

(2016) 06 KL CK 0098

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5591 of 2006 (N)

A.M. Prakasan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Co-operative Societies Act, 1969 — Section 27, Section 30(1)

Citation : (2016) 3 KHC 670

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. T.N. Manoj, Advocate, for the Petitioner; Sri. V.G. Arun, Advocate, for the Respondent Nos. 4, 5 and 7; Sri. N.P. Samuel, Advocate, for the Respondent No. 4; Sri. Jaiby Paul, Advocate, for the Respondent Nos. 6 and 8; Sri. P.K. Sajeev, Advocate, for

Final Decision : Allowed

Judgement

Mr. Shaji P. Chaly, J. - This writ petition is filed by the petitioner seeking to quash Ext.P2 and further to declare that Ext.P1 is illegal and irregular and is sanctioned without any authority or support of law, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. Writ petitioner is a shareholder of the 4th respondent Bank. The 8th respondent while functioning as the President of the 4th respondent Bank, accorded sanction for a mid-term loan of Rs. 1,02,75,000/- to the 6th respondent hospital in which the 8th respondent himself was the President during that period.

3. According to the petitioner, loan was sanctioned before the order of the Joint Registrar was obtained. The Joint Registrar cautioned that loan can be sanctioned only after obtaining property security towards loan and after obtaining valuation statement of the property offered as security. The property offered as security was only to the extent of 2 acres and 2 cents, which according to the petitioner,

was hardly enough to secure the loan advanced. That apart, it is contended that, the property offered as security was never accepted and registered as security and the same was returned to the 6th respondent hospital.

4. The 6th respondent failed to repay the loan. The principal amount alone with interest multiplied up to Rs. 2,03,41,000/-. It is also the contention of the petitioner that, the 3rd respondent with the connivance of Minister of Cooperative Department, resolved to set off the entire interest and penal interest totally amounting to Rs. 1,03,41,000/-, on the strength of a One Time Settlement Scheme. It is thus aggrieved by the said action of the 4th respondent, petitioner has approached this Court by filing the writ petition.

5. Fourth respondent has filed a counter affidavit refuting the allegations and reliefs sought for by the petitioner.

The loan advanced to the 6th respondent is admitted, but however, contends that the same was done as per the decision of the Director Board meeting of the 4th respondent held on 26.04.1995, 14.02.1996 and 29.02.1996 and also in compliance with the sanction orders of the Registrar of Cooperative Societies and the Joint Registrar, Thrissur. It is also contended that the amount was disbursed to the 6th respondent by way of 11 instalments during the period 09.03.1996 to 04.12.1996. That, as per the suggestion of the Reserve Bank of India, second-charged over the property as per the agreement was got registered in October, 2000 and the Bank had incurred registration expenses of Rs. 2,07,500/-, which was agreed to be returned by the 6th respondent. It is also stated, accordingly, the registration charges were returned to the Bank on 31.03.2004.

6. That, there is no practise prevailing in the 4th respondent Bank to demand valuation certificate from the borrower and the normal procedure is to secure valuation by constituting a permanent sub-committee before sanctioning the loan applications. Accordingly, a sub-committee was constituted by the Board on 29.02.1996 and thereafter only the loan was recommended. It is also contended that, the allegation that loan of Rs. 1,02,75,000/- was sanctioned on 09.03.1996 is absolutely wrong. Based on the valuation report submitted by the sub-committee and earlier resolution of the Director Board only Rs. 10,00,000/- was issued to the hospital and that too, in compliance with the order of the Registrar and each instalments were issued on securing specific valuation report of the sub-committee after separate resolutions of the Board. It is also contended that, the land of 2.02 acres mortgaged to the HUDCO was purchased by the hospital for Rs. 22,27,841/-. The cost of the land escalated many-fold, following purchase of properties for a pathway to a nearby road by the 6th respondent on 18.10.1995, and another 20 cents for getting access to the State Highway at a cost of Rs. 14,90,550/- on 14.01.1998, in addition to general spurt in land prices in this area. Therefore, it is contended that, valuation of the property of the 6th respondent is at 8 crores as on 05.11.1997, as certified by the Chartered Engineer and registered valuer of IT Department would prove that the Bank's lien with second charge is not out of place and a sufficient security.

7. It is also contended that, since the Registrar has approved the scheme and the Joint Registrar has approved the sub-rules, the title deeds were returned to the 6th respondent for enabling it to avail loan from HUDCO, which had sanctioned Rs. 513.5 lakhs. Therefore, it is urged that, there is no question of any mischief as alleged by the petitioner since there is no room for any ambiguity in the matter. That apart, it is contended that, HUDCO had released only an amount of Rs. 4,65,82,000/- out of the total sanctioned loan specified above. Due to paucity of funds, the full swing function of the hospital was inordinately delayed entailing substantial loss during the initial stages. However, in spite of the financial stringency, 6th respondent had remitted Rs. 14,23,749/- on 26.03.1998 towards interest. That apart, it is contended that, 6th respondent has repaid the principal amount of Rs. 100 lakhs to the Bank in lump on 30.03.2004 and interest was fully waived under the settlement scheme duly approved by the Registrar of Co-operative Societies. The One Time Settlement Scheme waiving the interest was implemented as per the orders of the Registrar dated 18.03.2004. Therefore, according to the 4th respondent, there is nothing contradictory in the decision, which he has claimed is in consonance to the criterion adopted by the Reserve Bank of India. That apart, it is contended that, the Director Board of the Bank has endorsed the waiving of interest. The 4th respondent bank had earned a net profit of Rs. 64.34 lakhs in 2003-04 that is during the period the interest was waived by the Bank. Therefore, it is contended that, there is no basis for the apprehension expressed by the petitioner with respect to the loss likely to be suffered by the 4th respondent.

8. So also, it is contended that, the Reserve Bank of India has included the 4th respondent Bank in the list of approved urban Banks in 1997, whereas the entire loan was disbursed to the 6th respondent during 1996 and therefore getting prior sanction from the Reserve Bank of India was inconsequential. That apart, it is contended that, it is in deference of RBI guidelines directing to reduce NPA of the Bank, the Managing Board accepted the OTS, paving the way for closure of loan by the hospital.

9. Fifth respondent has filed a counter affidavit almost on similar lines and also contended that the 5th respondent did not have any personal interest in the matter and he was only protecting the interest of the Director Board of the Society.

Sixth respondent has also filed a counter affidavit supporting the statements and averments made in the counter affidavit by the 4th respondent. Seventh respondent has also filed a counter affidavit supporting the contentions of 4th respondent.

It is also contended that, the petitioner has not cared to make any complaint to respective statutory authorities and that apart, among the 24000 members, petitioner is the only person who has challenged the action of the Bank.

10. Third respondent has filed a counter affidavit contending that, as per the

provisions of Kerala Co-operative Societies Act, 1969 [hereinafter called "the Act"], prior sanction of Registrar of Co-operative Societies should be obtained before sanctioning Rs. 1 crore and above. The respondent Bank had taken up the matter before the Registrar of Cooperative Societies, subject to the conditions of a letter dated 08.03.1996 of the Registrar of Co-operative Societies and resolution No.20 dated 29.02.1996 of the Board of Directors of respondent Bank. It is accordingly the Joint Registrar, Thrissur had issued order dated 14.03.1996 by which sub-rules 4, 5 and 10 were amended. Therefore, the Joint Registrar vide order dated 15.03.1996 had given sanction for releasing an amount of Rs. 1 crore to the 6th respondent Society, on condition that the 6th respondent should submit the valuation certificate of the property. The hospital had deposited title deeds of the property of 2 acres and 02 cents situated in Mukundapuram Taluk to the 4th respondent Bank and as per the valuation certificate, the land was valued at Rs. 85,000/- per cent and the aggregate value, at Rs. 1,72,15,135/-.

11. It is also contended that, 4th respondent Bank has released the document of the property deposited on request from the 6th respondent on 18.02.1997 for submitting it for a long term loan from HUDCO. It is also urged that, the Cooperative hospital submitted post-dated cheque for Rs. 1,09,24,924/- to the respondent Bank. The hospital also remitted additional registration charges, as per the directions of the Board resolution No.09 dated 27.09.2000. So far as the settlement part of the loan is concerned, the contentions raised by the 4th respondent Bank is reported by the 3rd respondent also. Therefore, it is contended that, the writ petition is devoid of merit and the same is liable to be dismissed.

12. Heard learned counsel for the petitioner and the respective counsel appearing for the respondents. Learned counsel for additional respondent supported the plea raised by the petitioner in the writ petition. Perused the pleadings and the documents on record.

13. The question to be considered is whether any interference is required in Ext.P2 order passed by the 3rd respondent. Learned counsel for the petitioner reiterated the contentions in the writ petition. That apart, it is contended that, the members of the Director Board, on their own volition and without taking the General Body into confidence, had taken the decision along with other official respondents to wipe off the loan liability of the 6th respondent by waiving the interest completely. That apart, it is contended that, under the Societies Act as well as under the bye-laws of the 4th respondent Bank, General Body is the superior authority to take any policy decision, which has got wide ramification and implications so far as the assets of the Bank is concerned.

That apart, it is contended that, even though property security was secured, same was released by the Director Board at its own sweet will and pleasure, without discussing the General Body and therefore the security created for the huge amount of loan advanced was unable to be realized, which persuaded the Director Board to arrive at a settlement by closing the loan transaction by

receiving the principal amount alone. Due to the conduct of the Director Board, the Bank has lost substantial amount by way of interest, thereby affecting the assets of the Bank as well as the interest of the shareholders to a large extent. It is also contended that, the 6th respondent did not repay any money to the 4th respondent Bank. Even though the loan amount was released in instalments, the Director Board of the 4th respondent at no point of time was bothered to verify the viability of the hospital and its future development. Therefore, the counsel contended that the Director Board of the 4th respondent was recklessly and criminally negligent in granting the loan to the 6th respondent, releasing the property security and waiving of interest completely.

14. Per contra, learned counsel for the 4th respondent Bank contended that, the action of the Director Board was in accordance with law and as per the power conferred on the Director Board to deal with such situation of providing loan and settling the transaction in accordance with the scheme launched by the 4th respondent. It is also contended that, the Registrar of Co-operative Societies was also involved in the release of the loan as well as in the settlement proceedings.

Since the Director Board was vested with every power to take policy decisions on releasing loan, there was no need or necessity to take the General Body into confidence. That apart, it is also contended that, the 6th respondent almost became defunct and that is the reason why the Director Board has decided to settle the transaction by receiving the principal amount. It is also urged that, an amount of nearly Rs. 15 lakhs was paid by the 6th respondent towards repayment of the loan amount. That apart, it is contended that, the settlement by accepting the principal amount was the only course open to the 4th respondent, since there was no security consequent to the release of the security documents to the 6th respondent in order to enable the 6th respondent to provide security to HUDCO for securing a loan of nearly Rs. 5 crores. The contentions raised by the counsel for the 3rd respondent is adopted by the other respondents and sought dismissal of the writ petition. Additional respondent appeared through counsel supported the arguments advanced by the learned counsel for the petitioner.

15. Having evaluated the arguments advanced across the Bar, the question for consideration is whether any interference is required in Ext.P2 order passed by the Registrar, by which the settlement of loan transaction by the 3rd respondent was approved. On a reading of Ext.P2, it is categoric and clear that the loan was advanced as per the decision of the Director Board and the Director Board had placed the proposal before the Registrar and on account of sanction from the Registrar, the loan was sanctioned and released by 11 instalments to the 6th respondent. Even though it is stated in Ext.P2 order that the Director Board has decided to wipe off the loan transaction by receiving Rs. 1 crore and the same was approved by the 3rd respondent, the guidelines issued by the RBI enable the Society to do so, with the approval of the Co-operative Department. However, it is clear from Ext.P1 that the Director Board of the Society has not placed the

settlement of the matter before the General Body of the 4th respondent Bank. That apart, 4th respondent has no case that it was based on the approval of the General Body that the 4th respondent has decided to settle the loan transaction by accepting an amount of Rs. 1 crore in single payment.

16. Section 27 of the Act provides that the General Body is the final authority of a Society subject to the provisions of the Act, the Rules and the bye-laws. None of the counsel appearing for the respondents could point out any provisions under the Act or Rules or under the bye-laws prohibiting the Director Board to seek approval of the General Body, for settling the loan transaction by waiving of huge amount of interest, nearly more than Rs. 1 crore. True, the Director Board is vested with powers to deal with loan transactions. It is an admitted fact that the loan was also released as per the decision of the Board and approval of the 3rd respondent. But however, the same was done by securing sufficient property security which was valued at that point of time nearly 1.73 crores. But the said property was released to the 6th respondent by the Director Board by its own volition. Since the release of the mortgaged property was at a risk, which can interfere with the assets and stability of the 4th respondent Bank, the Director Board had a duty to place the same before the General Body. If such a course was adopted by the Director Board of the 4th respondent, the 4th respondent Bank would not have suffered loss at this huge rate. Members who are the shareholders of the 4th respondent Bank are entitled to know the transactions that take place, by which they are free and at liberty to express their opinion on the subject, and the issues could have been decided by a majority vote. That apart, when the loan was decided to be settled by the Director Board, then also the Director Board had a duty to place the situation before the General Body and ascertain their views and opinion on the same. Co-operative Societies and Cooperative Banks are functioning to a large extent, with the money provided by the members of the Society and public at large and has a duty to ensure that they function in accordance with absolute transparency, thus retaining confidence among its members and the public at large, who may be depositors in the Bank and the Societies.

17. As provided under Section 30(1) of the Act, a special General Body can be convened by the Committee of a Society at any time. That apart, under sub-sections (2), (3) and (4) of the said section, the Registrar is vested with powers to call for a General Body meeting of the society. Neither the Director Board, nor the Registrar have cared to convene a General Body meeting so as to ascertain the views of the members of the 4th respondent, before deciding to waive the huge amount of interest. In my considered opinion, before the security property was released by the Director Board, losing its grip over the huge amount of loan advanced, ought to have convened the General Body and ascertained the views of the members. Whenever there is a likelihood of suffering any loss, the 4th respondent ought to have been cautious enough to apprise the members of the situation. From Ext.P5, it is understood that a case was registered by the Vigilance against the release of loan amount as well as the release of the security

documents. Moreover, it is admitted by the 4th respondent that, cheques were received for the whole amount of loan provided, from the 6th respondent, but is a mystery why the same were not presented for collection.

18. Taking into account the factual circumstances discussed above and reckoning the provisions of law, I am of the considered opinion that the course of action adopted by the 3rd respondent in the matter of settlement of loan transaction, negligence on the part of the Director Board in releasing the security documents, and the joint action of the 3rd respondent, and the Director Board of the 4th respondent in settling the loan transaction by receiving the principal amount of Rs. 1 crore and waiving more than Rs. 1 crore towards interest, were not in accordance with law, and therefore arbitrary and illegal, warranting interference of this Court under Article 226 of the Constitution of India. Therefore, Exts.P1 and P2 orders passed by the Director Board of 4th respondent Bank and 3rd respondent respectively are not sustainable under law.

19. Accordingly, Exts.P1 and P2 are quashed and direct the 3rd respondent to convene a special General Body meeting of the 4th respondent, and place the decision of the Director Board to waive interest of the loan transaction in question by accepting the principal amount alone, before the general body of the 4th respondent. The same shall be done by the 3rd respondent within a period of three months from the date of receipt of a copy of this judgment, after providing notice, as contemplated in the Kerala Co-operative Societies Act and Rules, to the members and the fate of subject issue will be guided by the decision of the general body so constituted.

20. Writ petition is allowed accordingly.