(2022) 04 TEL CK 0024

In the Telangana High Court

Case No : Writ Appeal Nos. 1814, 1815 Of 2008, 409 Of 2009

Andhra Pradesh State Financial, Hyd — APPELLANT

Vs

Pulukuri Venkateswarlu, Section. 3 Others — RESPONDENT

Date of Decision : 08-04-2022

Acts Referred:

State Financial Corporations Act, 1951 — Section 29
Kerala Revenue Recovery Act, 1968 — Section 52A, 52A(1), 70, 70(2), 70(3), 71
Limitation Act, 1963 — Section 18

Citation : (2022) 04 TEL CK 0024

Hon'ble Judges : Satish Chandra Sharma, CJ;Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : R Rajendra Prasad, V Hari Haran

Final Decision : Dismissed

Judgement

Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common order.

The facts of W.A.No.1814 of 2008 are reproduced as under:-

The present writ appeal is arising out of the order dated 16.09.2008 passed by the learned Single Judge in W.P.No.26014 of 2005.

The undisputed facts of the case reveal that the writ petition was preferred by the respondent Nos.1 and 2/writ petitioners being aggrieved by the action initiated by the Andhra Pradesh State Financial Corporation Limited (for short "the Corporation") for recovery of dues by taking shelter of the Andhra Pradesh Revenue Recovery Act, 1864 (for short "the Recovery Act"). The Corporation sanctioned term loan and soft loan for a sum of Rs.11,60,000/- to M/s.Nagarjuna Cable Industries Private Limited and the respondent Nos.1 and 2/writ petitioners stood as sureties in respect of the loan granted by the Corporation. The borrower did not repay the loan in time and therefore, the unit was seized and sold in accordance with Section 29 of the State Financial Corporations Act, 1951.

Thereafter, as the Corporation was not able to recover the dues from the borrower, notice was issued to the respondent Nos. 1 and 2/writ petitioners, who stood as sureties, by invoking the provisions of the Recovery Act. The learned Single Judge, based upon the judgment delivered by the Hon'ble Supreme Court, in similar circumstances, in the case of State of Kerala vs. V.R.Kalliyanikutty AIR 1999 SC 1305 has allowed the writ petition.

Paragraph 10 of the order passed by the Hon'ble Supreme Court in the case of V.R.Kalliyanikutty (supra) is reproduced as under:-

"10. The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of whole or part of the money paid under protest. Under Sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest."

In the considered opinion of this Court, once the controversy involved in the present case stands concluded on account of the judgment delivered by the Hon'ble Supreme Court in the case of V.R.Kalliyanikutty (supra), the question of recovery by taking shelter of the Recovery Act does not arise.

The learned Single Judge while allowing the writ petition has held as under:-

"The question directly fell for consideration in Kalliyanikutty (supra) with reference to Section 71 of the Kerala Revenue Recovery Act, 1968. The purport of Section 71 of the said Act is same as that of Section 52A of RR Act. It enabled – as in the case of proviso to Section 52A(1) of A.P.Act, the public authorities to recover "amounts due" as land revenue. But, the Supreme Court observed that the amount "due" normally refers to the amounts, which a creditor has right to recover. When such amount or debt amount is time barred, the same cannot be described as the amount due which a creditor can recover. In view of this, while holding that under Section 71 of the Kerala Revenue Recovery Act, the claims, which are time barred on the date of requisition is issued, are not "amounts due". The Supreme Court observed as under.

"There is no question, however, in the present case of any payment voluntarily made by a debt or being adjusted by his credit or against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of "amounts due". Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such process of recovery would start with a written requisition issued in the prescribed form by the creditor to the collector of the District as prescribed under Sect ion 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act."

In N.A.Radha v State of Andhra Pradesh (2000 (2) ALD 560), the action of the SFC to enforce its dues by notices under Section 52A of RR Act was challenged. This Court following Kalliyanikutty (supra) held as under.

The only question that survives and has been urged at the hearing of this writ petition is that the demand by the Corporation of the amounts due from the petitioners is barred by limitation and as such unenforceable per se or under the provisions of the Act.

In view of the decision of the Supreme Court in State of Kerala v Kaliyani Kutty, AIR 1999 SC 1305, proceedings under the Act cannot lie for recovery of amounts that are barred by limitation. The question that arises is whether the claim of the respondent – Corporation is barred by limitation and whether this question would be adjudicated in these proceedings.

In Kumar Chemicals and Fertilizers (P) Limited v Andhra Pradesh Industrial Development Corporation Limited (AIR 2008 AP 101) on which strong reliance is placed by the learned Standing Counsel for SFC also does not deviate from the ratio of Supreme Court's decision. It is observed therein that when Section 32G of the Act is invoked the ratio in Kalliyanikutty (supra) may get attracted because a similar expression "amounts due" is also contained in the said section. This

Court also held that when the action was initiated under Section 29 of the Act for sale of assets of the borrower, the period of limitation would not apply, and it is only in cases where SFC invokes Section 52A of RR Act read with Section 32G of the Act, period of limitation applies. To get over this aspect of the matter learned Standing Counsel has placed before this Court Xerox copy of the notice dated 05.10.1999 issued by the third respondent to the petitioners in both the writ petitions calling upon them to pay an amount of Rs.7,20,000/-, failing which action was proposed under RR Act. This Court is not able to comprehend as to how a notice demanding payment by the creditor to the debtor extends period of limitation as per Section 18 of the Limitation Act, 1963. Secondly, there is not even a whisper about issue of such notices in the counter affidavit filed by SFC. For the first time copy is produced before this Court without any evidence of service of such notices on petitioners. Therefore, importance cannot be attached to this aspect of the matter. SFC sanctioned loans to the borrower on 23.02.1988, and therefore, notice proposing to initiate action under Section 52A of RR Act issued on 08.08.2005. Hence recovery of debt is wholly time barred, and same cannot be recovered under said provision.

In the result, for the above reasons, the writ petitions must succeed, and they are allowed accordingly. But, in the circumstances of the case, there shall be no order as to costs."

In the considered opinion of this Court, the learned Single Judge was justified in allowing the writ petition and this Court, in the light of the judgment delivered by the Hon'ble Supreme Court in the case of V.R.Kalliyanikutty (supra) does not find any reason to interfere with the order passed by the learned Single Judge, as facts have not been disputed at all before the learned Single Judge nor before this Court.

Resultantly, the present writ appeals stand dismissed.

Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.