

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND**

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT APPEAL NO: 1044 OF 2014

Writ Appeal under clause 15 of the Letters Patent filed against order dated 11.07.2014 in W.P.No.18684 of 2009 on the file of the High Court.

Between:

Ch.Sudhakar Raju, S/o. Sri Purnachandra Raju, aged 40 years, Occ ; Business, R/o. Flat No. 303, Sundar Sai Plaza Anandnagar, Khairatabad, Hyderabad.

.....PETITIONER/APPELLANT

AND

1. Tirumala Coop Urban Bank Ltd, rep. by Branch Manager, Abids, Hyderabad.
2. SCR / Arbitrator, O/o. The Deputy Registrar of Coop. Societies, M7, A.P. Golconda Division, Nampally, Hyderabad.
3. The A.P. Coop. Tribunal, Hyderabad.

.....RESPONDENTS/RESPONDENTS

I.A.NO:1 OF 2014 (WAMP.NO: 2416 OF 2014)

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 11.07.2014 made in W.P.No.18684 of 2009, pending disposal of the above writ appeal.

I.A.NO:2 OF 2014 (WAMP. NO: 2687 OF 2014)

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased stay of

all further proceedings, pursuant to the Notice of Sale dated 16/08/2014 issued in Form No.8 in EP No. 112/2003 for sale of immovable Property bearing Flat No.303, 3rd Floor, Sundersai Plaza, House No.6-3-596/46 in Sy.No.263 of Anand Nagar, Khairatabad, Hyderabad, pending disposal of the above writ appeal.

I.A.NO:3 OF 2014 (WAMP.NO:3414 OF 2014)

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order or orders to direct the 3rd respondent AP Cooperative Tribunal at Hyderabad to pay the amounts laying in CIA No.238/2003 by the appellant-1st respondent in pursuance to the orders of the Hon'ble High Court to the petitioner/1st respondent bank.

**Counsel for Appellant : SRI VEDULA SRINIVAS, SENIOR COUNSEL
REPRESENTING SMT VEDULA CHITRALEKHA**

**Counsel for Respondent No.1 : SRI B.S.PRASAD, SENIOR COUNSEL
REPRESENTING SRI K.B.RAMANNA DORA**

**Counsel for Respondent Nos.2 & 3 : SMT B.MOHANA REDDY, GP FOR
COOPERATION**

The Court made the following Judgment : -

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL No.1044 of 2014

JUDGMENT: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

This intra-court appeal is filed by the appellant aggrieved by the order dated 11.07.2014 passed by the learned Single Judge dismissing W.P.No.18684 of 2009 and confirming the order dated 03.08.2009 passed by the Andhra Pradesh Co-operative Tribunal, Hyderabad, in C.T.A.No.238 of 2003.

2. Heard Sri Vedula Srinivas, learned senior counsel representing Smt.V.Chitralkha, learned counsel for the appellant, Sri B.S.Prasad, learned senior counsel representing Sri K.B.Ramanna Dora, learned counsel for respondent No.1-Bank, and Smt.B.Mohana Reddy, learned Government Pleader for Cooperation Department appearing for respondent Nos. 2 and 3.

3. **Brief facts of the case:**

3.1. Respondent No.1 is Tirumala Co-operative Urban Bank Limited conducting business of banking and grant loans to its members. The appellant approached respondent No.1 for a loan

of Rs.10,00,000/- and opened a savings account No.424 on 23.01.1999. Respondent No.1 after scrutiny of the value of the collateral security sanctioned loan to an amount of Rs.8,00,000/- as Secured Overdraft, *vide* SEOD A/c.No.32, on 17.02.1999 and the rate of interest agreed was 5% over the bank's prime lending rate with a minimum of 20% per annum with quarterly rests and the EMI was fixed at Rs.87,710/-. The appellant executed a demand promissory note on 17.02.1999 for an amount of Rs.8,00,000/- agreeing to pay the interest with quarterly rests from the date of executing the demand promissory note. After obtaining approval of the governing body and all the directors, respondent No.1 disbursed the loan amount on 18.02.1999 by deducting Rs.10,065/- towards share capital, out of sanctioned loan of Rs.8,00,000/-, and paid Rs.7,89,395/-. The appellant deposited the title deeds relating to his property *vide* letter dated 25.02.1999. Respondent No.1 has got a sister concern by name Tirumala Chit Funds Private Limited, which runs chit fund business, and the appellant herein was a subscriber to three chits for a total sum of Rs.11,00,000/-. The appellant became defaulter and not paid arrears, despite respondent No.1 issued notices on 23.07.1999, 13.03.2001 and final notice on 25.04.2001 requesting him to

remit the entire loan amount together with further penal interest accrued thereon.

3.2. Respondent No.1 filed A.R.C.No.322 of 2001-J1 before respondent No.2-Arbitrator for recovery of an amount of Rs.7,38,079/- with interest from 01.07.2001. The appellant entered his appearance through counsel, but no counter or documents have been filed and ultimately remained *ex parte*. Respondent No.2 passed an Award on 19.11.2002 in favour of respondent No.1. Aggrieved by the same, the appellant filed C.T.A.No.262 of 2002 before respondent No.3-A.P. Cooperative Tribunal at Hyderabad. Respondent No.3 allowed the appeal on 19.07.2002 by setting aside the Award dated 19.11.2002 and remitted back to respondent No.2 for fresh consideration on merits. Respondent No.2 once again passed Award on 21.04.2003 in A.R.C.No.25 of 2003. Aggrieved by the same, the appellant filed C.T.A.No.238 of 2003 before respondent No.3 and the same was allowed on 12.06.2006.

3.3. Questioning the same, respondent No.1 filed W.P.No.14428 of 2006 before the erstwhile High Court of Andhra Pradesh, Hyderabad, and the same was allowed on 08.12.2006 and the matter was remitted back to respondent

No.3 for consideration afresh. Pursuant to the above said order, respondent No.3 after considering the oral and documentary evidence on record dismissed C.T.A.No.238 of 2003, by its judgment dated 03.08.2009. Questioning the said judgment, the appellant filed W.P.No.18684 of 2009 before erstwhile combined High Court for the State of Telangana and Andhra Pradesh, Hyderabad, and the learned Single Judge dismissed the same, by its order dated 11.07.2014. Aggrieved by the same, the appellant filed this intra-court appeal.

Submissions of learned senior counsel for the appellant:

4. Learned senior counsel submitted that the appellant had discharged entire loan amount to respondent No.1. In spite of the same, respondent No.1 has not returned the documents, which are pledged at the time of availing loan, on the other hand, initiated arbitration proceedings for recovery of the alleged amount from the appellant. Respondent No.2, without giving reasonable opportunity to the appellant, passed *ex parte* Award on 21.04.2003, especially without giving any reasons, and the same is *non est* in the eye of law. He further contended that even if the appellant was made set *ex parte* in Arbitration Proceedings in A.R.C.No.25 of 2003, respondent No.2 ought to have passed Award by giving reasons. Hence, the Award passed

by respondent No.2 is contrary to Rule 49 of the Andhra Pradesh Co-Operative Societies Rules, 1964 (for short, 'the Rules').

4.1. He further contended that the appellant filed appeal, *vide* C.T.A.No.238 of 2003, before respondent No.3 along with all documents with regard to payment of total loan amount including certificate dated 24.02.2001 issued by respondent No.1, wherein it is specifically stated he paid the principle amount of Rs.8,00,000/- along with interest by way of cash payments and the said document was marked as Ex.B.1 and he had discharged his initial burden. However, respondent No.3 disbelieved the same merely on the alleged ground that PW.1 in his evidence disputed about payment of the amount by the appellant which is mentioned in Ex.B.1. Though PW.1 has not denied Ex.B.1, only denied the payment made by the appellant in the absence of any evidence.

4.2. Learned senior counsel vehemently contended that PW.1 has not denied about the issuance of Ex.B.1, on the other hand, PW.1 denied the two sentences, which reads as follows:

"The above interests are taken under "Housing Loan Scheme" only.

The principle amount of Rs.8,00,000/- along with interest has already been discharged by cash payments.”

In the absence of any iota of evidence, respondent No.3 erroneously come to the conclusion that the last two sentences in Ex.B.1 were in dark colour and not tallying with colour of earlier typing and learned Single Judge also without properly appreciating the same dismissed the writ petition simply relying upon the judgments of the Hon'ble Apex Court in **Syed Yakoob v. K.S. Radhakrishnan and others**¹, **S.R. Bommai and others v. Union of India and others**² and **Mohd. Shahnawaz Akthar and another v. First Additional District Judge, Varanasi and others**³ holding that the scope of judicial review under Article 226 of the Constitution of India is very limited and writ Court cannot re-appreciate the findings recorded by the Tribunal, especially while exercising the appellate jurisdiction to consider the oral and documentary evidence on record and give specific findings and the same is contrary to law.

4.3. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in **Central Council for Research in**

¹ AIR 1964 SC 477

² AIR 1994 SC 1918

³ (2001) 5 SCC 510

Ayurvedic Sciences and anr. V. Bikartan Das and Ors⁴, wherein it was held that findings of fact based on 'no evidence' or purely on surmises and conjectures or which are perverse points could be challenged by way of a writ of certiorari. Hence, the impugned order passed by the learned Single Judge confirming the judgment of respondent No.3 as well as the Award passed by respondent No.2 is contrary to law.

Submissions of learned senior counsel for respondent No.1:

5. Learned senior counsel contended that the appellant has not paid the amounts to respondent No.1. Respondent No.2 has given several opportunities to the appellant in A.R.C.No.25 of 2003, but he has not filed counter/objections nor produced any evidence. Respondent No.2, after considering the claim and also documentary evidence on record and after following the due process as contemplated under law, passed Award in A.R.C.No.25 of 2003 on 21.04.2003. Aggrieved by the same, the appellant filed statutory appeal, *vide* C.T.A.No.238 of 2003, before respondent No.3, wherein the appellant for the first time filed Ex.B.1 in the year 2006 alleging that he paid principle amount and interest, though he has not paid the said amount. The appellant himself included last two sentences in the said

⁴ AIR 2023 SC 4011

document Ex.B-1, whereas the document Ex.A.11 does not contain the said two sentences. Respondent No.3 after evaluating the oral and documentary evidence adduced by both the parties dismissed the appeal by giving cogent findings and disbelieved the version of the appellant in respect of alleged payment of loan amount.

5.1. He further contended that the appellant had not approached respondent No.3 as well as this Court with clean hands and Ex.B.1 document is a fabricated one. Hence, the appellant is not entitled to the equity relief enshrined under Article 226 of the Constitution of India and the learned Single Judge had rightly dismissed the writ petition; and he is not entitled to any relief in the present writ appeal.

Analysis of the case:

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that the appellant had borrowed an amount of Rs.8,00,000/- on 17.02.1999 *vide* loan account No.SEOC 32 from respondent No.1 and he committed default in repayment of the loan amount. Respondent No.1 initiated the proceedings for recovery of the amount due from the appellant and filed

Arbitration Application before respondent No.2 in A.R.C.No.322 of 2001-J1 invoking the provisions of Section 62 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') and the same was allowed on 19.11.2002. Aggrieved by the same, the appellant filed C.T.A.No.262 of 2002 before respondent No.3 and the same was allowed and remitted back to respondent No.2, by its judgment dated 19.07.2002. Thereafter, respondent No.2 after following due procedure had passed Award in favour of respondent No.1 on 21.04.2003. Questioning the same, the appellant filed C.T.A.No.238 of 2003 and the same was allowed, by its judgment dated 12.06.2006. Aggrieved by the same, respondent No.1 has filed W.P.No.14428 of 2006 before erstwhile High Court of Andhra Pradesh at Hyderabad and the same was allowed and remitted the matter to respondent No.2 for consideration afresh and with a direction to 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, by its judgment dated 08.12.2006.

7. In the above said C.T.A.No.238 of 2003, the appellant was examined as PW.1 and on his behalf Exs.B.1 to B.34 documents were marked and on behalf of respondent No.1, Mr.M.V.Ramana

Rao, who is the Manager of the Bank, was examined as RW.1 and Exs.A.1 to A.55 documents were marked. Respondent No.3 after considering the contentions of the respective parties, oral and documentary evidence on record and also after hearing both the parties dismissed the appeal holding that the claim of the appellant that he paid principal amount of Rs.8,00,000/- along with interest in favour of respondent No.1 was not true and correct and respondent No.1 denied the same including Ex.B1 document, especially two sentences which are mentioned in Ex.B1 are interpolation. Respondent No.3 after examining Ex.B1 and Ex.A11 documents observed that the last two sentences typing in Ex.B1 document was in dark colour and not tallying with colour of earlier typing. Respondent No.3 further observed that the appellant has not produced any iota of evidence that he paid the amount by way of cash to respondent No.1, especially respondent No.1 filed statement of accounts of particular period, whereby it is revealed that respondent No.1 has not received any amounts as alleged by the appellant. Respondent No.3 further held that till 2006, the appellant has not placed the documents at any point of time and he filed Exs.B1 and B.15 documents in the year 2006, for the first time i.e., on 13.03.2006 and 14.03.2006, though Ex.B1 document

pertains to 24.02.2001, and also observed that if the appellant really discharged the amount through Ex.B1, he has not made any effort for return of the documents, which are in the custody of respondent No.1 or approached any Court of law.

8. It is also pertinent to mention here that the appellant had not filed objections or produced any documents or participated in the Arbitration proceedings twice, in spite of the matter remitted back to respondent No.2 at the instance of appellant in C.T.A.No.262 of 2001 on 19.07.2002 and C.T.A.No.238 of 2003 on 03.08.2009.

9. The judgment relied upon by the learned senior counsel for the appellant is not applicable to the facts and circumstances of the case on the ground that respondent No.3 considered the oral and documentary evidence on record and passed the impugned judgment dated 03.08.2009 by giving cogent reasons.

10. It is pertinent to mention here that the appellant relying upon Ex.B.1 contended that he had discharged the loan amount, whereas RW.1 denied the same. It is settled principle of law that the party who is claiming the benefit under the document, he has to prove and establish that the said

document is genuine one by adducing necessary evidence under law. It is also relevant to mention here that this Court, while setting aside the judgment dated 12.06.2006 passed in C.T.A.No.238 of 2003, remitted the matter to respondent No.3 and granted liberty to both the parties to lead evidence, both oral and documentary, and also permitted them to get the genuineness of any of the documents examined by experts, if necessary. In spite of the same, the appellant had not taken any steps to prove Ex.B.1 document through expert by filing necessary application nor made any request before respondent No.3 to send Ex.B.1 document to the expert's opinion nor filed any application for summoning the concerned officer, who issued Ex.B.1 document, for recording evidence. However, the appellant simply filed Ex.B.1 document and had not discharged his initial burden, on the other hand, he shifted the same upon respondent No.1 and the same is not permissible under law.

11. It is also pertinent to mention here that the Appellate Tribunal is a fact finding Court/Tribunal while exercising the appellate jurisdiction and after appreciating the oral and documentary evidence on record and after hearing the parties passed the judgment on 03.08.2009 by giving cogent findings and the learned Single Judge also after considering the

contentions of the respective parties and after taking into consideration the principles laid down by the Hon'ble Apex Court dismissed the writ petition.

12. For the foregoing reasons, this Court does not find any ground in the writ appeal to interfere with the impugned order dated 11.07.2014 passed by the learned Single Judge to exercise the powers conferred under clause 15 of Letter Patent.

13. Accordingly, the writ appeal is dismissed, without costs.

Miscellaneous applications pending, if any, shall stand closed.

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**SD/-I. NAGA LAKSHMI
DEPUTY REGISTRAR**

SECTION OFFICER

To

1. Two CCs to GP FOR COOPERATION, High Court for the State of Telangana at Hyderabad. [OUT]
2. One CC to SMT VEDULA CHITRALEKHA, Advocate [OPUC]
3. One CC to SRI K.B.RAMANNA DORA, Advocate [OPUC]
4. Two CD Copies

SA
BS

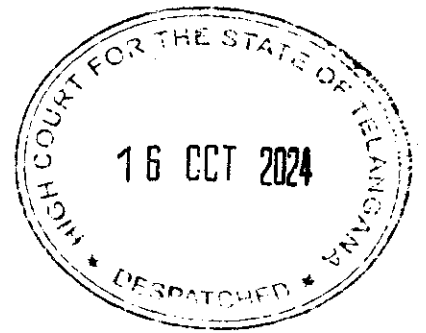


HIGH COURT

DATED:11/09/2024

JUDGMENT

WA.No.1044 of 2014



**DISMISSING THE W.A
WITHOUT COSTS.**

⑦
24/09/24
LKS