our sympathies with the appellant but the writ petition, if otherwise is not maintainable, would still not become maintainable on sympathetic grounds.

11. In our opinion, the learned Single Judge was correct in not entertaining writ petition. Any decision in the writ petition, even if we believe the agreements between the parties to be clearly stipulating what has been contended before us, would necessarily entail adjudication of the correctness of the action of the respondents No.1&2 Banks of disbursing the loan amount i.e. whether the Banks took the precautions which they were required to take before disbursing the loan amount and if not to what effect. It would also require valuation of the work of construction carried out, in accordance with the parameters prescribed therefor in the contracts. We fail to see as to how the same does not raise disputed questions of facts. Undoubtedly the counter affidavits have not been called as yet. However, in every case we do not have to await the counter affidavits to gauge whether disputed questions of facts arise. If we were to do that in a pedantic manner, the same would add considerable unnecessary load to the docket of this Court, to the prejudice of deserving cases. There has been a sea change in this regard since the era in which *Gunwant Kaur (supra)* was pronounced. Here, the battle lines have already been drawn between the appellant and respondent No.3; else there was no need for the appellant to approach this Court.

12. Though the Supreme Court in *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, has held that merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule and that in appropriate cases a writ petition against a State or an instrumentality of State arising out of contractual obligation is maintainable but we find the adjudication of disputed question of facts as arising in the present facts to be entailing issuance of a commission for local enquiry / measurement / valuation and examination and cross-examination of witnesses and all of which in our view is not feasible under Article 226 and is best left to be done in a fact finding fora. Also, the said disputes are not only contractual in nature but are not with the respondents No.1 & 2 Banks, even if to be called an instrumentality of State, only but are in the nature of tripartite disputes between appellant, respondents No.1&2 Banks and the respondent No.3. The same also, in our opinion are not to be entertained in writ jurisdiction.

13. The Supreme court, again in *Godavari Sugar Mills Ltd. Vs. The State of Maharashtra and Others*, , on a conspectus of case law on the subject, held that normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract and

that the aggrieved party will have to agitate the question in a Civil Court. Similarly, in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , it was held that interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition, being in realm of private law and that the fact that one of the parties to the agreement is a statutory or a public body will not of itself affect the principle to be applied. It was held that every act of a statutory body need not necessarily invoke exercise of a statutory power. It was further held in Godavari Sugar Mills Ltd that only where the lis has a public law character or involves a question arising out of public law functions on the part of the State or its authorities, is the access to justice by way of public law remedy allowed.

14. There is no public law character or element in the dispute of the petitioner with respondents No. 1 and 2 Banks. The actions of the respondents No. 1 and 2 Banks with which the appellant is aggrieved are not public functions. The dispute between the appellant and the respondents No.1&2 Banks if any and the dispute certainly between the appellant and the respondent No.3, are purely civil in character. It is not as if the respondents No.1&2 Banks are alleged to have acted in contravention of any guideline of the Reserve Bank of India with which they are bound. The disbursement / sanction of loan by the respondent Banks to the respondent No.3 and of which loan the appellant stood as guarantor was purely a private arrangement, not in discharge of a public duties / functions of the respondents No.1&2 Banks. The disputes arising therefrom thus cannot be adjudicated upon in a writ petition. As aforesaid, if at all the appellant is aggrieved from the disbursement by the respondents No.1&2 Banks of the loan amount to the respondent No.3 in excess of that provided under the terms of sanction and on the basis whereof the appellants stood guarantor, the only remedy of the appellant is to notify the respondents No.1&2 Banks that on its doing so, the appellant stands discharged from its liability as a guarantor.

15. We also fail to see as to what action the respondents No.1&2 Banks also can now take against the respondent No.3, even if they were to be of the opinion that the respondent No.3 has wrongly got disbursed loan amount in excess of its entitlement. As aforesaid, the entire loan amount is stated to have been already disbursed. The appellant wants us to issue a direction to the respondents No.1&2 Banks to seek security for the excess amount withdrawn by the respondent No.3 from the respondents No.1&2 Banks. We fail to see as to how in this jurisdiction such a direction also can be issued. The only remedy of the respondents No.1&2 Banks, even if what the appellants says is to be true, would be to recall the loan.

16. We are therefore of the view that the writ petition as well as this appeal is totally misconceived. Accordingly, the appeal is dismissed. However since the appellant claims to be already in the predicament aforesaid for reasons not attributable to it, we are refraining from burdening the appellant with costs of these proceedings.