

IDRESS
v
UNION BANK OF COLOMBO

COURT OF APPEAL
AMARATUNGA, J.
CALA. 488/2002
D.C. COLOMBO No. 813/DR
MARCH 13, 2003

Debt Recovery Act, No. 2 of 1991 – No. 9 of 1994 – Section 4(4), and 30 – Affidavit to be made by a Principal Officer – Who is a Principal Officer ?

The Affidavit accompanying the Plaintiff was signed by one "B" who is the Personal Banking Officer. It was contended that "B" was a person who did not come within section 30 of the Act. The District Court held that "B" is a Principal Officer of the Bank.

Held:

- (i) The word Officer suggests a position of trust and authority. An Officer is a person holding such position.
- (ii) Personal Banking is one important service in the Bank. The documents relating to the facilities obtained by the defendant were accessible to her and she was a signatory of some of them. Material indicate that "B" is a Principal Officer of the Bank.

APPLICATION for leave to Appeal from the Order of the District Court of Colombo.

Case referred to:

1. *New Delhi & London Bank Ltd. v Oldham and others*, ILR 21 page 20.

Faizer Musthapa for the petitioner

Nigel Hatch for the respondent

Cut. adv. vult

September 5, 2003

AMARATUNGA, J.

This is an application for leave to appeal against the order of the learned Additional District Judge of Colombo directing the defendant-petitioner to deposit a sum of Rs. 50 lakhs in order to grant leave to

file answer and defend the action filed against him by the plaintiff-Bank under the Debt Recovery (Special Provisions) Act, No. 2 of 1990 as amended by Act, No. 9 of 1994. The defendant by his petition filed for the purpose of obtaining leave to appear and defend has raised, among other objections, an objection to the affidavit annexed to the plaint in terms of section 4(4) of the Debt Recovery Act, No. 2 of 1990 as amended by Act, No. 9 of 1994. The said section, as it now stands reads as follows: 10

“The affidavit to be filed by the institution under subsection (1) shall be made by a principal officer of such institution having personal knowledge of the facts of the cause of action and such person shall in his affidavit swear or affirm that he deposes from his own personal knowledge to the matters therein contained and shall be liable to be examined as to the subject matter thereof at the discretion of the judge.”

The word *principal officer* in relation to an institution has been defined in section 30 of the Act as follows: 20

“Principal officer in relation to an institution means, a director, secretary or other officer not below the rank of a manager of such institution and shall include any other officer of such institution specially authorized by such director, secretary or other officer not below the rank of a manager.”

In this case, the affidavit accompanying the plaint has been signed by one Sajeewani Bakmeedeniya who has given her designation as the Personal Banking Officer of the plaintiff Bank. The objection raised on behalf of the defendant was that there was nothing to show that she was a person who came within the definition of principal officer given in section 30 and that she was not a person specially authorized in the manner set out in section 30. This was the matter in respect of which leave was sought at the inquiry. Therefore what this Court has to consider is whether the Personal Banking Officer of the plaintiff Bank is a principal officer of that institution competent to sign the affidavit. 30

The word ‘office’ generally suggests a position of trust and authority. An officer is a person holding such position. In relation to corporations and companies the word *principal officer* may denote a person whose oversight or authority exists either over the whole or some 40

particular department of the general business of the corporation or the company. The words Chairman, President, General Manager and Managing Director signify persons who have authority and general oversight over the entire business of a company or a corporation. There are others who have authority and oversight over particular branches of a business. A secretary has authority and oversight in respect of records and a treasurer, over the money.

Personal banking is one important service in any bank. The fact that the personal banking officer had the authority to offer large sums of money to the Bank's customers as banking facilities (over drafts) is apparent from documents P2 (Rs. 2500000/-) P3 (Rs. 4000000/-) P3Q Rs. 13000000/-). The Personal Banking Officer was a signatory (along with the Chief Credit Officer) to all those documents. This demonstrates that she in any way was not below the rank of a manager. Can the defendant, who has accepted large amounts of money offered to him by way of overdrafts under her signature now contend that the Personal Banking Officer of the plaintiff Bank was not a principal officer of that institution? In the circumstances of this case it is highly technical objection which cannot qualify as a good defence. 50

The Indian Civil Procedure Code of 1882 enacted in section 435 "In suits by a corporation.... the plaint may be subscribed and verified on behalf of the corporation.... by any Director, Secretary or other principal officer of the corporation...Who is able to depose to the facts of the case." In the absence of the Manager who had the authority to transact all business of the plaintiff Bank's branch at Luchnow, an accountant was given a power of attorney authorizing him to conduct all business of the Bank but the power of attorney did not contain the words giving him authority to 'sue for and recover' (debts). In *New Delhi and London Bank Ltd v Oldham and others*⁽¹⁾ (reproduced in *The Indian Decisions*) (new series) Vol. X. - page 672, the Privy Council held even in the absence of power to sue for or recover, the accountant was a principal officer within the meaning of section 435 who was competent to subscribe and verify a plaint for the recovery of money due on a promissory note. 60 70

In this case, on the material available it is clear that the Personal Banking Officer of the plaintiff-Bank is a principal officer of that institution. The documents relating to the facilities obtained by the defendant were accessible to her. In fact she was a signatory to some of

those documents. Therefore she is a person who could have had personal knowledge of the facts of the cause of action. She was therefore a person who could affirm to the affidavit which accompanied the plaint. As such the affidavit of the said Sanjeewani Bakmeedeniya was a proper affidavit. The objection raised to the affidavit is a mere technical objection and did not raise a good defence. There is no reason to grant leave to appeal on the question urged in support of leave. Leave to appeal is accordingly refused and the application is dismissed with costs in a sum of Rs. 10000/-.

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Appeal dismissed