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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 08 , 2015

\+ W.P.(C) 8619/2015 & C.M.No.18726/2015

KALI CHARAN ..... Petitioner

Through: Ms. S. Janani, Mr. Sunando Raha & Mr. Deepak Goel, Advocates

versus

CANARA BANK & ORS. ..... Respondents

Through: Mr. Manish Chauhan & Mr. Sandeep S. Duggal, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

% **(ORAL)**

The penalty of compulsory retirement was inflicted upon petitioner in July, 2009 when he was working as Bank Manager. The misconduct attributed to petitioner is that he had sold his residential flat which was already mortgaged with the bank and had thus defrauded the bank, as he had not obtained any permission from the bank nor had cleared bank's liability.

In July, 2006 one –*Suresh Goel* had made a complaint against petitioner that a Sale Deed was executed by petitioner in his favour for a consideration of ₹7,50,000/-, although the flat in question was mortgaged with the complainant-bank. The penalty of compulsory retirement was challenged by petitioner by way of statutory appeal and the said appeal stands dismissed vide order of 29th March, 2011 *(Annexure-X)*, which is now sought to be challenged in the year 2015.

The Appellate Authority in the impugned order *(Annexure-X)*, has noted that petitioner has admitted during the enquiry proceedings that he knew *Suresh Goel* since the year 1992 and that petitioner was in urgent need of money for marriage of his daughter and thus, took a loan from *Suresh Goel*. The stand taken by petitioner was that his signatures were obtained on blank papers by said *Suresh Goel* in respect of loan transaction and that he had not attempted to sell the flat in question to said *Suresh Goel*.

At the hearing, learned counsel for petitioner had submitted that the said *Suresh Goel* has not been examined during the enquiry proceedings and so, the enquiry report as well as the impugned judgment is rendered unsustainable. Attention of this Court was drawn to petitioner's communication of 3rd July, 2006 *(Annexure P-I)* to the respondent-bank to submit that prior to the initiation of disciplinary proceedings, petitioner had already informed the respondent-bank that he had signed some loan papers/ blank papers and the sale deed of his flat in good faith and he had promised to pay the respondent-bank the amount due, as said *Suresh Goel* had assured that he will get the sale deed cancelled when petitioner returns the money by selling the flat after obtaining permission from the respondent-bank. Vide this communication, petitioner had sought to convey to respondent-bank that he had been cheated by *Suresh Goel* and respondent-bank should be cautious in case he approaches the respondent-bank for enquiry regarding petitioner's house loan. Thus, it was submitted that the entire factual position was brought to the notice of respondent-bank and that petitioner had no intention of defrauding the respondent-bank.

At the hearing, it was pointed out that vide communication of 22nd April, 2006 *(Annexure II)*, petitioner had infact sought permission from the respondent-bank for substitution of the property in question and that petitioner had intended to sell the flat in question, as it was not found to be suitable to petitioner's family. It is a matter of record that the permission sought by petitioner vide aforesaid letter of 22nd April, 2006 *(Annexure II)* was not granted to petitioner, as petitioner had not come forward to secure outstanding dues of respondent-bank by any mode whatsoever.

On behalf of respondent-bank, it was submitted that the impugned orders do not suffer from any infirmity or illegality and so, this petition deserves dismissal.

Upon considering the submissions advanced by both the sides and on perusal of the impugned order and the material on record, I find that no doubt petitioner had informed the respondent-bank much prior to the initiation of the disciplinary proceedings that he had executed the sale deed in respect of the flat in question, which he had already mortgaged with respondent-bank but he was assured by the said *Suresh Goel* that he would get the sale deed cancelled but he has been cheated by the aforesaid *Suresh Goel*. However, the very conduct of petitioner executing the sale deed in respect of the flat, which he had already mortgaged with the respondent-bank, amounts to misconduct which certainly calls for penalty of atleast compulsory retirement.

In the considered opinion of this Court, impugned orders do not suffer from any irrationality nor there is any error apparent on the face of record, as the non examination of said *Suresh Goel* is inconsequential in view of the fact that petitioner has infact admitted that the sale deed in question was executed. The plea of sale deed being a loan transaction is not acceptable on the face of it. There being two non-encumbrance certificates on record is of no consequence because one of them is dated and another one is undated. The one which is dated, has been rightly considered by the authorities concerned. It cannot be ignored that petitioner's photograph is on the sale deed and he had infact gone to Registrar's office for registration of the sale deed. Petitioner is not illiterate and was working as Bank Manager at the relevant time. In this background, no leniency can be shown to petitioner who had consciously executed the sale deed in respect of the flat in question, (*although it was mortgaged*) without clearing the bank dues and without obtaining requisite permission from the bank.

The concurrent findings returned by both the authorities are not liable to be interfered with, as there is no error of law or fact in the impugned orders. Thus, there is no valid ground for any interference by this Court.

Finding no substance in this petition, this petition and application are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

September 08, 2015
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