T. Seshu Babu Vs. the State Bank of India, MaIn Branch Rep. by Its Branch Manager

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Court : Andhra Pradesh

Decided On : Dec-03-2007

Reported in : 2008(2)ALD774

Judge : P.S. Narayana, J.

Appeal No. : W.P. No. 6875 of 2007

Appellant : T. Seshu Babu

Respondent : The State Bank of India, MaIn Branch Rep. by Its Branch Manager

Advocate for Def. : Lakshmi Kumari, Adv.

Advocate for Pet/Ap. : A.P. Venugopal, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

P.S. Narayana, J.

1. Heard Sri A.P. Venugopal, learned Counsel representing the writ petitioner and Smt. Ch. Lakshmi Kumari, learned Counsel representing the respondent.

2. The writ petition is filed for a writ of Mandamus declaring the action of the respondent in retaining the title deeds pertaining to M/s. Asbestos & Cement Concrete Products and M/s. Manoj Castings, Vijayawada, though the accounts have been closed, as arbitrary and illegal, and consequently to direct the respondent to forthwith release all the title deeds given as security for the loan amounts availed by the above said firms.

3. In the affidavit filed in support of the writ petition, it is stated that the petitioner is a partner of M/s. Asbestos and Cement Concrete Products and M/s. Manoj Castings, registered firms, and the Managing Partner of the firms was late Sri T. Hanumantha Rao. It is further stated that one Adam Saheb was also a partner for M/s. Asbestos and Cement Concrete Products and that the said T. Hanumantha Rao and Adam Saheb expired leaving behind the petitioner as the surviving partner. It is also stated that there are other partners for M/s. Manoj Castings. Further, it is stated that the above said firms obtained working capital limits from the respondent bank by creating mortgage of the property belonging to the firms and that the petitioner, apart from being the partner of the firms, stood as guarantor for the repayment of loan amount by giving security/personal guarantee. It is further stated that when the rights of the petitioner as a partner of the said firms were being threatened, he filed a suit in O.S. No. 777 of 1992 on the file of the I Additional Senior Civil Judge's Court, Vijayawada, for dissolution and rendition of accounts, and the same is pending disposal. It is also further stated that when the firms defaulted in payment of amounts and the accounts became irregular, the respondent bank filed O.S. No. 354 of 1994 on the file of the III Additional Senior Civil Judge's Court, Vijayawada, against M/s. Asbestos and Cement Concrete Products for recovery of Rs. 8,56,945/- and filed O.S. No. 366 of 1994 on the file of the II Additional Senior Civil Judge's Court, Vijayawada, against M/s. Manoj Castings for recovery of Rs. 2,92,460.86 ps. and both the suits were decreed directing the defendants therein to pay the amounts as per the decree. It is also averred that the Managing Partner Sri T. Hanumantha Rao passed away on 26.06.1998 and Sri Adam Saheb also passed away on 06.09.1997 and subsequent to their demise, the partnership had never been reconstituted nor had separate partnership deeds been executed. It is also further stated that on the instructions issued by the R.B.I., respondent bank had come forward with O.T.S.

scheme and the petitioner was called upon to pay an amount of Rs. 3,50,600/- and Rs. 4,84,800/- respectively for closure of both the accounts. It is also stated that letters were addressed to the petitioner only and the bank had not taken any steps to communicate the same to the other Judgment Debtors. Further, it is stated that since none of the legal heirs of the deceased T. Hanumantha Rao and Adam Saheb had come forward to take advantage of the said O.T.S. scheme and as the deadline was fast approaching, the petitioner, left with no other alternative, reluctantly proceeded ahead in clearing out the amounts out of his personal funds by disposing of the immovable property belonging to him. It is also stated that the intention behind the clearance of the loan amounts was to safeguard the properties of the firms from being sold off in execution of the decrees. It is further stated that on the assurance given by the respondent bank that on clearance of the loan amounts, the documents pertaining to various properties which were kept as security would be handed over to the petitioner, the loan amounts were cleared off by the petitioner under the O.T.S. scheme on 29.06.2006. It is also further stated that though the amounts were paid in the month of June 2006, the final loan discharge certificates were not given till December 2006. Further, it is stated that though the amounts had been cleared way back in June 2006 and 'No Due Certificates' had also been issued, the respondent bank, without any valid reason, high handedly retaining the title deeds pertaining to the various properties given as security and the petitioner, in this regard, addressed a letter, dated 07.08.2006, as well. It is also further stated that the respondent bank, having received the entire amounts from the petitioner in full and final settlement of the accounts, is duty bound to return the title deeds without insisting for a partnership deed, which is not in existence. It is further stated that the respondent had also not taken any steps for intimating the other partners before accepting the amounts on behalf of the firms and, hence, it is duty bound to return the title deeds to the petitioner. It is also further stated that the petitioner got issued a legal notice to the respondent on 15.12.2006 calling upon it to return the title deeds pertaining to the properties given as security, as it has no legal right to retain the same, and to that a reply notice, dated 05.01.2007, was given with all false and untenable pleas. In such circumstances, it is stated that the writ petitioner approached this Court for the reliefs specified supra.

4. In the counter-affidavit filed by the respondent, it is stated that the writ petition is not maintainable. It is also stated that the writ petitioner was partner of M/s. Asbestos and Cement Concrete Products and M/s. Manoj Castings, registered partnership firms, for which one late T. Hanumantha Rao was the Managing Partner. It is further stated that, by mortgaging the properties of the partnership firms, loan was obtained in the name of two partnership firms for production and marketing purposes and, thereafter, some disputes arose among the partners and the writ petitioner filed O.S. No. 777 of 1992 on the file of the I Additional Senior Civil Judge, Vijayawada, for dissolution and rendition of accounts and the said suit is pending. It is also further stated that while the said suit is pending, one of the partners Shaik Mahaboob Adam was expired on 06.09.1994 and the Managing Partner Sri T. Hanumantha Rao was also expired on 26.06.1998, and their legal heirs were brought on record. It is also further averred that the respondent bank is not a party to the said suit. Further, it is averred that the respondent bank issued notice to the partnership firm for recovery of loan amount informing the guidelines of the R.B.I. for One Time Settlement scheme and, after receiving the said notice, the writ petitioner, being a partner of the said firm and guarantor of the said loan, paid the loan amounts and, to that effect, the respondent issued 'No Due Certificate' to the partnership firm on 29.06.2006. It is also further averred that the writ petitioner has been pressurizing the respondent for release of title deeds in his favour. It is further stated that the petitioner, being one of the partners of the firms, is liable to discharge the debts, but it does not mean that he alone is entitled to receive the documents without consent of other partners and heirs of the deceased partners. It is also further stated that the respondent had clearly explained the petitioner that the title deed of the mortgaged property belonging to the partnership firm cannot be released to him unless the other partners or the heirs of the deceased partners join with him or submit the consent letters to that effect. It is also stated that the petitioner issued a notice, dated 15.12.2006, asking the respondent to release the documents in his favour and a reply notice, dated 05.01.2007, was issued by the respondent advising the petitioner to obtain consent letters from the other partners or the heirs of the deceased partners for release of title deed. It is also further stated that if the petitioner produces such consent letters of the other partners or the heirs of the deceased partners, the

respondent bank has no objection to release the title deed. Further, specific stand had been taken that if the petitioner has any grievance to ascertain his rights in relation to partnership firm, he may have to get the redressal before appropriate forum and, hence, the dismissal of the writ petition had been prayed for.

5. The principal contention raised by Sri A.P. Venugopal, learned Counsel representing the writ petitioner is that the respondent-banking institution, having received the total amounts in lieu of final settlement from the petitioner, is not entitled to retain the title deeds and such continuance of retention of title deeds would be unlawful and the respondent-banking institution is bound to return the same. The fact that a civil suit is pending is not in serous controversy. It may be that the writ petitioner might have discharged the outstanding amounts due to the banking institution and may be at the time of final settlement of the disputes or controversies in relation to the partnership firm, all these aspects have to be taken into consideration.

6. Strong reliance was placed on a decision in S & S Associates v. Government of Andhra Pradesh : 2007(5)ALT686 , wherein the learned Judge of this Court, at paragraphs 13 and 14, observed as hereunder:

13. The main ground urged on behalf of the 3rd respondent is that the payments made by the petitioners do not discharge the loan transactions in their entirety. A statement is furnished in the additional counter-affidavit, depicting as though, a substantial amount is still due from the petitioners. It is pointed out that no payments were made as regards four loan transactions. The fact remains that, till today, the 3rd respondent did not choose to address any proceedings, or issue any demand notice, in respect of any amount. It is relevant to mention that, in every MOU, entered into between the petitioners and the respondents, a reference is made to the order passed in the writ appeals, and to the certification as to the correctness of the amounts mentioned therein. Across the Bar, learned Counsel for the petitioners submits that in some of the loan transactions, it emerged that the amount remitted towards repayment exceeded the one, that became payable as the OTS. This is not either denied or explained away, by the 3rd respondent. An effort is also made by the 3rd respondent to state that certain mistakes have

crept in, to the calculations, as regards some transactions, and that the same were noticed during the course of audit. The allegation in this regard is vague, and is not supported by any record.

14. When the petitioners and the 3rd respondent have acted upon a scheme evolved by the Reserve Bank of India, leading to the disposal of the writ appeals, and the execution of MOUs, it is not at all open to the 3rd respondent to resile from the same, after it received the payments, in accordance with the MOU. In none of the three counter-affidavits, filed by the 3rd respondent, it is alleged that the petitioners have either misrepresented, or committed any illegality in the process of entering into the MOUs. When an Apex Authority under the Act, the 2nd respondent, had verified the matter and recorded his findings, the 3rd respondent was under obligation to comply with the same. The conduct of the 3rd respondent in withholding the documents, even after receiving the payments made in accordance with the MOUs, entered into between itself and the petitioners, cannot be supported, either on facts, or in law. It is estopped from resiling from its commitment under the MOUs. Even if there existed any difference, as to calculation, it is deemed to have waived and acquiesced, in the light of the crystallization of the rights of the parties under the MOUs; and on account of the change of their position, by the petitioners.

7. Always it cannot be laid down as a broad proposition that whenever loan amount is discharged by a particular person, one of the partners in the present case, automatically such person would be entitled to the re-delivery of the title deeds. May be the consent of the legal heirs of the other partners also may have to be taken by the respondent-banking institution.

8. In the peculiar facts and circumstances, especially, in the light of the nature of the averments made in the affidavit filed in support of the writ petition and also the counter-affidavit, this Court is of the considered opinion that positive direction of this nature cannot be granted, but, however, liberty is given to the petitioner to pursue the other appropriate remedies available to him in law. Before parting with the case, it may also be observed that the other parties, who may be otherwise interested, also were not impleaded as parties to this writ petition for reasons best

known to the petitioner. Hence, viewed from any angle, except giving liberty to the petitioner to pursue his other remedies in accordance with law, as stated above, no other relief can be granted.

9. With the above observation, the writ petition stands dismissed. No order as to costs.