

**R.N. Hathiramani Vs. Canara Bank**

**R.N. Hathiramani Vs. Canara Bank**

**SooperKanoon Citation :** [sooperkanoon.com/56236](http://sooperkanoon.com/56236)

**Court :** DRAT Madras

**Decided On :** May-07-2003

**Reported in :** I(2004)BC10

**Judge :** A Subbulakshmy

**Appellant :** R.N. Hathiramani

**Respondent :** Canara Bank

**Judgement :**

1. Counsel for the appellant submits that the appellant is only a guarantor and he is a NRI and for the NRI to stand as a guarantor the Bank must obtain permission from the Reserve Bank of India (RBI) and without obtaining permission from the RBI, the Bank has obtained the guarantee document from the appellant guarantor and so the guarantee executed by the appellant is invalid and the guarantee cannot be invoked and no proceedings can be taken against the appellant. Counsel for the respondent Bank submits that it is not mandatory on the part of the Bank to obtain permission from the RBI before taking NRI as guarantor and the appellant is the Director of the 1st defendant Company and he is also the guarantor and all the loan documents are signed by the appellant and the appellant has also signed the Guarantee document and the appellant is liable for the suit claim.

2. Counsel for the appellant relies upon the instructions given in the application form and submits that the Bank must obtain prior approval of the RBI before taking the guarantee document from the NRI. He has not produced any rules and regulations to show that it is mandatory on the part of the Bank to obtain prior approval of the RBI before taking guarantee from an NRI. The appellant alone has signed all the loan documents on behalf of the Company. It is seen from the documents that the appellant is the Managing Director of the Company and he has signed the Promissory Note and other documents as Managing Partner of the Company. He has also signed the Guarantee document as guarantor for repayment of the loan. He has also executed the guarantee documents as guarantor. So, in dual capacity, he has signed all the documents and has availed the loan facility from the respondent Bank.

3. It is seen from the plaintiff's allegations that the appellant and the other guarantor, the 2nd defendant, informed the Bank that they would obtain necessary sanction from the RBI as may be required under the provisions of the Foreign Exchange Regulation Act (FERA), 1973 and would comply with all legal formalities for the loan. The appellant along with the other guarantor, the 2nd defendant, also offered to stand as guarantors for repayment of the loan in their individual capacity.

Only on the representations made by these defendants did the Bank sanction the loan. The instructions set out in the Application form reveal that the application should be completed in duplicate and should be submitted through an authorised dealer from whom the applicant desires to avail of the loan/overdraft facility. The instruction 'through authorised dealer' reveals that the authorised dealer should seek the approval of the RBI before granting loan/overdraft facility where it cannot be granted under the delegated powers. Relying upon this condition, Counsel for the appellant submits that the Bank ought to have obtained the approval of the

RBI before allowing the appellant as guarantor. From the Application form also it is evident that the application should be completed in duplicate and should be submitted through an authorised dealer from whom the applicant desires to avail the loan facility.

4. Section 68 of the FERA, 1973 states that "Where a person committing contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly." The same provision contains in Section 42 of the Foreign Exchange Management Act (FEMA).

5. Counsel for the appellant submitted that if there is any contravention of the rules and regulations of the FERA, the person can be proceeded with according to the rules and regulations. He further pointed out that for contravention of any of the provisions of this Act, as per Section 44 of the FEMA Act "No suit, prosecution or other legal proceedings shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder." He also filed the Amendments to the Exchange Control Manual issued by the RBI to all Authorised dealers in foreign exchange which states as follows-- "Attention of authorised dealers is drawn to paragraph 24C.3 of the Exchange Control Manual (1987 Edition) in terms of which prior approval of the Reserve Bank in form LOV 4 is required to be obtained for granting loans and overdraft [other than those covered under Note. 'A' to paragraph 25C.3(i) and paragraph 26B.10] to persons, firms and companies in India against the guarantee of, or the pledge of collateral by persons, firms and companies (including Banks) outside India. It has been decided that authorised dealers may hereafter grant loans and overdrafts to persons, firms and companies in India against the guarantee of individuals, firms and companies (including Banks) outside India subject to the fulfilment of certain conditions embodied therein." 6. Relying upon this modification, Counsel for the respondent Bank pointed out that it has been decided that the authorised dealers may hereafter grant loans and overdrafts to persons, firms and companies in India against the guarantees of individuals, firms and companies including Banks outside India subject to the conditions set out therein. He pointed out that the authorised dealer may grant loan. The word 'may' refers that it is left to the discretion of the Bank to grant loan and nothing is mandatory on the part of the Bank to obtain prior permission and the Bank may grant loan and overdraft facility only subject to certain conditions set out therein. The authorised dealers may grant loan and overdraft facility subject to the conditions. On the representation made by the appellant and other defendants, the Bank sanctioned the loan.

7. Form LOV 4 states that in case of guarantees by Non-Residents, name and address of the overseas party arranging the guarantee, name and address of the overseas Bank issuing the guarantee, amount, period and relationship of the overseas party arranging the guarantee with the borrower and the consideration for which guarantee is provided, has to be stated. The appellant has signed all the documents and availed the loan and has also executed the guarantee to the Bank for repayment of the loan.

8. Counsel for the appellant also filed Xerox copy of the letter issued by the RBI to the appellant to his foreign address. The RBI has granted permission to the appellant for purchase of shares by the appellant of the defendant Company. So, the appellant has obtained permission of the RBI for purchase of shares. Permission was also granted by the RBI to the 1st defendant Company to export the Share Certificate in question, to the country of the address of Mr. R.N. Hathiramani the appellant, if so, desired by him. The RBI has also sent letter to the defendant Company stating that as no remittance facilities are required by the non-resident Director, the provisions of Section 30 of the FERA Act, 1973 are not attracted and as such approval of RBI for mere appointment of a non-resident as nonexecutive Director on Board of the Company is not necessary, Permission has also been granted by the RBI to issue 2,250 fully paid equity shares to the appellant. On 31.3.1987 also, permission was granted by the RBI for equity shares and also subsequently.

9. The Amendments to the Exchange Control Manual specifically states that it has been decided that authorised dealers may hereafter grant loans and overdrafts to persons, firms and companies in India against the guarantee of individuals, firms and companies including Banks outside India subject to fulfilment of conditions set out therein. So, the Bank is at liberty to grant loan and overdraft facility to persons subject to the conditions. So, it is not mandatory on the part of the respondent Bank to obtain prior permission of the RBI. The appellant has signed all the loan documents and obtained the loan. The appellant has also signed the guarantee document and stood as guarantor. The appellant has bound himself for repayment of the loan due to the respondent Bank. After signing all the documents and availed the loan facility and enjoyed it, now it is futile on the part of the appellant to contend that since the prior approval of the RBI was not obtained by the Bank the appellant is not liable for the suit claim. The defence set forth by the appellant is wholly untenable and the appellant is not entitled to contend that he is not liable for the suit claim.

10. The PO, DRT-I, has also found in his Order that the 3rd defendant (present appellant) did not furnish any document in support of his objection nor cross-examine the applicant Bank's witness as to whether the applicant Bank is required to obtain necessary clearance from the RBI. It is also found by the PO, DRT-I that the D3 the appellant has impliedly admitted his loan liability as being a guarantor to the extent of Rs. 1 crore and he cannot be permitted to fall back from his admitted liability as a guarantor as per the guarantee agreement executed by him and his technical objection is not sustainable in the eye of law. The appellant has also taken up the plea that in case the guarantee documents are found valid and enforceable, the liability has to be restricted to Rs. 1 crore inclusive of interest. Only based on that the PO, DRT-I, has given the finding that D3 has impliedly admitted his loan liability as a guarantor to the extent of Rs. 1 crore.

11. For the foregoing discussions, I hold that the objection taken by the appellant is wholly untenable. The OA was decreed for Rs. 1,00,00,000/- (Rupees one crore only) against this appellant. The facts and circumstances of the case prove that the appellant is not entitled for any concession of the proviso under Section 21 of the Act. The appellant is hereby directed to deposit 75% of the decree amount, which comes to Rs. 75,00,000/- (Rupees seventy-five lakhs only) within a period of four weeks i.e. by 4.6.2003 failing which the appeal shall stand rejected.