IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 5 OF 2019

THE GOA STATE CO-OPERATIVE BANK LTD., (H.Q.), PANJAI ... Appellant

Versus

DATTA SHRIPAD NAIK ... Respondent

Adv. S. R. Rivankar with Adv. Rama Rivankar for the Appellant.
Adv. R. G. Ramani for the Respondent.

Coram: DAMA SESHADRI NAIDU, J.

Date: 24th January 2020.

Oral Order:

Respondent Datta Shripad Naik borrowed money from the appellant Co-operative Bank and, later, defaulted. So the Bank sued Shripad; it launched arbitration proceedings. The award passed, the Bank applied for execution. Pending the execution, Shripad came forward to have the matter settled amicably. By then, the bank floated a one-time-settlement scheme (OTS); it let Shripad take advantage of the scheme.

2. Accepting the Bank's offer of OTS, Shripad cleared the loan. But after one year, Shripad raised a dispute before the arbitrator that the OTS Scheme violates the RBI guidelines. As per the RBI guidelines, the respondent could have paid far less than what he had paid under the OTS. Thus, he wanted the arbitrator to modify the OTS scheme keeping in view the RBI guidelines and recalibrate the loan amount. In other words, he

wanted the arbitrator to direct the bank to refund the amount Shripad supposedly paid in excess. The arbitrator, it seems, refused to interfere.

3. Aggrieved, Shripad has invoked section 34 of the Arbitration and Conciliation Act, 1996, before the District Court. The District Court, on merits, through its judgment dated 26.05.2003, allowed Shripad's objections and directed the bank to payback Rs.15,05,598/- to Shripad, together with interest @12% compounded with quarterly rests from 01.04.2003 till actual payment.

4. So the bank has filed this appeal under arbitration.

5. The learned counsel for the Bank has submitted that the judgment suffers from non-application of mind. To elaborate, he has submitted that the District Judge has just copied the grounds of objections from the respondent's application under section 34 of the Act and, in the end, appended the order without any discussion whatsoever.

6. Shripad's counsel, on the other hand, has submitted that the judgment may not have been happily worded, but it has considered the bank's objections and eventually rendered the impugned judgment. According to him, it is unassailable.

7. I have gone through the judgment, which runs into 24 pages. Initially, the judgment sets out the facts and the rival contentions. From para 15, it gives the reasons. Curiously, the reasons are again the rival contentions and the grounds of objection, reproduced verbatim from

Shripad's application under section 34 of the Act. Eventually, in para 45, the District Judge simply refers to the precedents and, finally, holds thus:

> " The ratio laid down in the above judgment would not favour the case of the respondent in any manner because the excess amount has gone in the hands of the respondent and which amount is required to be refunded to the applicants."

8. In the above extracted portion, the District Judge has concluded, as I gather, that the bank collected the excess amount and it should refund that amount. But it discusses nowhere in the judgment whether the RBI guidelines apply, whether Shripad's previous conduct estops him from contending otherwise, and whether the remedy Shripad sought could be sustained in the absence of any challenge to the OTS scheme itself.

9. Under these circumstances, I set aside the judgment and remand the matter to the District Court for a fresh adjudication.

Needless to observe that the parties on both sides are free to urge all the grounds available to them. As a matter of abundant caution, I note that the District Court will decide the matter uninfluenced by this Court's observations, if any, in this judgment.

DAMA SESHADRI NAIDU, J.

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