

(2006) 03 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition No. 383 of 2006

Ushanil Mercantile Private Ltd.

APPELLANT

Vs

Uco Bank

RESPONDENT

Date of Decision : 16-03-2006

Acts Referred:

Contract Act, 1872 — Section 63

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 26(2)

Citation : (2007) 1 BC 209 : (2006) 4 CHN 839

Hon'ble Judges : Girish Chandra Gupta, J

Bench : Single Bench

Advocate : S. Choudhury, for the Appellant; Soumen Sen, for the Respondent

Judgement

Girish Chandra Gupta, J.—The writ petitioner, in the present case, is the borrower. The respondent Bank is the lender. The respondent Bank obtained a certificate for a sum of Its. 22,27,416.38p. against the writ petitioner from the Debts Recovery Tribunal. The certificate was issued on September 24, 1997. Subsequently, a settlement camp was held where the parties to this writ petition amicably settled that a consolidated sum of Rs. 16,77,000/- would be payable by the writ petitioner to the respondent Bank within September 30, 2002. On the basis of the aforesaid settlement arrived at between the parties, the recovery proceedings were stayed. The writ petitioner, it appears, could not pay the settled amount within the stipulated time. There has. thereafter, been further negotiations between the parties taking into consideration the interest for the delay in payment of the settled amount. Parties agreed that a sum of Rs. 22,73,000/- shall be payable instead of the sum of Rs. 16,77,000/-. It appears from the particulars furnished at page 62 of the writ petition that the aforesaid sum has duly been paid. After the amount was paid by the writ petitioner and received by the Bank, an application was made by the Bank before the Debts Recovery Tribunal praying for an order for dropping the recovery proceedings. The aforesaid application made by the Bank was turned down by the Debts Recovery Tribunal by the impugned order dated January 4, 2006.

2. Both the parties submitted before this Court that they have resolved their disputes. The Bank has agreed to settle the matter. On the basis of such agreement the writ petitioner has paid the entire amount. The view adopted by the Debts Recovery Tribunal was unrealistic and illegal too.

3. The Tribunal, it appears, has taken the following view:

In my view the conception of economic justice for the purposes of exercising the power to withdraw the certificate u/s 26(2) of the RDB Act, 1993 must be understood in the perspective of the principles of economic justice imbibed in the constitution which advances the economy of the country vis-a-vis the public money in public sector banks for the public good and to every fairness of justice and to strengthen the basic economic structure of the society the public money should be recovered to its possible maximum score. In case, with this spectacle of the doctrine of economic justice the provisions of said Section 26(2) of the RDB Act, 1993 are viewed, it does not provide any scope to withdraw the certificate and drop the recovery proceedings where there is considerable gap between the recoverable amount and the amount to be paid under the settlement and where there exists the property of the certificate-debtor from which the certificate amount may be realized.

4. After considering the submissions made by the writ petitioner and the respondent, who unanimously prayed for reversal of the order passed by the Debts Recovery Tribunal, this Court is of the view that there has been an accord and satisfaction. The Debts Recovery Tribunal fell into a serious error of law. Section 63 of the Contract Act provides as follows:

63. Promisee may dispense with or remit performance of promise. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Statutory Illustration (b) to Section 63 is apposite which provides as follows:

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

5. A bare reading of Illustration (b) to Section 63 of the Contract Act would make it clear that the creditor has an unfettered right in law to dispense with or remit wholly or in part the performance of any promise or payment of any debt due to him. This position in law was not realised by the Debts Recovery Tribunal.

6. The Tribunal should realise that it is not a party to the Us. The Tribunal is expected to resolve a dispute and not to create one more particularly in a case where the parties have resolved their disputes amicably. The Parliament, in its wisdom, has not prohibited any settlement being arrived at between the parties at any stage. What is not prohibited by law cannot be prohibited by Court. The law of the land discussed above permits a creditor to accept any satisfaction he

likes. It was, therefore, not open to the Tribunal to refuse to revoke the certificate by having recourse to a vague concept of "economic justice".

7. What is justice? Justice, according to me, is an act of rendering to every party to the lis what is due to him. The parties themselves can safely be presumed to be the best Judges to decide as to what is due to them. If the parties themselves are satisfied that they are no longer indebted to each other, it is too much for any Tribunal or any Court to say that the recovery proceedings must continue nonetheless. The attitude adopted by the Tribunal can neither be supported by any of the provisions of the "Recovery of Debts Due to Banks and Financial Institutions Act, 1993", nor can the same be supported by recourse to any known concept of justice.

8. An observation of the Apex Court in the case of Union of India (UOI) and Another Vs. Azadi Bachao Andolan and Another, , to be found in paragraph 166 of the aforesaid journal can also be noticed in this regard:

We are unable to agree with the submission that an act which is otherwise valid in law can be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests, as perceived by the respondents.

9. For the aforesaid reasons, the order under challenge is set aside. The Tribunal shall reconsider the matter and pass an appropriate order.