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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1802 of 2013

1. Mir Kasim Ali S/o Late Shri Mir Mohsin Ali Aged About 64 Years R/o K-5, Anupam Nagar, P.S. Pandari, Raipur, Civil & Revenue Distt. Raipur C.G.

2. Mir Arif Ali S/o Late Shri Mir Mohsin Ali Aged About 65 Years R/o K-6, Anupam Nagar, P.S. Pandari, Raipur Civil & Revenue Distt. Raipur C.G.

---- Petitioner

Versus

1. State Bank Of Indore A Subsidiary Of State Bank Of India, Constituted Under The State Bank Of India (Subsidiary Banks Act, 1959), Having Its Head Office At 5, Yashwant Niwas Road, Indore And Branches Interalia At Green Park, New Delhi, Through Its Chief Manager.

2. M/s. Anmol Granites, A Partnership Firm Having Its Office At 220, Sector-14, Faridabad, Haryana, Through Its Partners: A- Shri Amitabh Choudhary, B- Shri Khalil Ahmed Ansari (wrongly mentioned as Khalia Ahmed Ansari in impugned order), C- Shri Bhaskar Chawla

3. Shri Khalil Ahmed Ansari S/o Late Shri S.M.I Ansari Aged About 70 Years R/o A-6, Anupam Nagar, Raipur, C.G. (since deceased)

4. Shri Amitabh Choudhary S/o Late Shri Deb Prasad Choudhary Aged About 65 Years R/o 911, Sector-17, Faridabad Haryana

5. Shri Bhaskar Chawla S/o Shri K.C. Chawla Aged About 60 Years R/o 817, Sector 15A, First Floor, Faridabad Haryana

---- Respondent

And

WPC No. 902 Of 2013

1. Mir Kasim Ali S/o Lt. Mir Mohsin Ali Aged About 64 Years resident of K-5,Anupam Nagar, P.S. Pandari, Raipur Civil & Revenue Distt. Raipur C.G.

2. Mir Arif Ali S/o Late Shri Mir Mohsin Ali Aged About 65 Years, resident of K-6, Anupam Nagar, P.S. Pandari, Raipur, Civil & Revenue Distt. Raipur C.G.

---- Petitioner

Vs

1. State Bank Of Indore, A Subsidiary Of State Bank Of India, Constituted Under The State Bank Of India (Subsidiary Banks Act, 1959), Having Its Head Office At 5, Yashwant Niwas Road, Indore and Branches interalia at Green Park New Delhi, through its Chief Manager, PS Green Park.

2. M/s Anmol Granites A Partnership Firm having Its Office At 220, Sector-14, Faridabad, Harana, P.S. Faridabad Through Its Partners (A) Amitabh Choudhary, (B) Khalil Ahmed Ansari (wrongly mentioned as Khalia Ahmed Ansari in impugned order), (C) Shri Bhaskar Chawla

3. Shri Khalil Ahmed Ansari, S/o late Shri S.M.I. Ansari Aged About 70 Years resident of A-6, Anupam Nagar, Raipur C.G. (since deceased) PS Pandari

4. Shri Amitabh Choudhary S/o Lt. Shri Deb Prasad Choudhary Aged About 65 Years, resident of 911, Sector 17, Faridabad (Haryana) P.S. Faridabad

5. Shri Bhaskar Chawla S/o Shri K.C. Chawla Aged About 60 Years, resident of 817, Sector 15A, First Floor, Faridabad (Haryana) P.S. Faridabad

---- Respondent

For Petitioners : Shri Sunil Otwani and Shri Kasif Shakeel, Advocates.
For Respondent/Bank : Shri Abhishek Sinha, Advocate.

<u>Hon'ble Shri Justice Prashant Kumar Mishra</u>

<u>C A V Order</u>

<u>Passed on</u> : 16/02/2016

1. WPC No.902/2013 has been preferred by the petitioners who are guarantors in the loan transactions assailing the order passed by the Debts Recovery Tribunal (for short 'DRT') on 6.3.2013 in OA No.181/99 and the appellate order passed by the Debts Recovery Appellate Tribunal (for short 'DRAT') on 1.5.2013 rejecting the petitioners' interim application for examination of Ex.-A/11 & A/12 by the handwriting expert.

2. WPC No.1802/2013 has been preferred by the same petitioners challenging the order passed by the DRT on 1.3.2013 in OA No.181/99 and the appellate order passed by the DRAT on 1.5.2013 rejecting the petitioners' interim application seeking opportunity to cross-examine Shri M.D. Sharma, Manager, State Bank of Indore, Green Park Branch, New Delhi to prove their contention that a forged power of attorney was pressed into service by the borrower i.e. defendant No.3 in collusion with the Bank officials for creating mortgage of the property belonging to the petitioners who are defendants No.5 & 6 in the OA.

3. The original defendant No.3 Shri Khalil Ahmad was partner of M/s Anmol Granites along with Shri Amitabh Choudhary and Shri Bhaskar Chawla. The said firm obtained cash credit facility of Rs.25 lakhs and Foreign Bill Discount facility of Rs. 25 lakhs, totaling Rs. 50 lakhs from the State Bank of Indore, respondent No.1 (hereinafter referred to as 'the Bank'). An agreement for the said loan transaction was executed between the parties on 10.8.94. The demand promissory note, DP note delivery letter and hypothecation agreement were also executed on 10.8.94 together with agreements of bills of purchase and two separate terms and conditions letters. The hypothecation was of all stocks of granites, blocks, marble slabs etc. lying at A-6, Anupam Nagar, Raipur. The present petitioners stood as guarantors for the said loan and executed agreement of guarantee on 10.8.94. They also executed mortgage of their immovable property by deposit of original sale deeds dated 29.3.86 on 13.8.94. The petitioners also executed power of attorney in favour of original defendant No.3 i.e.

Khalil Ahmad Ansari. The creation of mortgage was for Plot No.K-6, measuring 4080 sq.ft. situated at Anupam Nagar, Shankar Nagar Ward-18, Raipur owned by Mir Arif Ali together with all building structures and executions thereon.

4. On default in repayment of loan, the Bank filed OA No.181/99 for recovery of Rs.62,03,057.78/- together with interest at the contractual rate of 20% per annum with quarterly rest from the date of filing of the OA i.e. 12.5.1999 till realization.

5. The OA was allowed on 29.5.2002 only against defendants 1 to 4. In the said proceedings, defendants 1, 2, 4, 5 & 6 did not appear. Initially defendant No.3 appeared but subsequently remained ex-parte. Defendants 5 and 6 also appeared subsequently and preferred their written statements in view of the order passed by this Court on 9.3.2001 in WP No.310/2001. Notices in the OA were served on the defendants through newspaper publication.

6. In the appeal preferred before the DRAT challenging dismissal of OA in respect of the present petitioners, the DRAT passed an order on 8.12.2005 remitting the matter back for re-consideration only on the point of liability of defendants 5 & 6/petitioners.

7. Although in WP No.310/2001 the petitioners were allowed 15 days time for filing of the written statements and the Original Application was decided almost 14 months thereafter i.e. on 29th May, 2002, the petitioners allege that they did not file their written statements. It was only after the matter was remitted back by the DRAT vide its order dated 8.12.2005, the present petitioners/defendants 5 & 6

submitted their written statements on 13.11.2006. In para-9 of their written statement, the petitioners have denied that they stood guarantors through their power of attorney holder i.e. defendant No.3 and executed guarantee agreements (Ex.A/9 & A/10). They also denied execution of power of attorney in favour of defendant No.3 vide Ex.-A/11 & A/12, with further statement that the same has been forged, fabricated and got prepared by defendant No.3 without their knowledge or consent. The petitioners denied their signatures on Ex.-A/11 & A/12. It is also averred in para-27 of the written statement that defendants 5 & 6 never appeared before the DRT and had not filed any written statement previously. For the first time they became aware about the recovery proceeding only when they received notice of appeal from the DRAT, Allahabad.

8. In the above backdrop, when the OA proceeded ahead after remand, the subject application for examination of the documents Ex.-A/11 & A/12 by handwriting expert/State Examiner and for summoning Shri MD Sharma, Branch Manager of the State Bank of Indore, Green Park Branch, New Delhi has been preferred on the ground that in order to prove collusion between defendant No.3 (since deceased) and the Bank Officials, examination of Bank Manager is necessary and similarly, authenticity and genuineness of the documents Ex.-A/11 & A/12 can only be proved by examining the same by handwriting expert.

9. It is argued by learned counsel for the petitioners that the petitioners having initiated the prosecution against defendant No.3 for fraud committed by him in getting prepared the forged

documents and since the petitioners have been asserting from the very beginning that they have never signed documents Ex.-A/11 & A/12, both the applications should have been granted by the DRT/DRAT. He would submit that in the absence of such examination or opinion of the expert, the petitioners may not be able to prove their case.

10. Per contra, learned counsel for the Bank would submit that the matter is pending before the DRT since 1999. The petitioners did not appear before the DRT despite there being a direction by this Court in WP No.310/2001. On their own showing they entered for the first time when the matter was remitted back by the DRAT. The petitioners have to prove their case by examining their witnesses and not only by examining handwriting expert.

11. Having heard learned counsel for the parties and having regard to the nature of jurisdiction under Article 226/227 of the Constitution of India, in matters arising out of proceeding before the DRT/DRAT concerning an interim order, this Court is of the considered opinion that both the writ petitions deserve to be dismissed for the reasons infra:-

(i) The petitioners claimed that they became aware about recovery proceedings for the first time when they received notice of appeal from DRAT, Allahabad, however, they had preferred WP No.310/2001 before this Court seeking time to file written statement. Thus claim of knowledge about the proceeding only in the year 2006 is absolutely false. It is not proper for the petitioners to make such statement despite obtaining order from this Court in its writ jurisdiction.

(ii) Similarly, the petitioners had allegedly filed written statement earlier wherein also they denied execution of power of attorney in favour of deceased/defendant No.3 who was instrumental in obtaining loan from the Bank. It is not a case that in their earlier written statement the petitioners had admitted documents Ex.-A/11 & A/12. However, to protract the litigation, they would state in the subsequent written statement filed in the year 2006 that they have not filed any written statement earlier. There is no whisper in the pleading about filing of WP No.310/2001.

(iii) The Bank Manager of State Bank of Indore, Green Park Branch, New Delhi is not a witness to the execution of the documents. It is private to the petitioners and deceased defendant No.3. If the Bank Manager was also involved, the petitioners would have initiated criminal proceeding against him also. However, it does not appear from the record that any such proceeding was initiated against the Bank Manager by the petitioners.

(iv) Insofar as examination of the documents by handwriting expert is concerned, such prayer in respect of loan transaction has its own peril inasmuch as if this is allowed in a routine manner, then every borrower or guarantor would start denying his signatures and seek opinion of expert and there will be no end to the recovery proceedings which are initiated by the Bank for recovery of tax payers' money. The Banking transactions are conducted in accordance with law even though it is commercial in nature. The Bank Officer is ordinarily not presumed to have thrown away public money by giving loan in a fraudulent manner. The petitioners have to prove their own case by adducing evidence.

(v) The matter is pending before the DRT since 1999 i.e. for the last about 17years.

12.It is settled law that while exercising writ jurisdiction over the orders passed by the Administrative Authorities, Tribunal and Quasi Judicial Authorities, this Court should not sit over the judgment/order as an appellate authority.

13.In the matter of **B.K. Muniraju Vs. State of Karnataka and others** {(2008) 4 SCC 451}, it has been held in para-22 thus:-

> "**22**.It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an interior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ."

14.For the foregoing, this Court does not find any substance in the writ petitions. Both the writ petitions are accordingly dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve