

ZUBAIR
v.
BANK OF CEYLON

COURT OF APPEAL.
EDUSSURIYA, J. (P/CA).
UDALAGAMA, J.
CALA No. 208/99.
DC COLOMBO 5276/SPL.
02ND MARCH, 2000.

Bank of Ceylon Act - Ss. 19, 26 - Business Turnover Tax - Sale by public auction of mortgaged property - Is the Bank entitled to recover Business Turnover Tax?

Held :

(i) S.19 of the Bank of Ceylon Act must be considered with S.26. S.26 specifically entitles the Bank to recover in addition to the amount due on any loan, over-draft, advance or any other recommendation all monies expended by the Bank relevant to the transaction.

(ii) This section is wide enough to include B.T.T. and the Bank is entitled to pass a Resolution in terms of S. 19 to recover dues by way of B.T.T. too.

Per Udalagama, J.

"In Debt Recovery matters it would not be correct for the courts to hold against the intention of the legislature on technicalities."

APPLICATION for Leave to appeal from an order of the District Court of Colombo.

Ikram Mohamed P.C., with *T. Wijegunawardena* for Plaintiff-Appellant.
Ms. M.N.B. Fernando, S.S.C. for Defendant Respondent.

Cur. adv. vult.

April 26, 2000.

UDALAGAMA, J.

The plaintiff-appellant mortgaged to the Respondent-Bank the property described in the schedule to the plaint by

mortgage bond No. 1384 dated 14. 07. 1998 as security for the repayment of over-draft and other financial facilities. In default, the Respondent-Bank by resolution of its Board of Directors resolved to sell the said property for the recovery of the principal sum and interest due on the aforesaid bond. Subsequently the Plaintiff-appellant instituted the above action No. 5276/96 spl, seeking a declaration that the resolution referred to above is unlawful and/or void and that the Respondent-Bank is not entitled to sell by public auction the said property. The appellant also claimed interim relief. Learned District Judge on 07. 09. 99 dismissed the application for interim relief. Being aggrieved the appellant seeks from this court leave to appeal against the aforesaid order of the learned District Judge dated 08. 09. 99 and also interim relief.

This court by its order dated 24. 11. 99 refused interim relief. This order pertains to the appellant's application for leave to appeal. The sole contention of the learned President's Counsel who appeared for the appellant was that as stated in paragraph 6 of the objections of the Respondent-Bank dated 19. 03. 99 that the Respondent-Bank was not entitled to recover Business Turn Over Tax as per section 19 of the Bank of Ceylon Act. However, on a perusal of the relevant section of that Act it is our view that as stated in section 19 the contents therein must be considered with section 26 of the same Act. Section 26 specifically entitles the Bank to recover in addition to the amount due on any loan, over- draft, advance or any other accomodation, all monies expended by the Bank relevant to the transaction. Thus it is also our view that this section is wide enough to include Business Turn over Tax and that the Bank was entitled in law to pass a resolution in terms of section 19 of the Bank of Ceylon Act, to recover dues by way of Business Turn over Tax too. Furthermore, the contents of paragraph 4 of documents C11, C2 and C3 casts an obligation on the appellant to pay any tax levyable on the amount of the over-draft or other facilities obtained from the Bank.

In the aforesaid circumstances, we find no merit in this application of the appellant and accordingly refuse leave to appeal with costs fixed at Rs: 3150/-.

Before parting with this order it would also be appropriate to mention that in Debt Recovery matters it would not be correct for courts to hold against the intention of the Legislature on technicalities.

EDUSSURIYA, J. (P/CA) - I agree.

Application refused.