

Delhi High Court

Mohd. Yousuf vs Jamia Cooperative Bank Ltd. And ... on 25 May, 2007

Equivalent citations: AIR 2008 Delhi 61

Author: M Sharma

Bench: M Sharma, S Khanna

JUDGMENT Mukundakam Sharma, C.J.

1. By this judgment and order, we propose to dispose of the Letters Patent Appeal, which is filed against the impugned judgment and order passed in the writ petition (Civil) No. 3527/2006.

2. The aforesaid writ petition was filed by the appellant herein in respect of the demand letters issued by the respondent -bank. In one of the said demands dated 31st May, 2005, the bank has alleged non-payment of the bank dues amounting to Rs. 87,740/-. The second demand letter was issued by the bank on 31st May, 2005 alleging non-payment of the bank dues amounting to Rs. 1,01,911/-. In the aforesaid writ petition, which was filed by the appellant, there was a prayer that the respondent was under hardship and, therefore, a direction should be issued to the respondent to accept the payment of dues in Installments.

3. The learned Single Judge considered the various prayers raised by the appellant herein as the writ petitioner and thereafter passed the impugned order recording reasons for the decision. Being aggrieved by the aforesaid order, the appellant has filed the present appeal on which we have heard the learned Counsel appearing for the parties. We have also perused the records placed before us and in the light thereof we propose to dispose of the present appeal.

4. The appellant took two loans from the respondent-bank, one for purchase of machinery that was hypothecated and the other on equitable mortgage of the land. The bank granted the aforesaid loan to the appellant in 1996 and necessary documents in that regard were also executed. However, in violation of the trust, the appellant sold the machinery without intimation to the bank and also sold the land, although the same was mortgaged with the bank for which also no intimation was sent. The appellant did not repay the loans and became a defaulter and the matter was referred to arbitration as provided for under the Delhi Cooperative Societies Act, 1972 to the Registrar. Arbitrator was appointed by the Registrar in accordance with the provisions of the Act and the Rules framed there under. On completion of the said arbitration proceedings, two separate awards were passed. So far award No. 1 is concerned, which is dated 26th December, 1999, an award was passed that the appellant and his sureties will pay jointly and severally to the bank the sum as mentioned in the said award. Second award was also passed on the similar lines for the sum ascertained therein. Legality and validity of the aforesaid awards was not challenged by the appellant in any forum and, therefore, the said awards became final and binding. The appellant, however, did not pay the amount as awarded due to which the recovery proceedings had to be initiated.

5. When the recovery proceedings were initiated against the appellant, he filed a writ petition in this Court, which was registered as WP (C) No. 4387/2000, which was disposed of by the Division Bench of this Court under order dated 9th May, 2003. It was recorded in the said letter that the appellant has to pay Rs. 2,77,785/- together with interest and another sum of Rs. 1,69,780/- towards the

second loan. In the said order it was also recorded that the appellant would give a proposal to the bank within two weeks for repayment of the balance amount and the said proposal of the appellant would be sympathetically considered by the bank. In terms of the aforesaid order, a statement of account with the bank was duly shown to the appellant and it is stated that an endorsement was recorded by the appellant in the said account that the same is correct. A second civil writ petition came to be filed by the appellant, which was registered as WP(C) No. 9479/2004. The said writ petition was dismissed in limine. Thereafter, the appellant again filed a suit in the trial Court being suit No. 169/2004. The said suit was dismissed by the Civil Judge on 29th April, 2005. As against it, the appellant filed a revision petition being CM (Main) No. 114/2005, which was dismissed on 28th February, 2006 by the High Court. Even thereafter another proceeding was initiated by the appellant being WP (C) No. 3572/2000, which was dismissed by the learned Single Judge as against which the present appeal is filed.

6. The awards have become final and binding. The amount is to be repaid by the appellant. The demand letters shown to have been issued on 31st May, 2005 are stated to be manipulated by the appellant with assistance of some employees of the bank. It is stated that the said two letters are fabricated documents. The said letters have been shown to have been issued by the General Manager. According to the bank, the said authority has no power to reduce or to give up any amount due to the bank. In this connection, reference may be made to Rule 83, which provides that no co-operative society shall write off in whole or in part any debt or other sums due to it without the previous sanction of the Registrar. It is not shown that any previous consent of the Registrar was obtained before issuing the said letters. Therefore, the said demand letters cannot be acted upon and are not binding on the parties. Some amount has been deposited by the appellant in this Court. The said amount shall be paid to the respondent No. 1 - bank by the registry of this Court. After receipt of the aforesaid amount, the bank respondent No. 1 may proceed to recover the balance amount from the appellant in accordance with law and in terms of the awards passed.

7. The appeal stands disposed of in terms of the aforesaid order.