

Canara Bank vs Arif Siddiqui on 23 February, 2024

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 1960/2024
CANARA BANK

ARIF SIDDIQUI

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR
ORDER

% 23.02.2024 CM APPL. 11326/2024 , CM APPL. 11327/2024 (exemption)

1. Allowed, subject to all just exceptions.

2. Applications stands disposed of.

CM(M) 1960/2024, CM APPL. 11325/2024--stay

3. The present petition under Article 227 of the Constitution of India has been filed seeking setting aside of the impugned order dated 01.02.2024 passed by the learned District Judge (Commercial Court-03), District Shahdara, Karkardooma Courts, Delhi, (hereinafter referred to as "learned Trial Court") in CS(COMM) No.138/2023 titled as "Canara Bank vs. Arif Siddiqui", whereby the learned Trial Court directed its reader to file a complaint against the petitioner bank as an institution and its manager and further gave liberty to respondent to approach the Deputy Commissioner of Police to get an FIR against the bank and its officials. The petitioner herein This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2024 at 22:18:28 is the plaintiff before the learned Trial Court.

The relevant facts as highlighted in brief as follows:

4. It is submitted that the respondent approached petitioner bank seeking for vehicle loan of Rs. 5,00,000/- on 28.12.2017 and a Mudra Loan of Rs. 2,00,000/- vide application dated 24.03.2018. On 22.12.2020, respondent had executed Acknowledgment of Debt and Security in favour of petitioner, thereby confirming and acknowledging the dues. On 27.01.2023, the petitioner bank filed a Commercial Suit no. 138/2023 against the respondent for recovery of the loan amount along with

interest to the tune of Rs. 7,59,525/- as on 17.04.2023 before the learned Trial Court.

5. It is further submitted that on 29.04.2023, summons were issued upon the defendant and since none appeared on behalf of the defendant and no written statement was filed therefore right of the respondent to file written statement was closed vide order dated 05.07.2023 passed by the learned Trial Court. The matter was referred to mediation and was returned unsettled on 18.09.2023.

6. It is submitted that during the hearing of the final arguments before the learned Trial Court, a question was raised by the learned Trial Court on the authenticity of the document, namely, Acknowledgement of Debt & Security dated 22.12.2020. As a consequence to it, learned Trial Court issued notice under section 340 Cr.P.C. to present Branch Manager, Sh. Ashutosh Kumar and erstwhile Branch Manager Sh. Anuj Kumar Yadav to show cause and submit their reply in writing supported with an affidavit within two weeks as to why a criminal complaint be not made against them for commission of offences punishable under Chapter 11 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") of furnishing False Evidence This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2024 at 22:18:28 and related offences but also under Chapter 18 of the IPC for offences of Section 465/467/468/471 apart from 420 IPC. The learned Trial Court further issued notice to General Manager, (Litigation & Recovery) Canara Bank Head Quarter.

7. It is submitted that in compliance to the above mentioned directions passed by the learned Trial Court, an affidavit dated 03.01.2024 was filed by General Manager(Litigation and Recovery), Head Office, Canara Bank and reply to show cause notice by bank officials. However, the learned Trial Court found reply to be unsatisfactory for want of particulars and specifications. The learned Trial Court directed that Chairman, Canara Bank shall ensure that the enquiry is completed within next four weeks.

8. Multiple submissions have been made by learned ASG to challenge the justifiability of the interim order. It is submitted that the order passed by the learned Trial Court is perverse on the face of it as the learned Trial Court could not have taken cognizance with respect to 340 CrPC as the document namely Acknowledgment of Debt and Security i.e. annexure P-7 was not custodia legis as the document was filed at the time when the suit was instituted and not during the proceedings of the case. Reliance is placed in the case titled as Sachida Nand Singh and Another vs. State of Bihar and Another , (1998) 2 SCC 493. Moreover, in this case before initiating the proceedings, the learned Trial Court issued show cause notice only to Sh. Ashutosh Kumar and Sh. Anuj Kumar Yadav. However, the bank was never issued any show cause notice.

9. The learned ASG submits that the present suit has also not been contested by the respondent herein who is defendant before the learned Trial Court as his defense has been struck off and the petitioner has also not relied This is a digitally signed order.

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10. It is submitted that in the said manner the said acknowledgment was never to be used in the Court proceedings and if at all the learned Trial Court was not convinced with the genuineness of the document at the most the same could have been ignored or the suit could have been dismissed but the proceedings under Section 340 CrPC could not have been initiated.

11. Learned ASG further submits that it is also unheard of that a litigant whose defence has been stuck of during the proceedings of the suit has been given the right by virtue of the impugned order to lodge a FIR against the bank officials.

12. It is further submitted that the respondent herein had applied for the loan facility with the Syndicate Bank and after the merger of Syndicate Bank with the Cananra Bank, the entire accounts with respect to the debts, liabilities and all other transactions of the Syndicate Bank were taken over by the Canara Bank. Therefore, under these circumstances, probably the alleged document came to be filed along with the suit.

13. The learned ASG submits that by no stretch of imagination, the acknowledgement document can be said to be forged and fabricated document, as it has not been tempered in any manner. In fact, by passing the impugned order 01.02.2024 there was harassment of the public officials who in fact had no role of deal with the said document. Reliance has been placed This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2024 at 22:18:29 on the judgment delivered by the Hon ble Supreme Court in the case titled as "Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another", (2005) 4 SCC 370.

14. It is submitted that Sh. Ashutosh Kumar, Present Manager of Canara Bank had already furnished a detailed reply before the learned Trial Court by submitting that he was transferred to the present Canara Bank branch in the year 2023, when the aforesaid document was already lying with the bank before his transfer, however, the said submissions have been ignored by the learned Trial Court.

15. The learned ASG also put this Court through the provision of 340 CrPC and submitted that in the peculiar facts and circumstances of this case the impugned order dated 01.02.2024 be stayed.

16. Apart from hearing the arguments, the impugned order and the documents placed on record have been perused. It is relevant to note the observations made by the learned Trial Court which

reads as under:

"As such, Reader of this Court is directed to send a complaint to Ld. CMM, Shahdara, Karkardooma Court against the Canara Bank and above two officials, detailing the facts of the case as detailed supra alongwith copy of this Order, for offences punishable under Sections 191/192/193/196/197/198/199/200/209 IPC, apart from commission of offence under Sections 465/467/468/471 and 420 IPC r/w Section 34 IPC. The complaint be sent forthrightly. A copy of the same on record alongwith copies of relevant documents and annexures.

Being a victim in the above offences purportedly committed by the Bank and its Officials, defendant Arif Siddiquie is at liberty to approach the DCP concerned to get a First Information Report registered against the Bank and its officials, if he so decide. Copy of order of this Court and other documents be supplied to him."

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17. At this stage, the learned ASG had brought to the notice of this Court specifically document dated 22.12.2020 which has become the basis for issuing notice under Section 340 CrPC. It is vehemently argued that a preliminary inquiry is required which has also not been conducted and it appear that the learned Trial Court in a very hurried manner has disposed of such a sensitive issue pertaining to registration of FIR against the public officials.

18. It was stressed upon that the filing of the said document has occurred only due to the fact of the merger of the Syndicate Bank with the Canara Bank as initially the loan was disbursed by the Syndicate Bank and the Canana Bank had no role to play into it. However, the respondent approached the petitioner bank via loan application dated 31.07.2020 seeking for term loan in the nature of guaranteed with Guarantee Emergency Credit Line ("GECL"). Learned ASG submits that interim order is erroneous, not sustainable and this is a case of essentially oversight.

19. On due consideration of the above submissions, the circumstances of the case as pointed out hereinabove, the impugned order dated 01.02.2024 be stayed till the next date of hearing.

20. On taking steps, issue notice to the respondent through all permissible modes including via approved courier service, returnable on 04.04.2024.

21. Trial Court Record in digital form be requisitioned.

22. Order dasti under the signature of Court Master as requested.

SHALINDER KAUR, J.

FEBRUARY 23, 2024/SDS/DP This is a digitally signed order.

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