

Hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9524 OF 2014

Mr. Mayashanmkar M. Pandey

..Petitioner.

V/s.

Dena Bank and Ors.

..Respondents

Mr. S.P. Kanuga i/by Ms. Sapna Nath for the petitioner.

Mr. Anup Khaitan i/by M/s. Anup Khaitan & Co. for respondent no. 1.

CORAM : A.S.OKA AND

V.L.ACHLIYA, JJ.

DATED : 29TH SEPTEMBER, 2015

P.C. :-

Heard learned counsel for the petitioner.

2. Clause (1) of the order dated 9th September, 2015 reads thus :

“1. When we invited attention of the learned counsel appearing for the petitioner to the impugned Judgment and Order dated 5th August 2014 passed by the learned Chair Person of the Debt Recovery Appellate Tribunal and in particular the finding recorded in paragraph 5 thereof that even the original dishonoured cheque has not been produced before the DRT, the learned counsel for the petitioner on instructions of the petitioner who is stated to be present in the Court states that the original dishonoured cheque was produced before the DRTII in Appeal No.4 of 2007.”

3. We must note here that before the statement was

recorded on 9th September, 2015, we had informed the learned counsel for the petitioner to make the petitioner aware of the consequences of the statement turning out to be a false statement. After the learned counsel explained to the petitioner the consequences, the same has been recorded. Today on instructions, learned counsel for the petitioner in the presence of the petitioner has taken altogether a different stand. He states that the original dishonoured cheque with memorandum is with the petitioner. He states that only a photocopy thereof was made a part of the appeal compilation which is not disputed. On instructions, he states that the original cheque was shown to the Presiding officer of the DRT II at Mumbai and was returned to the petitioner.

4. In view of the aforesaid statement made on 9th September, 2015, the record of Appeal No. 4 of 2007 was called from DRT-II, Mumbai. In terms of the order of this Court dated 9th September, 2015, the record of Appeal No. 4 of 2007 is produced by the DRT-II, Mumbai. We have perused the roznama of the Appeal maintained by the DRT-II. We find that in the roznama, there is no reference to the fact that original cheque or any other original document was produced by the petitioner for the perusal of the Presiding Officer and that the same was returned to the petitioner.

5. Thus the statement which is made by the petitioner and which is recorded in the order dated 9th September, 2015 is completely a false statement.

6. The petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The jurisdiction of this Court both under Article 226 and 227 of the Constitution is always discretionary.

7. Considering the fact that a false statement was made by the petitioner before this Court on 9th September, 2015, the petitioner is disentitled to any relief. Considering this conduct of the petitioner, he cannot be allowed to invoke the extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

8. Accordingly we dismiss the petition. Considering the conduct of the petitioner, we direct the petitioner to pay costs quantified at Rs.10,000/- to the first respondent. The amount shall be paid within a period of four weeks from today. The records of the appeal shall be returned to DRT-II.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

Certified to be true and correct copy of original signed
Judgment / Order.