(1992) 01 BOM CK 0028

In the Bombay High Court

Syndicate Bank		APPELLANT
	Vs	
Dashrath Narahari Narvekar Dashrath Narahari Narvekar Vs Syndicate Bank		RESPONDENT

Date of Decision : 10-01-1992

Acts Referred:
Motor Vehicles Act, 1939 — Section 62

Citation : (1993) 76 CompCas 139

Hon'ble Judges : M.L. Dudhat, J;E.S. Da Silva, J

Bench : Division Bench

Advocate : J.P. Mulgaonkar, for the Appellant; S.S. Kantak, for the Respondent

Judgement

M.L. Dudhat J.

1. Letters Patent Appeal No. 7 of 1989 and Letters Patent Appeal No. 25 of 1990 are arising out of the same proceedings and we are disposing of the same by a common judgment.

2. Letters Patent Appeal No. 7 of 1989 is filed by the present appellant against the judgment and decree passed by the single judge of this court (*), in First Civil Appeal No. 16 of 1987 whereby the single judge of this court set aside the judgment and decree dated October 30, 1986, passed by the Civil Judge, Senior Division, Mapusa. A few facts which are material for the disposal of both these Letters Patent Appeals are as under :

3. The appellant in this case is the original defendant-bank. The respondent/ original plaintiff filed a suit, being Suit No. 123 of 1986, before the Civil Judge, Senior Division, Mapusa. The plaintiff/present respondent contended that the defendant bank advanced a loan of Rs. 1,12,000 to the plaintiff by way of loan for purchase of a second hand Leyland bus in the year 1978. [* = See Dasharath Narahari Narvekar Vs. Syndicate Bank, .] Since there were few defaults, the defendant-bank filed a suit, being Special Civil Suit No. 179 of 1983 before the Civil Judge, Senior Division at Mapusa for recovery of the loan

advanced to the plaintiff. The said suit was ultimately decreed but the bank preferred a first appeal to the High Court feeling aggrieved by the order of the trial court as regards the interest. The said first appeal is pending before this High Court.

4. The plaintiff further contended that, till the year 1985, he was getting temporary permits from the Regional Transport Authorities. On October 31, 1985, the temporary permit granted to him had expired and, therefore, the plaintiff made an application for grant of a temporary permit for a further period. The said application for grant of permit was refused by the Regional Transport Authorities and it is contended on behalf of the plaintiff that the defendant-bank instructed the Regional Transport Authorities not to grant permit without obtaining a no-objection certificate from the defendant-bank. Therefore, on November 25, 1985, the plaintiff addressed a letter to the Regional Transport Authorities for issuance of a certified copy of the letter given by the defendant-bank to the Regional Transport Authorities. In the meantime, the Regional Transport Authorities issued the permit to the plaintiff to ply his bus from November 25, 1985, to January 31, 1986. As per the plaintiff''s contention, even at the time of issue of this temporary permit the Regional Transport Authorities directed the plaintiff to approach the defendant-bank for a copy of the letter issued by the defendant-bank to the Regional Transport Authorities. The plaintiff thereafter approached the manager of the defendant-bank for obtaining a copy of the letter addressed by the defendant-bank to the Regional Transport Authorities. The bank manager informed the plaintiff that the defendant-bank would withdraw the letter addressed to the Regional Transport Authorities provided the plaintiff agreed for decreeing the Special Civil Suit No. 179 of 1983 filed by the defendant-bank against the plaintiff.

5. Thereafter, the plaintiff applied for a fresh temporary permit after the expiry of the earlier temporary permit which expired on January 31, 1986. However, the Regional Transport Authorities refused to grant the temporary permit without obtaining the no-objection certificate from the defendant-bank. The plaintiff, therefore, approached the defendant-bank for the said no-objection certificate. However, the bank refused to give such a certificate unless the plaintiff agreed to the entire claim of the defendant in Special Civil Suit No. 179 of 1983. The plaintiff, therefore, gave notice to the defendant-bank through his advocate by letter dated February 15, 1986, calling upon the defendant-bank to withdraw the letter addressed by the bank to the Regional Transport Authorities. On failure of the defendant-bank to comply with the said notice, the plaintiff filed the suit, being Suit No. 123 of 1986 before the Civil Judge, Senior Division, Mapusa, on March 15, 1986. In the said suit, the plaintiff alleged that, because of wrongful intimation given by the defendant- bank, the Regional Transport Authorities refused to grant him the necessary temporary permit which he was otherwise entitled to and he has sustained losses of Rs. 21,760 till the date of the filing of the suit and further he is entitled for damages of Rs. 200 per day until the defendant-bank withdraws the wrongful intimation given by the bank to the

Regional Transport Authorities.

6. The trial court, by its judgment and order dated October 30, 1986, dismissed the said suit after allowing both the parties to lead evidence and after scanning the documentary as well as oral evidence. Against the aforesaid decision dated October 30, 1986, given by the Civil Judge, Senior Division, Mapusa, in Special Civil Suit No. 123 of 1986, the respondent preferred a first appeal, being First Appeal No. 16 of 1987. The said first appeal came up for final hearing before the single judge of this court and this court, by its decision dated February 24, 1989 (*), set aside the decision given by the trial court and allowed the said first appeal by directing the defendant-bank to pay an amount of Rs. 13,600 with interest calculated at the rate of 12 percent per annum from the date of filing of the suit till actual payment. As against the said decision given by the single judge of this court (*), dated February 24, 1989, the plaintiff filed a review application, being Review Application No. 6 of 1989. The single judge of this court, by his judgment and order dated September 19, 1989 (**), allowed the said review application and, in addition to the direction given to the defendant-bank to pay the amount of Rs. 13,600 with interest at the rate of 12 percent per annum, the defendant was further directed to pay an amount calculated at the rate of Rs.200 per day from the date of the filing of the suit till the withdrawal of the letter given by the defendant-bank to the Regional Transport Authorities. [* =See Dasharath Narahari Narvekar Vs. Syndicate Bank, .]

7. Feeling aggrieved by both the aforesaid decisions, the appellant/original defendant-bank preferred Letters Patent Appeal No. 7 of 1989 against the judgment and decree dated February 24, 1989(1), passed by the single judge of this court in First Appeal No. 16 of 1987 and also filed Letters Patent Appeal No. 25 of 1990 against the judgment and order dated September 19, 1989(2), passed by the single judge of this court in Civil Review Application No. 6 of 1989.

8. We have heard the arguments of both the sides in both these Letters Patent Appeals and we are disposing of these two appeals by a single judgment. Mr.Mulgaonkar, learned counsel appearing on behalf of the present appellant/ original defendant-bank, contended that the single judge of this court reversed the trial court''s well-considered and well-balanced decision and passed the decree in favour of the respondent/plaintiff when, in fact, there is no evidence on record to support the contentions made by the respondent/plaintiff. According to him, under the Motor Vehicles Act, as per section 31A(5A),(5B) and (5C), the applicant intending to obtain a temporary permit is supposed to annex along with his application, a no-objection certificate from the bank. He further contended that on earlier occasions the Regional Transport Authorities had granted temporary permits to the plaintiff without such a no-objection certificate from the defendant-bank. It is because of this act of indifference to the provisions of the Motor Vehicles Act that the defendant-bank addressed the letter dated July 15, 1985, informing the Regional Transport Authorities that there is irregularity in the payment of loan by the plaintiff and, therefore, before issuance of permit to the

plaintiff to see that he produces a no-dues certificate from the bank. At this stage, we may wish to point out that the requirement as per the Motor Vehicles Act is obtaining a no-objection certificate from the bank and not obtaining a no-dues certificate from the bank.

9. Mr.Kantak, learned counsel appearing on behalf of the plaintiff, contended that, in fact, the defendant-bank committed a wrongful act by insisting upon the Regional Transport Authorities before granting the temporary permit to obtain a no-dues certificate from the defendant-bank. It was further contended on behalf of the plaintiff that the defendant-bank knew fully well that, unless the whole payment of the loan is made, it was impossible for the plaintiff to obtain a no-dues certificate from the bank. Counsel further argued that, in fact, at the most, the bank could have refused to grant a no-objection certificate but, instead of that, the bank wrongfully addressed a letter to the Regional Transport Authorities insisting upon a no-dues certificate which is not the requirement under the statute. Dasharath Narahari Narvekar Vs. Syndicate Bank, . It was further contended by Mr.Kantak, learned counsel appearing on behalf of the original plaintiff, that it is this wrongful act on the part of the bank that resulted in the refusal of the temporary permit which the plaintiff was otherwise entitled to, thereby resulting in colossal loss by keeping his vehicle idle.

10. According to our opinion, there is no substance in the arguments advanced by Mr.Kantak, learned counsel appearing on behalf of the original plaintiff. The claim of the original plaintiff proceeds as if the plaintiff had a right to obtain the temporary permit, but, in fact, after going through the relevant provisions of the Motor Vehicles Act, the position is to the contrary. Whether the temporary permit is to be given or not is, in fact, in the discretion of the concerned Regional Transport Authorities. Section 62 of the Motor Vehicles Act prescribes four circumstances under which such permit can be granted. Unless an exigency as mentioned in the aforesaid provisions of section 62 of the Motor Vehicles Act is established, the Regional Transport Authorities are entitled to refuse the said permit, and, therefore, the plaintiff has failed to prove that he had a right to get such permit from the Regional Transport Authorities. On this count, the plaintiff''s claim is liable to be dismissed.

11. It is the case of the plaintiff that because of the letter addressed by the defendant-bank the Regional Transport Authorities refused to grant the temporary permit which they were granting on earlier occasions. The letter addressed by the defendant-bank dated July 15, 1985, is as under :

Mapusa-Goa. 15th July, 1985. 3347/7206/CRF-19/HF The Regional Transport Officer, Regional Transport Office, Panaji-Goa.

Dear Sir, Subject : Vehicle GDS 1512 of Mr.Dashrath Narvekar.

The above-mentioned vehicle is hypothecated to us and his loan account is highly irregular. Please, therefore, require him to produce a ''no-dues certificate'' from us before issuing a permit to him.

A confirmation in this respect will be highly appreciated. Thanking you, Yours faithfully, (Sd.) Chief Manager."

12. After going through the text of the aforesaid letter, it is clear that the defendant-bank has not stated in the said letter that the permit should not be given to the plaintiff but only requested the Regional Transport Authorities to insist upon a no-dues certificate before issuing the said permit. It is an admitted position that, on the date on which the said letter was addressed by the defendant-bank, the plaintiff was in arrears. It is also an admitted position that the Legislature thought it wise to see that, before granting such permit, a no-objection certificate from the bank is obtained. Therefore, if the defendant-bank requests the Regional Transport Authorities not to grant such permit unless he produces a no-dues certificate, the same cannot be called a tortious act. It is true that what is required under the Motor Vehicles Act is a no-objection certificate from the bank and not a no-dues certificate. However, the mistake in giving a different caption to the certificate will not convert the act of the bank in the ordinary course into a tortious act. Further, it is to be kept in mind that permits are to be given by the Regional Transport Authorities and, even if the defendant-bank requests the Regional Transport Authorities to insist upon a no-dues certificate, the Regional Transport Authorities having knowledge of the law with which they are dealing will not pay any heed to the aforesaid requests and only try to see as to whether a no-objection certificate is obtained or not. This being the position, by no stretch of imagination, can the letter dated July 15, 1985, be said to be a tortious act on the part of the defendant-bank.

13. It is pertinent to note that, in spite of the aforesaid letter dated July 15, 1985, the transport authorities issued the temporary permit to ply the said bus from November 25, 1985, to May 31, 1986. This only shows that, in fact, the letter dated July 15, 1985, addressed by the defendant-bank never resulted in rejection of the temporary permit and, from this point of view, the contention in the plaint as alleged by the plaintiff that this letter in fact resulted in refusal of the permit which he was entitled to, appears to be far from the truth.

14. Presuming without admitting the aforesaid factual aspect, if really the Regional Transport Authorities relied on a no-dues certificate instead of no-objection certificate, then the plaintiff could have ventilated his grievance by filing an appeal against that order or even filing a writ petition against that order on the ground that the Regional Transport Authorities are taking extraneous material into account for refusing the temporary permit. In any view of the matter, there is no question of any wrongful or tortious act on the part of the defendant-bank. Further, it is pertinent to note that, in his deposition, the plaintiff has stated that the defendant-bank has addressed another letter to the Regional Transport Authorities requesting the authorities not to grant the temporary permit. However, excepting the statement of the plaintiff in his deposition, the plaintiff has not led any evidence to substantiate his aforesaid statement and, therefore, according to us, the aforesaid statement of the plaintiff

does not reflect the true factual position. It is also pertinent to note that, presuming for a while that the bank addressed a second letter due to which the temporary permit was refused by the Regional Transport Authorities to the plaintiff, then in that event, the present suit as it stands is liable for dismissal because, in that event, the cause of action will not be communication of letter dated July 15, 1985, to the Regional Transport Authorities but the subsequent letter of which there is no evidence.

15. Taking all the aforesaid points into consideration, according to our opinion, by addressing the letter dated July 15, 1985, the defendant-bank has not committed any wrongful act or tortious act. According to our opinion, the observations of the single judge of this court that the attitude and conduct of the bank manager becomes more suspicious and symptomatic in the background of the suit filed by the bank against the plaintiff for the recovery of the dues as regards the said bus are unwarranted.

16. Now, as regards the quantum of damages, since we are dismissing the claim of the plaintiff on the ground that he has failed to establish the cause of action, there is no need to go into a detailed discussion of the damages as claimed by the plaintiff in his suit. However, we may mention that the plaintiff has claimed his damages from the defendant-bank at the rate of Rs.200 per day from November 1, 1985, to November 25, 1985, and from February 1, 1986, till the date of actual withdrawal of the letter dated July 15, 1985. The nature of damages the plaintiff is claiming is and by way of special damages. According to us, whatever has been pleaded in paragraphs 17 and 18 of the said plaint is not sufficient pleading for claiming such type of damages. Further, in this case, the plaintiff has led no evidence to establish these special damages excepting his own statement. On this count alone, the plaintiff''s suit for damages is to be dismissed.

17. Hence Letters Patent Appeal No. 7 of 1989 is allowed. The judgment and decree passed by the single judge of this court dated February 24, 1989(1), in First Appeal No. 16 of 1987 is set aside and the judgment and decree passed by the Civil Judge, Senior Division, Mapusa, in Special Civil Suit No. 123 of 1986 dated October 30, 1986, is restored with no order as to costs.

18. As regards Letters Patent Appeal No. 25 of 1990, it is filed by the defendant-bank against the order dated September 19, 1989(2), passed by the single judge of this court in Civil Review Application No. 6 of 1989 by allowing the review application filed by the respondent/plaintiff. By the said review application, the single judge of this court, in addition to the damages awarded of Rs. 13,600 with interest at the rate of 12 percent per annum, further directed the defendant-bank to pay Rs.200 per day from the date of the filing of the suit till the withdrawal of the letter dated July 15, 1985. Since we have set aside the order passed by the learned single judge directing the defendant-bank to pay Rs. 13,600 with interest at the rate of 12 percent per annum, vide our decision in Letters Patent Appeal No. 7 of 1989, the decision given by the single judge in

Civil Review Application No. 6 of 1989, dated September 19, 1989(2), will have to be set aside and, therefore, we allow Letters Patent Appeal No. 25 of 1990 and set aside the decision of the single judge of this court in Civil Review Application No. 6 of 1989 dated September 19, 1989.

