

Bombay High Court

Dr. Freddie Ardeshir Mehta And ... vs Union Of India And Others on 3 August, 1989

Equivalent citations: 1989 (3) BomCR 656, 1991 70 CompCas 210 Bom

Author: S Bharucha

Bench: S Bharucha

JUDGMENT: S.P. Bharucha, J.

1. The petitioners were, at the relevant time, the directors of the Ahmedabad Advance mills Ltd., a company incorporated under the provisions of the Indian Companies Act, 1882. On May 31, 1977, the company purchased a flat in Clover Apartments at Cuffe Parade, Bombay, for a sum of Rs. 1,84,000 for accommodating the seventh petitioner who was an employee of the company and its whole time director. It was agreed when the purchase was made that the seventh petitioner would have the option to purchase the flat during the course of his employment or within 12 months thereafter. On September 14, 1978, an agreement was entered into between the company and the seventh petitioner giving him such option on payment by him of Rs. 100. On November 29, 1978, an agreement was entered into between the company and the seventh petitioner exercised the option. He then paid to the company a sum of Rs. 92,000 being half of the purchase price and requested that he be allowed to pay the balance in three equal installments. The company's board of directors, thereupon passed a resolution. It approved the transfer of the flat to the seventh petitioner on the basis that half of the purchase price should be paid immediately and the balance in three yearly installments report and balance-sheet and accounts for the year ended March 31, 1979, the company showed the amount due from the seventh petitioner under the head of "Sundry debtors-unsecured". On February 20, 1980, the seventh petitioner paid to the company the balance purchase price and the sum of Rs. 6,685 by way of interest thereon.

2. In November and December, 1981, the books and records of the Company were inspected by the Assistant Inspecting Officer of the Office of the Regional Director, Department of Company Affairs, Bombay, under the provisions of section 209A of the Companies Act, 1956. On December 17, 1981, this officer wrote to the company stating that it had not complied with the provisions of sections 49, 297 and 301 of the ACt in relation to the sale of the flat to the seventh petitioner. The company replied and the sale of the flat to the seventh petitioner. The company replied and the alleged non-compliance with the aforementioned provisions was not pressed. Instead, on November 18, 1982 notice were addressed to the petitioners alleging that, inasmuch as the balance purchase price of Rs. 92,000 and the interest amount of Rs. 6,685 and been paid by the seventh petitioners to the company after about 17 months, it amounted to the company giving a loan to the seventh petitioner. As prior approval of the Central Government pursuant to section 295 had not been taken by the company, the giving and taking of the loan amounted to an infringement of the provisions of section 295(1) of the Act making the petitioners liable to be proceeded against under section 295(4). The petitioners, through their advocates, contended in reply that the financial accommodation that was given by the company to the seventh petitioner in the form of deferred payment of the balance purchase price did not amount to a loan and, therefore, the provisions of section 295 were not attracted.

3. On December 10, 1982, the Registrar of Companies filed a prosecution against the petitioners in the court of the Additional Chief Metropolitan Magistrate at Bombay. He stated that the seventh petitioner had paid the sum of Rs. 92,000 on November 29, 1978, and the balance amount of Rs. 92,000 together with interest in the sum of Rs. 6,685 only on February 20, 1980. He alleged : "The amount due from Shri Gonda (the seventh petitioner) was not on

account of any of the normal trading or business activities of the company as it is not the business of the company to deal in immovable property and, therefore and, the amount of Rs. 92,000 due from Shri Gonda to the company and such financial assistance and deferred part payment amounts to, and shall be treated as, a loan to a director without the previous approval of the Central Government and thereby the accused have contravened the provisions of section 295(1)(a) punishable under section 295(4) of the Companies Act, 1956."

4. This writ petitioner is filed to quash the prosecution. The contention is that no loan had been advanced by the company to its director, the seventh petitioner, and that, therefore, the provisions of section 285 have no application.

5. Section 295, sub-section (1), prohibits a company from directly or indirectly making any loan to its director without the previous approval of the Central Government in that behalf. Contravention of this provision is punishable under sub-section (4) either with fine which may extend to Rs. 5,000 or with simple imprisonment for a term which may extend to six months, provided that where the loan has been repaid, the punishment by ways of imprisonment shall not be imposed.

6. The principal and an interesting question is : What is a loan ? A loan is defined by the Oxford English Dictionary as " a thing lent; something the use of which is allowed for a time, on the understanding that it shall be returned or an equivalent given ; esp., a sum of money lent on these conditions and usually with interest."

7. The concept of a loan has received judicial consideration in India. In *Suradindu Sekhar v. Lalit Mohan Mazumdar* money was due to the plaintiff and the defendant had executed a bond in respect thereof. The defendant claimed relief under the Bengal Money Lenders Act. The Court said, "leaving the purchase money unpaid is leaving a debt unpaid. Every loan is a debt but every debt is not a loan. The purchase money due to the plaintiff is a debt due to the plaintiff but is not a loan or a transaction which is in substance a loan" This judgment was relied upon in *Sujansing Ajitsing Mohota v. Ramachandrarao Krishnarao Singarao* . In *Laxmi Co. v. CIT* the question arose in the context of the Income-tax Act. The firm of J.K.Kothi was supplying goods to the assessee on credit. Whenever goods were supplied, the account of the assessee with the firm was debited with the price thereof. The amount which was outstanding against the assessee in the books of the firm represented the price of the goods supplied on credit. The amount was held to be a debt due from the assessee to the firm but it was not of the nature created by a loan. Reliance was placed upon the judgment of the Supreme Court in *Shree Ram Mills Ltd. v. CEPT* , which held that a loan "imports a positive act of lending coupled with an acceptance by the other side of the money as loan."

8. As against this, Mr. Mehta, learned counsel for the respondents, emphasised that section 295 prohibited a company from giving a loan to its director without the permission of the Central Government, whether directly or indirectly. In his submission, the company had given the seventh petitioner a loan in an indirectly manner by permitting him to defer payment of the balance purchase price of the flat and pay interest thereon.

9. The essential requirement of a loan is the advance of money (or of some article) upon the understanding that it shall be returned, and it may or may not carry interest.

10. The debt here arose not out of an advance but out of the sale of the flat by the company to the seventh petitioner. The company gave to the seventh petitioner time to pay a part of the

purchase price. The seventh petitioner was, thus given financial accommodation by the company in the matter of payment of the debt. Such financial accommodation was not and did not amount to a loan.

11. When section 295 refers to an indirect loan to a director, what it means is that the company shall not give a loan to a director through the agency of one or more intermediaries. The Word "indirectly" in the section cannot be read as converting what is not a loan into a loan.

12. This, therefore, is a case where the court, under article 226, may justifiably issue a writ quashing the prosecution launched against the petitioners. (See state of West Bengal v. Swapan Kumar Guha, .

13. Having regard to the view that I have taken, I do not consider the alternative submission on behalf of the petitioners that, in any event, the prosecution is barred by limitation.

14. In the result, the petition is made absolute in terms of prayer (a).

15. No orders as to costs.