

**SUPREME COURT OF INDIA**

Karnataka State K.V. Industries Board

Vs.

Punjab National Bank

C.A.No.8182 of 2003

(Anil R. Dave and Dipak Misra JJ.)

13.09.2013

**JUDGMENT**

**ANIL R. DAVE, J.**

1. Leave granted.

2. Being aggrieved by the judgment delivered by the High Court of Karnataka in Regular First Appeal No. 1684 of 2004 dated 29th July, 2005, this appeal has been filed by the Karnataka State Khadi and Village Industries Board, who was defendant No. 3 in the Suit, which had been filed by Punjab National Bank, who is respondent No. 1 (for sake of convenience, the creditor- Punjab National Bank has been described as 'the Bank' whereas the appellant has been described as the 'Board' and the principal debtor Shevashakti Gramodyoga Sangh, Gulbarga, who had borrowed funds from the Bank has been described as the 'Borrower').

3. The facts, giving rise to the present litigation, in a nutshell, are as under :

The Borrower had borrowed money from the Bank for its business and as per policy of the State of Karnataka, the Board had assured the Bank that by way of subsidy, the amount of interest would be paid by the Board to the Bank, provided there was no default in repayment of the principal amount by the Borrower.

4. As the Borrower could not pay its dues to the Bank in spite of several notices, the Bank was constrained to file Original Suit No. 83 of 2002 in the Court of Civil

Judge (Sr. Division) at Gulbarga. In the said Suit, the Board was joined as defendant no. 3 as the Board had given an assurance that the interest would be paid by the Board to the Bank , if the Borrower was paying its dues regularly i.e. without any default.

5. Upon perusal of the evidence and after hearing the learned advocates, the suit was decreed. All the defendants, namely the Borrower, the Secretary of the Borrower, who was defendant No. 2 and the Board were made liable to pay a sum of Rs.1,60,827.68/- with interest at the rate of 12% p.a. to the Bank. However, from the said amount, defendant no. 3 was made liable to pay only Rs.75,213/- alongwith other defendants, namely the Borrower and the Secretary of the Borrower as the said amount was towards interest.

6. Being aggrieved by the aforesaid judgment delivered in the suit, the Board had filed Regular First Appeal No. 164 of 2004, which has been dismissed by the High Court and being aggrieved by the said judgment, the Board has filed the present Appeal.

7. We have heard the learned counsel appearing for the parties and have also perused the impugned judgment and the judgment delivered in the Suit and the relevant documents. Upon hearing the concerned counsel and looking at the contents of a letter dated 23rd March, 1988, we find that the Board has been wrongly saddled with the liability of paying Rs.75,213/-.

8. It is an admitted fact that the Borrower had borrowed Rs.1,00,000/- from the Bank and the said amount, along with interest thereon could not be repaid by the Borrower to the Bank. The question only is with regard to the liability of the Board. The Board is neither a borrower nor a guarantor. In pursuance of policy of State of Karnataka, the Board was to give subsidy to the Borrower. The letter dated 23rd March, 1988, which had been written by the Chief Executive Officer of the Board to the Manager of the Bank reads as under: "The above mentioned Sri Shiva Shakti Gramodyoga Sangha, Gulbarga has applied to Gulbarga (sic) for a loan of Rs.1,00,000-00 for working capital for P.C.P.I. Industry.

The above loan upto Rs. 1,00,000 ( Rupees One Lakh Only) will be eligible for the interest subsidy payable by the Commission in terms of Government of India, Ministry of Industry (Department of Industrial Department) letter No. 4(47) 75 –KVI (1) dated the 17th May 77. The Commission agrees to

surrender its first charge over the assets (moveable and immoveable) the above instruction in favour of the Bank (sic).

The final decision to accept or reject any loan application from eligible borrowers will vest with the Bank. However, in case the Bank reject the application they may indicate to the Commission / the State Board the reasons for rejecting the Loan Application. The Commission and the Karnataka State Khadi and Village Industries Board, will have no liability of any kind either in respect of the principal amount of loan or payment of 4% or revised rate of interest to be borne by the borrowers for which interest subsidy eligibility certificate has been issued by the Commission. Its liability shall be restricted only to the extent of payment of interest subsidy as per scheme.

The Commission would be liable to pay interest subsidy as per the scheme only for the period of which the loan is sanctioned by the Bank and is not liable to pay such interest subsidy for the defaulted period 87-88.”

9. Upon perusal of the said letter, it is clear that the Board had agreed to pay interest on behalf of the Borrower and the Board had also agreed that whatever charge had been created on the Borrower's assets in favour of the Board would be released in favour of the Bank. Moreover, the interest payable by the Borrower was to be paid by the Board by way of subsidy, provided the borrower does not commit any default in the payment. It is an admitted fact that the Borrower had committed default by not paying its dues to the Bank regularly. In the aforesaid circumstances, the Board cannot be held liable to pay interest on behalf of the Borrower. The liability, which the board had, was only with regard to surrendering its first charge over the assets of the Borrower in favour of the Bank as one can see from the third para of the letter dated 23rd March, 1988. In other words, upon default committed by the Borrower, the Board was absolved of its liability of paying interest on behalf of the Borrower to the Bank and its liability was only to the effect that it would surrender its first charge over the moveable and immoveable assets of the borrower in favour of the Bank.

10. In spite of the aforesaid facts, the trial court came to the conclusion that the Board was liable to pay interest which was due and payable by the Borrower. In our opinion, the said finding of the trial court is not correct. Even the High Court's view of confirming the said finding is not correct and therefore, we quash and set aside the judgment of the appellate court as well as the decree passed by the trial

court so far as it makes the Board liable to pay the interest on behalf of the Borrower. In view of the contents of the aforesaid letter dated 23rd March, 1988, the Board shall surrender its first charge over all the moveable and immoveable assets of the Borrower in favour of the Bank as soon as possible.

11. The appeal stands partially allowed to the above extent with no order as to costs.