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Andhra Pradesh High Court

Case No: W.P.No. 24451 of 1997

G.V.N. Kameswara Rao	APPELLANT
Vs	
Debts Recovery Tribunal, Bangalore and Others	RESPONDENT

Date of Decision: April 2, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 22

Citation: (1998) 3 ALD 536 : (1998) 3 ALT 765 : (1998) 93 CompCas 474

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. M.V. Durga Prasad, for the Appellant; Government Pleader for Home, Mr. G. Ramakrishnaiah, Mr. T.S. Venkata Ramana and Mr. B. Panduranga Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Aggrieved by the docket order passed by the 1st respondent Tribunal in dismissing the application filed by the petitioner to summon the Assistant Sub-Inspector of Police, Law and Order, Krishna Lanka Police Station, City Planner, Vijayawada Municipal Corporation by contending that the record in the 1st respondent tribunal and the 2nd respondent-Bank was tampered, the present writ petition is filed.

2. The undisputed facts of this case are that the petitioner offered his residential house at Ramachandrarao pet, Vijayawada as a collateral security for the term loan sanctioned to the 5th respondent Company, a builder for construction of apartments in an extent of 421 square metres in new town survey No.82 at Venkateswarapuram, Bandar Road. It is on record now that the 2nd respondent Bank sanctioned a total loan of Rs. 10,00,000/- for the above purpose and while the

first loan of Rs.5,00,000/- was released on 4-6-1990, the second loan of Rs.5,00,000/- was released on 25-3-1991. It is the case of the petitioner that he has given his property as a security only for the first loan but not the second loan. The 5th respondent and the Branch Manager of the 2nd respondent collided with each other and created documents on blank signed white papers obtained from him while giving security at the time of release of the first loan, as if he has given security for the second loan also. It is his case that at a later stage he came to know that the 2nd respondent-Bank sanctioned loan for the construction of apartments without there being a sanctioned plan for the purpose and as such the 5th respondent and the Branch Manager not only played fraud but also created the document as if he has given the security for the 2nd loan by bringing documents into existence by using the blank signed white papers obtained from him at the time of sanctioning of 1st loan by committing forgery and that he has also filed a private complaint on 14-1-1996 before the Magistrate stating that a fraud has been committed by the Branch Manager of the 2nd respondent Bank and the 5th respondent in obtaining the security.

3. After the Bank filed an application for realisation of the loan amount before the first respondent Tribunal, when the matter was referred by the Magistrate to the police, the third respondent-Assistant Sub Inspector of Police seemed to have visited the Bank for the approved plans of the building that are underconstruction and the Bank under covering letter dated 28-9-1996 supplied certain documents to the third respondent including the apartment''s plan under the name and style "Manoranjan Apartments" along with another approved plan for construction of shopping complex plan by the fourth respondent under permit No.1466/88 dated 17-12-1988, hereinafter referred as "undisputed plan". But the plan with regard to Manoranjan Apartments does not disclose that the same was approved by the city planner. Thereafter, the third respondent seemed to have visited the Debt Recovery Tribunal on 19-3-1997 and during the course of inspection of the records he found a xerox copy of the plan under Mallika and Manoranjan apartments duly certified by the Bank Officers while filing the application before the Tribunal. This plan contains endorsement made by the city planner with the same number and date as contained on the undisputed plan and absolutely without any details whatsoever. On that, the third respondent seemed to have filed an application for supply of a certified copy of the said plan. On that, die Chairman of the Tribunal directed him to come to Hyderabad on 25-3-1997 on which date the case is posted. The further case of the petitioner is that on that day the entire records were handed over to the Counsel for the Bank as they were not properly bound. Subsequently, after completing with the objections of the Tribunal, the paper book seemed to have represented. It is also the specific case of the petitioner that while his chief examination is going on 24-6-1997, he saw the plan under the name and style "Manoranjan Apartments" and the same was marked as an enclosure to the loan application, Ex.Al. But, by the time of cross-examination, the plan of the apartment

under the name of "Manoranjan" is replaced with the plan of Mallika and Manoranjan apartments by pealing out a portion of the paper where the bank official signed. With the result, a plan under the name and style Mallika and Manoranjan apartments without the signature of the bank official and without any particulars whatsoever was marked as Ex.A1. On mat, the petitioner asked for a certified copy of the entire loan application which was marked as Ex.A1. But, the Tribunal furnished the copy of only loan application along with other enclosures except the undisputed and the disputed building plans. Immediately he seemed to have filed an application to summon the city planner, Vijayawada Municipal Corporation, Assistant Sub-Inspector of Police (third respondent) to prove lhat the records of the Tribunal were tampered and they do not tally with the records available in the Bank and prove that Ex.Al is a forged document. The Tribunal dismissed the application vide docket order dated 26-8-1997 and posted the case for arguments on 3 0-9-1997. The endorsement of the Tribunal is reproduced hereunder.

"AW1 recalled and cross-examined. Ex.A50, Ex.A1, D9 and D10 marked. Case closed. Arguments by 30-9-1997. Defendant No.5 wants to summon two witnesses from City Planning Office and the Police. His request is rejected since the evidence he wants to bring is irrelevant to decide the issue before us.

Arguments on 30/9. Signed on 26/8."

Aggrieved by this docket order, the present writ petition is filed.

4. The sum and substance of the contention of the petitioner is that he has given his residential house as security for the loan as sanctioned by the second respondent-Bank in April, 1990 which was released on 4-6-1990 and he is not aware of the sanction of the second loan by the respondent-Bank, In other words, his case is that he gave security for construction of a shopping complex in an extent of 412 square metres as approved by the Municipal Corporation under permit No.1466/88 dated 17-12-1988. The rest of the documents were brought into existence to prove that he has extended the security for the second loan which was released on 23-1-1991 and they were fabricated taking advantage of the signatures obtained by the Bank on blank papers. The case of the Bank is one of total denial of all these allegations.

5. As the allegations are of very serious in nature, I have perused the entire record. I am of the opinion that there is a lot to be said about this case. There is something more than what is visible to the nacked eye in this case, I will be adverting about the conduct of the Bank officials in this case at the end of the judgment,

6. First, let me examine the contention of the petitioner whether he was aware of the sanction of the second loan and whether he has extended the security that was given by him to the first loan to the second loan also and even if all is not well with this transaction whether the petitioner can derive any advantage of the situation in

which the loan papers of the fifth respondent was processed in the Bank.

7. The fifth respondent initially submitted an application seeking a term loan of ten lakhs on 7-9-1989. In that, it is stated that the loan is required for uninterrupted construction of commercial cum residential complex. In that application, the fifth respondent offered one apartment belonging to the Managing Director, one apartment, one semi finished (penth house rights) apartment. Shares worth Rs.3,50,000/- of M/s. Model Bottling Co. (P) Ltd., Guntur. In this application except stating that the loan is required for uninterrupted construction of commercial cum residential complex, he did not give any details of plans approved by the Municipal Corporation etc. on 15-9-1989. He gave another letter to the Manager stating that they have contacted the customers for construction of apartments in Manoranjan and Mallika projects. He has given the details of the amounts received under each of the projects. As per his letter under Manoranjan Project he received Rs.5,50,000/- and for Mallika Project he received Rs.2,25,000/- already from the customers.

8. It is the case of the respondent-Bank that the fifth respondent has enclosed two xerox copies of two buildings plans i.e. one is the undisputed shopping complex and the other is Mallika and Manoranjan apartments. Having considered the application of the fifth respondent, the Bank seemed to have sanctioned only Rs.5.00,000/-. In the loan agreement entered into between the parties on 4-6-1990 it is shown that a term loan of Rs.5,00,000/- was granted and the same shall be payable in three consecutive instalments and/or interest for two quarters and the amount repayable before December, 1990. However, from the letter dated 8-1-1991 the term loan given on 4-6-1990 was rescheduled and as per the reschedule, he has to pay the same by July, 1991. In para 5 it is stated that the second party shall utilise the loan only for construction of Manoranjan and Mallika apartments. Under clause 7, the property situated at H.No.2-6-39, Ramachandrarao Road, Suryarao Pet, Vijayawada belonging to the petitioner valued at Rs.19.58 lakhs was offered as a security in addition to the personal guarantee of all the Directors and third party guarantor i.e. the petitioner herein and the amount of Rs.5,00,000/- was released on 4-6-1990. On5-6-1990, the petitioner addressed a letter to the Branch Manager wherein the list of the documents were deposited as security including the affidavit attested by the notary. He has also executed an irrevocable power of attorney on 7-5-1990 authorising the Bank to sell the above mentioned property. If the fifth respondent failed to discharge the loan. It is interesting to note that the Managing Director of the fifth respondent Company addressed a letter dated 2-7-1990 requesting the second respondent Bank to release the balance of five lakh rupees loan as if it was sanctioned already. What transpired in the Bank and how this application was considered no information is forthcoming to the Court. The Bank sanctioned another loan of Rs.5,00,000/- on 8-1-1991. It is interesting to note that the time stipulated for repayment of the first loan itself expired by that date and not even a single pie was paid. When it is the case of the fifth respondent-Company that almost the construction work is completed and he is receiving monies from the customers

who intend to purchase, but failed to pay a single pie before the stipulated date the Bank did not examine the integrity and honesty of the enterpreneur while sanctioning the second term loan. Pursuant to the sanction order, the loan agreement was entered intobetween the parties on 23-1-1991. In this also, the purpose given was construction of Manoranjan and Mallika apartments. In the loan agreement it is clearly stated that additional charge is created on the house belonging to the petitioner that was already given as security for repayment of the first loan. The loan agreement was also signed by the petitioner in the last. He addressed another letter on 23-1-1991 and the relevant portion is extracted hereunder:

"I/we write to place on record that the documents of title to the property mentioned in the schedule here to which have already been delivered and deposited by me/us with the Vysya Bank Limited are agreed to be continued to be held by you and treated and considered as having been deposited for securing the monies that would be found due and payable not only on account of the earlier transactions but also on receipt of liability of Myself/Ourselfs or in the account of Sri M/s. Silpa Apartment Promoters (P) Ltd."

On the same day he has executed another guarantee bond in favour of the Bank apart from the irrevocable power of attorney of even date. According to the petitioner these documents were brought into existence by the fifth respondent in collision with the Branch Manager of the second respondent Bank by utilising the signed blank papers given by him and as the entire transaction is vitiated by fraud, his liability cannot be extended for the second loan. Even assuming for a moment that there is something to be said in this case, I would like to examine the case of the petitioner from the events that have taken place in this case, the loan agreement signed by the partners of the fifth respondent-Company contain the signatures of the Branch Manager and Managing Director of the fifth respondent Company and the petitioner as well as the guarantor. It is now on record that the fifth respondent having utilised the second loan also only paid some paltry amounts leaving substantial amount unpaid. After addressing series of letters to the fifth respondent seeking repayment of the loans, the Bank addressed a letter to the petitioner on 8-6-1993 bringing to the notice of the petitioner that the two loans sanctioned in favour of the fifth respondent in April 1990 remained unpaid and as such his personal attention is drawn to this fact for early recovery of the dues as guarantor and requested the petitioner to co-operate with them in realising the dues. The petitioner by his letter dated 23-6-1993 did not dispute about the sanction of two loans. He simply stated that "1 have discussed the matter with Mr. N. Bhaskar, Managing Director of Silpa Apartment Promoters Pvt. Ltd., Mr. Bhaskar has assured me that he is going to pay off the loan with interest. The delay is due to some severe cash-flow problems. He will also be communicating with you soon." From this, it is seen that even assuming that he is not aware of the sanction of the second loan on 23-1-1991 and the documents said to have been executed were

brought into existence by fabrication, even as per his own letter, for the first time he came to know of the two loans sanctioned by the Bank, utilised by the fifth respondent and the petitioner himself gave a reply wherein he did not make even a whisper about the nonexecution of the documents at the time of release of second loan. The petitioner himself addressed another letter on his own to the Bank on 21-5-1994 and a reading of the letter discloses that some disputes have arisen between the fifth respondent and the petitioner by that time. In this letter, he categorically stated that the fifth respondent was sanctioned short term loan I and II for Rs.5.00 lakhs each in April 1990. By this letter he wants to withdraw security offered by him as well as the personal guarantee and the irrevocable power of attorney. It is interesting to note in this letter he stated that "I am also withdrawing the power of Attorney given to you on 23-1-1991". This itself clinches the issue that he is aware of the sanction of second term loan and he has not only referred to two term loans sanctioned but also he specifically referred to the irrevocable power of attorney executed on 23-1-1991." Though he tried to explain the words short term loans I and II for Rs.5,00,000/- each in April 1990 by saying that the Bank in its letterdated 8-6-1993 stated that in April 1990 two loans were released and he was simply had to believe the version of the Bank, the very para that was extracted above proves that the petitioner has not come to this Court with clean hands. Further, the Bank after receipt of this letter got a legal notice issued on 1-7-1994. In this also two loans that were sanctioned to the fifth respondent were referred to and the petitioner admitted the same while sending reply to this letter. Subsequently, for the first time he made a grievance against Bank in sanctioning the loan for construction of apartments for which permission was not granted by any of the authorities. At the same time he referred to the Resolution passed by the Vijayawada, Guntur and Tenali Urban Development Authority (VGTU) and its meeting held on 4-12-1989 wherein fifth respondent was given permission for construction of ground, first and second floor for Mallika Nursing Home but not for apartments. Except this he has not said anything about signing of the papers by him at the time of sanction of the second loan by the second respondent-Bank. Of course, the Bank got a suitable reply issued through its Counsel dated 26-8-1994, making it clear that the obligation of the petitioner to pay the loan amount continues. In fact, after the Bank approached the Tribunal for recovery of the amounts, in the complaint filed before the fourth Metropolitan Magistrate, now redesigned as Special Metropolitan Magistrate, he stated as hereunder:

"The bank has taken the registered will, original sale deed and power of Attorney for the property of the complainant situated at 29-6-1939, Ramchandrarao Road, Suryaraopet, Vijayawada and disbursed loans of Rs-5 lakhs (Rupees five lakhs) each on 4-6-1990 and 23-1-1991."

9. In the light of the repeated admissions made by the petitioner while addressing letters to the Bank as well as filing the criminal complaint before the Magistrate, it is far fetched to contend that he is not aware of the sanction of the second term loan

and he never executed documents that are with the second respondent Bank at the time of disbursement of the loan. Learned Counsel for the petitioner repeatedly tried to draw my attention that the matter was sought to be typed on the blank white papers given by his client at the time of disbursement of first loan. But sitting in the writ jurisdiction under Article 226 of the Constitution of India, neither I can go into that aspect nor make a roaming enquiry, more so keeping the conduct of the petitioner in view. However, as certain glaring irregularities have been noticed by me in this case which I am going to advert hereunder. I kept the issue open so that the petitioner can work out his remedies elsewhere if he is so advised. Any attempt made by the petitioner to prove that these documents were brought into existence on the signed blank papers, the concerned Court/Forum may decide the question uninfluenced with the observations made by this Court and in accordance with law.

10. At the same time I am astonished to note the way in which the Tribunal dismissed the application by a docket order without applying its mind and even without hearing the petitioner and without giving any reasons in support of the order passed by it atleast to the extent of the allegations relating to the Tribunal with regard to replacement of its plan, the records in its custody. It is a well settled principle that justice is not only done but it should appear to be done. Even the client who lose the case should have a feeling that the Judge gave him full opportunity to put forth his case and having understood his case before passing the order. In this case, such an attitude on the part of the Tribunal is very much lacking. Though the provisions of C.P.C. are not applicable in strict sense, the Tribunal cannot forget the principles of observing principles of natural justice in adjudicating the cases before it Whatever may the defects that are pointed out, these defects will not absolve the petitioner of his liability as they appear now, and for the present it is suffice to state that he is fully aware of the fact that the fifth respondent has availed two term loans whether it is in April 1990 and January 1991 or April 1990 as contended by him now.

11. Before parting with the case 1 intend to go on record that all is not well with this Branch more so in the light of the repeated assertions made by the learned Counsel for the petitioner that the Manager of the Bank obtained the signatures on the blank papers as per the practice that is being followed in the banking system. Regarding the controversy about the construction of the apartments, from the record it is seen that the Municipal Corporation of Vijayawada approved the plan for construction of shopping complex under permit No. 1466/88 dated 17-12-1988 and the description is given simply as shopping complex. But in the application filed by the fifth respondent it is stated that the loan is required for construction of residential-cum-commercial complex. The disputed apartment''s plan as found in the Tribunal''s records is shown as Mallika and Manoranjan Apartments. A look at this map, on the basis of which the Branch Manager sanctioned the loan, I am very much baffled to know that this sort of happenings are taking place in banking transactions also. The map does not contain any particulars with regard to

ownership of the land, the extent of land on which the proposed apartments arc to be constructed, the details of the apartments, number of floors etc. and other particulars generally seen. It neither contains signature of the architect nor the owner of the premises which is a mandatory provision while applying for municipa! permission for construction. Further this plan also contains the same permit No. 1466/1988 under which a shopping complex was sought to be constructed. This fact also did not throw any suspicion in the minds of the officer concerned, to verify whether the fifth respondent furnished really the approved plan by the authorities concerned or he submitted a forged plan. Likewise in the application it stated that he is asking for loans for construction of Mallika and Manoranjan Apartments. But the plan now filed in the Bank record is a single building plan. Even at this stage the Manager concerned did not seek any clarification from the builder how he submitted single drawing while he has to construct the buildings separately as shown by him in the application as well as his letter dated 15-9-1989. Further there is no reference to the shopping complex plan found in the record of the Tribunal. Normally; any financial institution while considering an application for grant of term loan is expected to conduct a field inspection to find out whether the applicant has furnished true facts or not and whether the project is a feasible one or not before sanctioning the term loan. But, in this case, it does not appear that either the Branch Manger or any responsible officer visited the place of construction to satisfy themselves about the genuineness of the application,

12. Further in the application filed by the fifth respondent he did not offer the building owned by the petitioner as a security. In fact in the sanctioned letter dated 11-4-1990 also the properties of the Directors offered in the application were accepted as security. Now, it is seen that the Bank did not take the properties which were offered initially as securities by the fifth respondent. Having accepted them as securities now and in what manner the Bank has given up these properties is not bom out by the record. The learned Counsel for the respondent-Bank tried to bring to my notice that the action of the Manager of the Bank in accepting the property of the petitioner as security by giving up the properties which were offered as security was ratified while sanctioning the second plan. Likewise, it is the specific case of the petitioner mat when the third respondent Inspector approached the Bank it has furnished a building plan containing full particulars under the name Manoranjan Apartments along with the a covering letter. But the building plan filed along application before the Tribunal is altogether different and the plan is shown as Mallika and Manoranjan apartments more so, a blank drawing which is not even visible. If the Bank admits the fact of furnishing the plan "Manoranjan Apartments" to the 3rd respondent, the Bank has to clarify whether the loan was sanctioned on the basis of the plan found in the records of the Tribunal "Mallika and Manoranjan Apartments"" or on the basis of "Manoranjan Apartments". As it also the case of the Counsel for the respondent Bank that his client acted only on a xeroxcopy without insisting for an approved plan by the authorities concerned and the matter requires

a deeper probe. In fact, the petitioner''s Counsel has gone to the extent of submitting that the Bank filed the blank plan before the Tribunal along with the application and when the papers were returned to the Bank''s Counsel to file them in proper order at Hyderabad on 25-3-1997 the drawing has been replaced with the drawing that was furnished to the Sub-Inspector of Police and in fact his client has seen at the time of his chief examination. But, the same was again removed from the records of the Tribunal by the tune of his cross-examination. It is a serious allegation against the functioning of the Tribunal and the Chairman and the Tribunal has to look into this allegation as he himself recorded the evidence and he will be in a better position to accept or deny the allegation of the petitioner.

13. It is also seen from the record initially that the fifth respondent filed an application seeking term loan of Rs.10 lakhs on the basis of the values of the properties offered as security. But the Bank sanctioned only five lakhs as term loan and the same is repayable by December, 1990. As observed in the body of the judgment that on 2-7-1990, the fifth respondent filed an application as if a loan of Rs.10 lakhs was sanctioned but only Rs.5 lakhs was released and he seeks for release of balance of Rs.5 lakhs terms loan sanctioned. How this application was processed nothing is found in the record filed by the Tribunal. But, the fact remains that the second term loan was sanctioned on 8-1-1991 by which time the time fixed for the repayment of the first loan expired and the fifth respondent did not pay even a single pie towards the repayment of the loan having lured the Bank to grant short term loan by stating that he has already collected substantial amounts from the customers. Further, even at the time of sanctioning of the second term loan also the officials of the bank seemed to have not conducted any field inspection to know whether the monies released by the Bank was properly utilised for the purpose for which the loan was sanctioned and whether the lonee realised any amount on the apartments and whether there is any genuine need for the sanction of a second loan.

14. As much has to come out in the criminal proceedings initiated by the petitioner, the Tribunal is directed to keep the original record with care in the safe custody and furnish the certified copies of the documents that are needed by the petitioner to establish the fraud played in this case, and to find whether the fifth respondent alone is responsible in playing the fraud on the Bank and whether there is any hand of the Branch Manager in committing this fraud and whether the Branch Manager has acted in accordance with the guidelines given by the R.B.I. and Head Office for sanction of term loans.

15. With the above observations/ directions, the writ petition is disposed of. No costs.