

Canara Bank Vs Sh. Vivek Kumar

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Case Summary

Details of the Parties:

- 1. Appellant: Canara Bank**
- 2. Respondent: Sh. Vivek Kumar**

Facts of the Case:

- The dispute arises from a tripartite agreement involving Canara Bank (lender), homebuyers (borrowers), and AVJ Developers (builder). Under the agreement, the bank disbursed loan amounts to homebuyers for property purchases, and the builder undertook specific responsibilities regarding the property transfer and loan repayment.
- Clause 16 of the tripartite agreement stipulated that in case of default or failure to transfer property to the homebuyers, the builder (AVJ Developers) was obligated to refund the entire amount advanced by the bank to the bank. This clause created a primary repayment obligation on the builder, with secondary responsibility on the homebuyers.
- During the insolvency proceedings of AVJ Developers, the bank filed a claim as a financial creditor, arguing that it had a direct relationship with the builder (corporate debtor) due to this unique clause in the tripartite agreement.
- The National Company Law Tribunal (NCLT) had initially rejected the bank's claim based on previous rulings,

including *Value Infracon India Private Limited*, where banks were not treated as financial creditors. The NCLT also rejected claims due to the failure to register the mortgage under Section 77 of the Companies Act, 2013 and the recovery certificate issued by the Debt Recovery Tribunal (DRT).

Issues Involved:

1. **Classification of Canara Bank as a Financial Creditor:** Whether Canara Bank should be classified as a financial creditor in the insolvency proceedings of AVJ Developers based on the tripartite agreement and Clause 16.
2. **Impact of Non-Registration of Mortgage:** Whether the non-registration of the mortgage under Section 77 of the Companies Act, 2013 invalidates the bank's claim to be treated as a secured creditor.
3. **Scope of Recovery Certificate:** Whether the recovery certificate issued by the DRT can be considered a part of the financial debt under the IBC.

Judgement:

- The **National Company Law Appellate Tribunal (NCLAT)** ruled in favor of the appellant, Canara Bank, and **set aside the NCLT's order**.
- The NCLAT held that the tripartite agreement in this case had a unique clause (Clause 16) that directly linked the repayment responsibility to the builder (AVJ Developers), making the bank a **financial creditor** under Section 5(8) of the Insolvency and Bankruptcy Code (IBC). This was distinguished from the usual cases where homebuyers are treated as financial creditors.
- The tribunal emphasized that despite the non-registration of the mortgage, the rights of the bank were valid and did not impact its status as a secured

creditor, based on precedents like **Canara Bank v. Union of India**.

- The NCLAT also observed that the DRT's recovery certificate might fall within the definition of a financial debt, thus strengthening the bank's claim.
- The matter was **remanded back to the NCLT** for a fresh review, with the tribunal instructing the NCLT to reassess the case without being influenced by prior observations.

Conclusion:

The NCLAT ruled that Canara Bank should be recognized as a **financial creditor** in the insolvency proceedings of AVJ Developers, based on the terms of the tripartite agreement. The bank's claim was upheld despite issues like the non-registration of the mortgage and the DRT's recovery certificate. The matter was sent back for reassessment, ensuring that the rights and claims of all parties involved are duly considered under the Insolvency and Bankruptcy Code.