(2013) 02 KL CK 0057

In the High Court Of Kerala

Case No : W.A. No. 1526 of 2012

Bank of India	APPELLANT
Vs	
Barry Sebastian	RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 71
Micro, Small and Medium Enterprises Development Act, 2006 — Section 2(e)

Citation : (2014) 2 BC 299 : (2013) 1 KHC 584 : (2013) 1 KLJ 709 : (2013) 1 KLT 645

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.P. Joyi, for the Appellant; K. Paul Kuriakose, K.A. Anish and Girija Gopal, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—The 1st respondent in the Writ Petition is the appellant. Writ Petition is filed by the 1st respondent challenging the action initiated by the appellant to recover the amounts due to the bank by initiating revenue recovery proceedings. The facts as disclosed in the Writ Petition would reveal that the petitioner obtained a loan of Rs. 8,00,000/- from the appellant bank as working capital. There was delay in remitting the payments and ultimately the amounts became overdue. The bank filed a suit against the petitioner as O.S. No. 856/2011 for recovering the outstanding balance amount of Rs. 8.41 lacs. In the meantime, at the instance of the bank, the 3rd respondent initiated revenue recovery proceedings by way of Ext. P4 and P5. This was challenged by the 1st respondent/petitioner on the ground that revenue recovery proceedings cannot be initiated as the loan advanced by the 1st respondent to the petitioner is not an agricultural loan nor was it advanced under any development schemes.

2. The appellant filed a counter affidavit before the learned Single Judge inter alia contending that by virtue of the notification issued by the Government of

Kerala in exercise of power under S. 71 of the Kerala Revenue Recovery Act, amount due to the bank under various development schemes including priority sector advances and all financial assistance given through the banks under the schemes approved by the State/Central Government or other Government agencies or the scheme administered by the Development department with a view to improving the living condition of the economically and socially weaker sections of the community is permitted to be recovered by virtue of provisions to the Revenue Recovery Act. They relied upon two Government Notifications Exts. R1(a) and R1(b), i.e., S.R.O. No. 1465/1987 and S.R.O. No. 797/1979 respectively.

3. Learned Single Judge relied upon the judgment in Jabbar and Another Vs. Dhanalakshmi Bank Ltd. and Others, wherein it has been held that the loans extended to the traders, fixing a ceiling upto Rs. 5 lakhs will be liable to be declared as ''priority sector'' and therefore revenue recovery proceedings could be initiated. However since the loan availed by the petitioner was for Rs. 8 lakhs, the learned Single Judge held that the said judgment cannot have any application and that the respondents were not justified in recovering the amount by way of revenue recovery proceedings. It was further held that only after obtaining a decree from the civil court the bank was entitled to initiate revenue recovery proceedings as held in the judgment in Syndicate Bank Vs. S.S. Sheriff and Others, .

4. Though a Review Petition was filed relying upon the Master Circular of 1.7.2009 issued by the Reserve Bank of India wherein the various categories of priority sector loans have been mentioned which included direct finance to small enterprises including ail loans to micro and small (manufacturing) enterprises and such service enterprises, the review was also dismissed on the ground that the petitioner can seek proper remedy by filing an appeal.

5. Annexure B is produced by the appellant along with I.A. No. 944 of 2012. It is a Master Circular issued by Reserve Bank of India consolidating the lending in priority sector. Retail Trade is treated as one among the priority sector and reads as under:

3. Retail Trade

3.1. Advances granted to retail traders dealing in essential commodities (fair price shops), consumer co-operative stores and;

3.2. Advances granted to private retail traders with credit limits not exceeding Rs. 20 lakh.

6. Annexure A notification issued by the Reserve Bank of India on 18.9.2009 under the Micro, Small and Medium Enterprises Development Act 2006 (hereinafter referred to as MSMED Act) is also produced. The notification deals with various services of Priority sector-Lending and Categorization of activities and services which inter alia includes retail trade also. In Clause (3) of the said

Annexure it indicates that there will be no separate category for "Retail Trade" under priority sector and loans granted by banks for retail trade with credit limits not exceeding Rs. 20 lakhs would henceforth be part of Small (Service) Enterprises. Since Reserve Bank of India had modified the earlier guidelines and had included loans upto Rs. 20 lakhs for retail traders as priority sector lending as evident from Annexure A and B, we are of the view that the loan grated to the petitioner has to be treated as priority sector lending.

7. Having come to such a conclusion when we consider the notification issued under S. 71 of the Kerala Revenue Recovery Act, S.R.O. 1465/87, the loans advanced by the banks under the development scheme is permitted to be recovered by Revenue Recovery proceedings. It is specifically mentioned that the development scheme shall include all priority sector advances. It cannot be disputed that the loan granted to the petitioner is a priority sector advance as the learned Single Judge had also come to such a finding. The only reason for allowing the Writ Petition was that the loan advanced to the petitioner exceeds the limit of Rs. 5 lakhs. In view of Annexure A and B it is evident that any loan advanced to a retail trader upto Rs. 20 lakhs forms part of a priority sector advance.

8. The contention urged by the respondent who is the petitioner in the Writ Petition is that Annexure A master circular has no application to the loan granted to the petitioner as the loan granted is not coming within the purview of retail trade. It is the argument of the learned counsel for the 1st respondent that the explanation given in paragraphs 2 and 3 of Annexure A letter would take the establishment of the 1st respondent beyond the purview of retail trade as defined in Annexure A. In paragraph 2 of the Annexure A it is mentioned that activities made mention of thereunder would be included within the priority sector only if such enterprises satisfies the definition of Micro and Small Service Enterprises'' as laid down under the MSMED Act, 2006. In paragraph 3 of Annexure A letter, no separate category for Retail Trade is mentioned. It is therefore the argument that a conjoint reading of Paragraphs 2 and 3 of Annexure A letter would make it evident that only an advance availed by an enterprise which would fall within the definition of the term enterprises as defined under S. 2(e) of the MSMED Act 2006 would come within the purview of priority sector lending. Hence it is the argument that the provisions of Revenue Recovery Act cannot be invoked as there is no specific notification to recover the amount advanced by the bank to the 1st respondent. Learned counsel also relied upon the definition of enterprises in S. 2(e) of the MSMED Act in order to contend for the above position. Even without going into the provisions of the MSMED Act, on a reading of Master Circular dated 1.7.2009 of Reserve Bank of India-Annexure B, retail trade upto Rs. 20 lakhs is treated as priority sector lending./Hence this contention of the 1st respondent is not sustainable.

9. The only other point that requires to be considered is whether notification issued by the Government under S. 71 of the Kerala Revenue Recovery Act, that

is Exts. R1(a) and R1(b) enables the bank to recover the loan advanced to the petitioner by resorting to revenue recovery proceedings. It is not in dispute that in respect of any loan advanced by the bank under various development schemes the bank can recover the amount by resorting to revenue recovery proceedings. Development scheme is explained under the very same notification and it includes all priority sector advances. If Reserve Bank of India had treated retail trade upto Rs. 20 lakhs as priority sector lending, it cannot be treated that the loan granted to the petitioner is not a priority sector loan. One has to look at the notification which permits Revenue Recovery proceedings and to understand what is a ''development scheme'' as contemplated in the notification S.R.O. 1465/1987. If the development scheme includes "all priority sector advances" and Reserve Bank of India circular stipulates so, we have no hesitation to hold that the loan given to the 1st respondent herein can also be recovered by invoking revenue recovery proceedings by virtue of the notification produced as Ext. R1 (a).

Under these circumstance the Writ Appeal is only to be allowed, the judgment of the learned Single Judge is set aside and the Writ Petition is dismissed.