

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.14428 of 2006

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the Judgment dated 12-6-2006 passed in C.T.A.No.238 of 2003 on the file of the A.P. Cooperative Tribunal, Hyderabad, wherein the Award dated 21-4-2003 passed in A.R.C.No.25 of 2003 on the file of the 2nd respondent was reversed, as arbitrary and illegal.

According to the petitioner, the 1st respondent obtained two loans in Account Nos.SEOD-18 and SEOD-32. Against Account No.SEOD-18, an overdraft amount of Rs.1,88,000/- was drawn by the 1st respondent on 23-1-1999. Against Account No.SEOD-32, an amount of Rs.8.00 lakhs overdraft facility was availed by the 1st respondent on 18-2-1999. By 31-3-2000, the Account No.SEOD-18 was redeemed and closed. However, the amount against Account No.SEOD-32 was not settled. Petitioner has an independent sister organization called 'Tirumala Balaji Chit Fund Limited' in which the 1st respondent had two chit accounts i.e. Chit Nos.27 and 28 and lien was created by the 1st respondent against these loan Account Nos.SEOD 18 and 32. When the money was not paid by the 1st respondent to the petitioner, the amount from the chit fund company was adjusted against Loan Account No.SEOD-18; however, against account No.32, an amount of Rs.7,38,089/- was outstanding. Therefore, an arbitration dispute was raised in A.R.C.No.322/2001 before the 2nd respondent for a claim of Rs.7,38,089/- relating to Account No.SEOD-32. The Arbitrator passed an Award on 19-11-2001 as prayed for by the Bank. Aggrieved by the same, C.T.A.No.262 of 2001 was filed by the 1st respondent herein. While filing written arguments in the said C.T.A., the 1st respondent raised a dispute as to the very existence of Account No.SEOD-18 and certain documents were also marked. However, the CTA was allowed and the matter was remitted back to the Arbitrator for reconsideration by a Judgment dated 19-7-2002 on the ground that the 1st respondent did not participate in the proceedings before the Arbitrator. On remand, before the Arbitrator only Exs.A1 to A10 were marked and no evidence, oral or documentary, was adduced on behalf of the 1st respondent herein. In fact, he remained *ex parte*. On considering the material before him, the Arbitrator passed an Award on 21-4-2003, which reads as under:

"In the circumstances, the respondent is set *ex parte*. The petitioner Bank is directed to proceed as per the Rules to recover the balance amount of loan Rs.7,38,079/- and interest thereon 20% from the date of filing the Arbitration Petition till the date of realization and the costs incurred by the Bank by attaching movable and immovable properties of the respondent."

Challenging the said Award, the 1st respondent herein filed C.T.A.No.238 of 2003. During the pendency of this C.T.A., P.W.1 was examined on behalf of the appellant (1st respondent herein) and got marked Exs.B1 to B23 and on behalf of the 1st respondent therein (petitioner herein) R.W.1 was examined and got marked Exs.A11 to A24 (Exs.A1 to A10 marked before the Arbitrator). On considering the said

evidence, the Tribunal allowed the appeal by Judgment dated 12-6-2006 and set aside the Award passed by the Arbitrator. The amount paid by the 1st respondent herein to the petitioner-Bank pursuant to the Award of the Arbitrator was directed to be refunded to the 1st respondent, after the expiry of the appeal time. Aggrieved by the same, the present Writ Petition is filed.

The real controversy between the parties is as to the existence of Account No.SEOD-18 and adjustment of the amounts (relating to chit account Nos.27 and 28) against loan Account No.SEOD-32 or SEOD-18, if it is existed - whether the letter Ex.A11 is a fabricated document.

In substance, the case of the petitioner is that it had sanctioned a loan of Rs.1,88,000/- on 23-1-1999 under SEOD Account No.18 and a further loan of Rs.8,00,000/- on 18-2-1999 to the 1st respondent herein. The amounts received by way of chit amounts were to the tune of Rs.2,42,780/-, out of which the outstanding amount of Rs.2,27,379/- under Account No.SEOD 18 was given credit to and the balance amount of Rs.15,401/- was given credit to Account No.SEOD 32, which is the subject matter of dispute. As such, the 1st respondent was due to the Bank, as on the date of dispute, a net amount of Rs.7,38,079/-.

Whereas, it is the contention of the learned counsel for the 1st respondent that A/c No.SEOD 18 never existed; therefore, the question of adjusting any amount against such account does not arise. There was only one account in respect of the 1st respondent i.e. A/c No.SEOD 32 against which a loan of Rs.8.00 lakhs was sanctioned to the 1st respondent by the petitioner-Bank on 18-2-1999 and any amounts adjusted thereafter was only against A/c No.SEOD 32. In fact, under Ex.B15 an amount of Rs.6,45,000/- was adjusted against A/c No.SEOD 32 and proper receipt was also passed by the Bank. However, the execution of such receipt was denied by the petitioner stating that Ex.B15 is a manipulated document and the counterfoil of such receipt is not available with the Bank. Further, in the written arguments submitted by the 1st respondent herein, in C.T.A.No.262 of 2001 it was stated that the Bank failed to come forward with true version of second account under SEOD 18 and the present claim under No.SEOD 32 cannot be believed to be true. In the light of the receipts given by the Bank on 20-3-1999, 27-8-1999, 29-11-1999 and 25-11-2000 a total amount of Rs.2,75,420/- was received by the Bank and added to that, an amount of Rs.2,92,860/- was sent by Tirumala Chit Fund Company, which is a sister concern of the Bank, but the said amount was not shown anywhere, either in SEOD A/c.No.18 or in SEOD A/c No.32. In addition to the said amount of Rs.5,68,280/-, the Andhra Bank Statement of Account of the 1st respondent dated 11-6-2001 shows a discharge of another amount of Rs.94,000/- on 31-3-1999. But, the said payment was not shown in the Statement of Account filed by the petitioner-Bank. Since this amount is fortified by the Andhra Bank Statement, it cannot be doubted and it is to be added to the above total amount of Rs.5,68,280/-. If this is added, the total discharge comes to Rs.6,62,280/-.

Heard the learned counsel for the parties and perused the entire material made available on record including the impugned Judgment.

It appears that the 1st respondent herein had not filed any explanation or participated in the proceedings before the Arbitrator twice (i.e. even after the matter was remanded in C.T.A.No.262 of 2001). However, in the present C.T.A.No.238 of 2003 both the parties were permitted to adduce additional evidence and they were also permitted to file written arguments. The sum and substance of the written

arguments filed by the petitioner herein, in C.T.A. No.238 of 2003 is that both the documents i.e. the alleged discharge letter-Ex.B1 and the counterfoil of payment voucher under Ex.B15 are false and fabricated. Petitioner-Bank never issued such discharge letter. The fact that the said document is fabricated is clearly seen from a naked eye. Further, the 1st respondent at the fag end of the proceedings before the Tribunal, on 14-3-2006 filed a counterfoil (Ex.B15) dated 24-2-2001 stating that through the payment voucher under the said counterfoil, he had deposited an amount of Rs.6,45,000/- with the Bank. This Court has verified the said counterfoil with all other vouchers of the said date i.e. 24-2-2001 (Xerox copies of the same are produced now) and also examined the seal of the Bank that has been affixed on the counterfoil with that of the seal on the other vouchers and on comparison, it is found that the counterfoil produced by the 1st respondent contains a different seal than the seal existing on all other vouchers, numbering 60 (which were not marked). *Prima facie*, I am of the opinion that the said document is a created and fabricated one. Further, the averment regarding issuance of legal notice etc., did not form part of the written arguments dated 8-7-2002 filed by the 1st respondent. That apart, the alleged payment under Ex.B15 is not mentioned in the written arguments filed by the 1st respondent on 8-7-2002 in C.T.A.No.262 of 2001.

A bare look at Ex.A11, the office copy of the certificate dated 24-2-2001 would show that it was not issued indicating that the 1st respondent had discharged the loan amount of Rs.8.00 lakhs. This is a certificate styled as "**To whomsoever it may concern**". Nowhere in the said certificate, it is stated that it is a discharge certificate. In Ex.B1, there is a clear interpolation of the words '**the above interests are taken under "Housing Loan Scheme" only. The principal amount of Rs.8,00,000/- along with interest has already been discharged by cash payments**'. As could be seen from Ex.B1, which is said to be the original of Ex.A11, *prima facie* I am of the view that it is a manipulated document. It is unfortunate that the Tribunal has taken a view that it is true that the loan amount sanctioned in favour of the 1st respondent stood discharged and Ex.B1 is a genuine document. If this is the discharge certificate, the same should have been either mentioned as a caption or the tenor of the language used should have indicated such thing. None of these things are present.

Further, Ex.A21, dated 23-4-1999 is not in dispute. The signature of the 1st respondent is available on it. In the said letter, the 1st respondent had stated that he had taken loan of Rs.1,88,000/- vide SEOD A/c.No.18 against the free balance of his chit held with M/s.Tirumala Balaji Chit Funds (P) Limited, Abids, Hyderabad and out of the two instalments, he had already paid one instalment. Due to personal problems, he requested the Bank to present his cheque for clearance for the month of April on 15-5-1999 instead of 25-4-1999. This letter has not been taken into consideration by the Tribunal. There is no whisper about Ex.A21 in the entire judgment of the Tribunal. Why this crucial document filed by the Bank, in which the signature of the 1st respondent is not disputed, was not taken into consideration, is not known. Apart from this, as noticed above, even in the written arguments filed earlier in C.T.A.No.262 of 2001, it was stated that an amount of Rs.2,92,860/- was sent by Tirumala Balaji Chit Funds (P) Limited, which is the sister concern of the petitioner, but the said amount was not shown anywhere either in SEOD A/c No.18 or SEOD A/c No.32 and it leads to an inference that the 1st respondent had the knowledge of SEOD Account No.18. This itself *prima facie* shows that the 1st respondent himself admitted that there is another account i.e. SEOD 18.

Further, as noticed above, the 1st respondent has not filed any counter before the Arbitrator, either before the remand or after the remand nor pursued the matter. Therefore, two times *ex parte* Award was passed by the Arbitrator, which resulted in earlier filing C.T.A.No.262 of 2001 and now C.T.A.No.238 of 2003. The petitioner also filed many documents before this Court to show that Ex.B15 is a fabricated one. It is for the Tribunal to examine and appreciate them on their own merits after being marked in accordance with law.

From the above, it is seen that the Tribunal has not properly appreciated the evidence on record and came to an erroneous conclusion that there was no SEOD A/c No.18 and the amount against SEOD A/c No.32 stands discharged in view of Ex.B1. Therefore, the impugned Judgment is liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned Judgment is set aside. The matter is remitted back to the Tribunal for consideration afresh. The Tribunal shall give opportunity to the parties to lead evidence, both oral and documentary, and also permit them to get the genuineness of any of the documents examined by experts, if necessary. No order as to costs.

08-12-2006

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