SUPREME COURT OF INDIA

Iqbal Naseer Usmani

Vs.

Central Bank of India

C.A.No.657 of 2006

(H. K. Sema and B. N. Srikrishna, JJ.)

19.01.2006

JUDGEMENT

SRIKRISHNA, J.:-

1. Leave granted.

2. The appellant obtained a loan of Rs. 64,000/- from the first respondent on 30-5-1981 for the purchase of a motor vehicle under the terms of agreement between the appellant and the first respondent. The loan had to be discharged by payment of certain instalments. The appellant defaulted in repayment of this loan. First respondent filed Regular Suit No. 66 of 1991 for recovering the amount of Rs. 2,48,438.64 p. which represented the unpaid amount of loan together with accumulated interest thereon. The Civil Court by a decree dated 28-11-1995, decreed the said amount. The appellant filed an appeal against the said decree in Forma Pauperis with an application for being declared as a pauper. This application was rejected by the appellate court by order dated 4-4-2002.

3. Instead of executing the decree obtained against the appellant, the first respondent approached the Tehsildar, Gonda for issuing a certificate of recovery under the provisions of Section 3 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 (hereinafter referred to as 'the Act' for short). The appellant was called upon to appear before the Tehsildar in connection with the amount claimed by the first respondent-Bank. Since the appellant failed to appear before the Tehsildar, a warrant was issued by the Tehsildar against the appellant to appear before the Tehsildar regarding recovery of the decretal amount. The appellant challenged the action taken by the Revenue Authority by his Writ Petition No. 4294 of 2004. The High Court dismissed the writ petition as devoid of merit. The appellant is before this Court to impugn the said judgment of the High Court.

4. The learned counsel for the appellant candidly admitted before us that he did not impugn the decree of the civil court in the proceedings before the High Court, nor does he impugn it before us. His contention is that whatever be the other modes of execution of the decree, the provisions of the Act were not available therefor. This is the only contention urged before us with which we are inclined to agree for the reason which follows.

5. As the preamble to the Act suggests, it is an Act to provide, inter alia for "the speedy recovery of certain classes of dues payable to the State Government or to the Uttar Pradesh Financial Corporation or any other Corporation notified by the State Government in that behalf or to any nationalised or other Scheduled Bank or to a Government Company...."

6. There is no doubt that the first respondent is a banking company within the meaning of Section 2(f) of the Act. Section 3(b) of the Act provides that where any person is party "to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him, by a banking company or a Government company, as the case may be, under a State-sponsored scheme" and such person makes any default in the payment of the loan or advance or any instalment thereof, on a certificate as to default along with a request from the concerned company to the Collector, the Collector shall proceed to recover the amount stated therein as arrears of land revenue. While there is no doubt that the appellant had obtained a loan from the first respondent-banking company and defaulted in repayment thereof, there is no evidence to suggest that the loan was relating to hire-purchase of goods sold to him under a "State-Sponsored Scheme". The learned counsel for the respondent frankly conceded that the loan was not under any such "State-sponsored scheme". In our view, the provisions of the Act are not intended to supplant the machinery for execution of all decrees under the provisions of the Code of Civil Procedure. They can only be utilised for recovery of sums due in the special cases enumerated in Section 3(1) of the Act.

7. Upon a perusal of the record, and after hearing learned counsel, we are not satisfied that the case of the appellant falls within the parameters of Section 3 of the Act. Consequently, the revenue officers have neither the authority to issue any certificate for recovery, nor the power to take any

steps for recovery of the decretal amount. The High Court seems to have been impressed by the fact that the money was public money, and that in order to encourage development in the country, banks are providing loan facilities to persons who are willing to purchase vehicles and further that if such a loan is treated as a commercial loan, it would be difficult for the Bank to recover the same by filing a civil suit, which takes years and years to decide. According to the High Court "the money of the Bank and financial institutions is public money, which should be in circulation, otherwise the Bank and depositors will suffer." We are afraid that while this may be very good sentiment, it cannot apply in the face of Section 3 of the Act for the reason that Section 3 does not envisage the provisions of the Act being utilised for recovery of every loan taken. Section 3(1)(b) permits this to be done only in respect of loans taken under a "State-sponsored scheme", which expression has been defined in Section 2(g) of the Act. Since it is admitted that the loan taken by the appellant was not under or in relation to a "State-sponsored Scheme" within the meaning of Section 2(g), whatever else it may be, it would not be recoverable by recourse to the machinery under Section 3 of the Act.

8. In the result, we allow the appeal and set aside the impugned judgment of the High Court with liberty to the first respondent-bank to recover the money due under the decree in any other manner permissible in law. There will be no order as to costs.

Appeal allowed.