
(2005) 06 KL CK 0051
In the High Court Of Kerala
Case No : O.P. No. 899 of 2003 F

Bhaskaran K.

APPELLANT

Vs

The Sub Registrar and Others

RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Kerala Revenue Recovery Rules, 1968 — Rule 4, 5(2)

Citation : (2006) 132 CompCas 183 : (2005) 3 ILR (Ker) 137 : (2005) 2 KLJ 589 : (2005) 3 KLT 150

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Sivan Madathil, for the Appellant; P.P. Davis (GP) and V.B. Unniraj (SC, KFC), for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran

1. The petitioner availed a loan of Rs. 20,00,000/(Rupees Twenty Lakhs) from the Kerala Financial Corporation for the construction of a building for business purposes. Though the petitioner could complete the ground floor of the building he could not complete the entire structure due to paucity of funds and he had to abandon the idea of completing the project. Finding that he would not be able to repay the amount in time, he thought of selling the property and settling the whole amount due to the Corporation. The petitioner approached the Corporation and the latter agreed as per Ext. P1 dated 26-7-2001 to settle the loan account on remittance of Rs. 36,00,000/- (Rupees Thirty Six Lakhs) by the petitioner. As per Ext.P2 dated 28-12-2001, the petitioner wanted some-reduction to be made in the matter of payment of interest. Meanwhile, revenue recovery proceedings were initiated as per Ext.P3. The petitioner approached the Corporation with Ext.P4 representation praying to drop the revenue recovery proceedings and to permit the petitioner to pay the whole balance amount under the One Time Settlement Scheme. That request was accepted by the Kerala Financial

Corporation, as evidenced by Ext.P5 letter dated 1-9-2002 whereby the petitioner was permitted to remit a sum of Rs. 36,00,000/- (Rupees Thirty Six Lakhs) with interest under the O.T.S. Scheme. Ext.P6 receipts would prove that the petitioner paid a sum of Rupees Thirty Six Lakhs in two installments (i.e. Rupees Four Lakhs on 11-10-2002 and Rupees Thirty Two Lakhs on 21-10-2002). According to the petitioner, the Corporation did not release the documents of title to the petitioner and the Corporation demanded a further payment of Rupees Two Lakhs towards interest for the full and final settlement of the loan account. Ext.P7 shows that the petitioner acceded to the request and paid Rupees Two Lakhs to the Kerala Financial Corporation. The document of title in respect of the mortgaged property was released to the petitioner, but, the petitioner alleges that document of title in respect of another property which was offered as collateral security was not released by the Corporation to the petitioner.

2. Ext.P8 was issued by the Corporation stating that a further sum of Rs. 1,90,500/- (Rupees One Lakh Ninety Thousand and Five Hundred) should be paid by the petitioner towards the revenue recovery charges and. Rs. 1.02 lakhs towards reduced interest. The petitioner challenges Ext.P8 and prays for issue of a writ of mandamus directing respondents 3 and 4 (The Kerala Financial Corporation and its District/Chief Manager) to issue necessary directions to the second respondent, Deputy Tahsildar (Revenue Recovery), for issuing no objection certificate to enable the petitioner to sell the property. There is also a prayer for declaration that the petitioner has fully discharged the liability towards the third respondent Corporation. As per the interim order passed by this Court on 10-1-2003. In C.M.P. No. 1615 of 2003, the first respondent Sub Registrar- was directed to register the sale deed executed by the petitioner in favour of the purchaser.

3. The petitioner cannot contend that he is not liable to pay Rs. 1.02 lakhs as demanded in Ext.P8. The further question is whether the petitioner is liable to pay the revenue recovery charges of Rs. 1,90,500/-.

4. From the facts narrated above, it is clear that the amount due was paid by the petitioner to the Kerala Financial Corporation directly. The amount was not recovered by recourse to revenue recovery proceedings. In 1985 KLT 741 (Kadeeja Beevi v. Kerala Financial Corporation), this Court took the view that the question of revenue recovery commission or collection charges would arise only when there was collection of arrears under the provisions of the Revenue Recovery Act, on behalf of any institution notified u/s 71 of the Act. In Village Industries Development Centre Vs. Kerala Khadhi and Village Industries Board, this Court held that Rule 5 of the Kerala Revenue Recovery Rules, 1968 would apply only if the arrears were collected under the provisions of the Revenue Recovery Act. In that case, the amounts due to the Khadi and Village Industries Board were paid by the defaulter directly. However, the Board had collected the revenue recovery charges from the defaulter. The original petition was filed for a declaration that the petitioner therein was not liable to pay any amount as

collection charges since arrears were not collected or realised under the provisions of the Revenue Recovery Act and also for a direction to the Board to refund the amount to the petitioner therein. This Court relied on the decision in 1985 KLT 741 and allowed the original petition.

5. Though the principles laid down in the decisions in 1985 KLT 741 and Village Industries Development Centre Vs. Kerala Khadhi and Village Industries Board, would apply to the facts of this case, it cannot be lost sight of that those cases were decided in respect of matters covered by the Kerala Revenue Recovery Rules, 1968, before the amendment of Rules 4 and 5 as per G.O.(P) No. 508/97/RD dated 7-7-1997 published as SRO. No. 565/97 in K.G. No. 29 dated 22-7-1997. Rule 4 of the Kerala Revenue Recovery Rules, 1968 reads as follows:

4. Batta and other charges at the rates specified in Column (2) of the Table below; shall be levied in respect of the item specified against them in column (1) of the said Table. These charges shall be recovered from the defaulters along with the arrears due.

Item (viii) "collection charges" was added by the notification referred to above. Rule 5 as it stood before the amendment was as follows:

5.(1) Collection charges at the rate of 5 percent of the arrears collected under the provisions of the Act on behalf of any institution notified under S. 71 shall be realised from such institutions.

(2) The collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institution.

Rule 5(1) was substituted by the aforesaid notification and the present Rule 5(1) reads as follows:

5(1) Collection charges at the rate of 5 percent of the arrears to be on behalf of any institution notified under S.71 or collected on behalf of any institution under S.68 shall be realised from the defaulters and accounted as arrears to such institutions.

6. I do not think that the amendment or the Rules referred to above would have any impact on the dictum laid down in 1985 KLT 741 and 1996 (2) K.L.J. 53. This Court in 1990 (2) KLT 120 (Mohan Roy v. State Bank of Travancore) had taken the view that it would not be proper to read Rules 4 and 5 separately and limit the recovery under the Act only to the actual arrears due and the charges specified in Rule 4. It is to be noted that item (viii) in Rule 4 was not available then and the amendment came into force only in 1997. It was held that the charges payable under Rule 5 would equally constitute part of the amount due to the creditor as cost of recovery; and hence recoverable from the defaulter. In that case, a contention was raised that the collection charges are not liable to be recovered by recourse to revenue recovery proceedings. This Court repelled that contention.

7. As per Rule 4 item (viii), collection charges at 5% of the arrears are to be recovered from the defaulter along with the arrears due. As per Rule 5(2), the collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institution referred to under sub-rule (1) of Rule 5. I do not think that the expression "to be collected" in Rule 5(1) while referring to the institution notified u/s 71 and the expression "collected" while referring to the institution u/s 68 would make any difference in the matter of the application of the dictum laid down in 1985 KLT 741 and Village Industries Development Centre Vs. Kerala Khadhi and Village Industries Board, . The proceedings under the Revenue Recovery Act are intended for collecting the amount from the defaulter and making it available to the institution referred to in Section 68 or 71. If the amount is not collected or recovered by the revenue recovery authorities, there is no question of realisation of the collection charges. The arrears as well as collection charges are to be recovered from the defaulter by a single process. Therefore, it is clear that if the arrears are not collected by recourse to revenue recovery proceedings, there is no question of realising the collection charges. The expression "Collection Charges" in Rule 4 and 5 has no separate existence other than by its association with the expression "arrears due". If the amounts payable to the institution are directly paid by the defaulter, there is no question of the collection of the arrears by resorting to revenue recovery proceedings. In such an event, it would be puerile to contend that the defaulter is liable to pay collection charges. Realization of the collection charges in such an event would be not only unjust but also unrealistic. The provision for deduction of "collection charges" from "the amount recovered" in Rule 5(2) makes the position clear. The question can be answered in another way; that is, if the defaulter pays the amount due to the creditor directly to the creditor, can the revenue recovery authorities continue the recovery proceedings for realisation of collection charges? The answer definitely would be "No". The reason for the answer is also available in Rule 5(2). If only "collection charges" are recovered by continuing the revenue recovery proceedings, how could the revenue recovery authorities comply with Rule 5(2) after recovery of that amount? To comply with Rule 5(2), they have to pay the "balance amount" to the "institution". If collection charges alone are recovered, they cannot pay "the balance amount" to the "institution" since there is no balance. Thus, it can safely be concluded that there could be no realisation of collection charges when the arrears are paid by the debtor to the creditor.

8. A defaulter cannot be over burdened by realising the collection charges when he pays the arrears to the creditor. Suppose a debtor pays to the creditor the arrears immediately on receipt of notice from the revenue recovery authorities; it is not at all just to say that he must be mulcted with the liability to pay collection charges as provided in Rule 4. If such an interpretation is placed we would be putting the debtor who could not pay the amount within the time stipulated by the creditor in a most disadvantageous position.

9. Therefore, I hold that Ext.P8 is not legal in so far as it relates to the demand for payment of revenue recovery charges of Rs. 1,90,500/-. If the petitioner pays

a sum of Rs. 1.02 lakhs within one month from today, it shall be tread that all the arrears due from the petitioner to the Kerala Financial Corporation stand discharged. It is made clear that in the facts and circumstances of the case, the Kerala Financial Corporation would not be justified in claiming further interest on the interest of Rs. 1.02 lakhs. If the sum of Rs. 1.02 lakhs is not paid by the petitioner within one month from today, the Kerala Financial Corporation would be entitled to claim interest on that amount.

10. Before parting with the case, I would like to express concern over the realisation of huge collection charges from the defaulters. As per Rule 4, 5% of the arrears shall be the collection charges. No scale is provided taking into account the quantum of the amount due. Under the Kerala Court Fees and Suts Valuation Act, advalorem fee is provided under Article 1 of Schedule 1. Before the commencement of the Kerala Court Fees and Suits Valuation Amendment Act 2 of 2003, 2% was provided as court fee up to Rs. 15,000/-, 5% up to Rs. 50,000/-, 7.5% up to Rs. 10 lakhs, 5% up to Rs. 10 million and 0.05% if it exceeded Rs. 10 million. By the Kerala Court Fees and Suits Valuation Amendment Act 2 of 2003, the rate of court fee was enhanced. The rate has an ascending and descending trend depending on the amount involved. In the Kerala Revenue Recovery Rules, 1968, there is no such difference in the rate of collection charges with reference to the quantum of arrears. This may some times cause great hardship to the defaulters. The process of collection of arrears by recourse to revenue recovery proceedings certainly does not involve that much time and expenditure of money when compared with the disposal of a suit and the disposal of the execution proceedings before the civil court. Costs payable by the defendant in a money suit depends on the court fee paid by the plaintiff. But a defaulter from whom arrears are collected under the Revenue Recovery Act is liable to pay 5% of the arrears to be collected irrespective of the quantum of the arrears due. It is common knowledge that a considerable percentage of revenue recovery proceedings are being taken against agriculturists in respect of agricultural loans. We cannot shut our eyes to the reality of hundreds of agriculturists having committed suicide in recent years in the threat of revenue recovery action being taken against them. The data in this regard have been reportedly collected on all India basis. If huge sums are to be collected by way of revenue recovery charges, it would result in making a debtor a debtor of two debts; one the original debt and the other the debt of collection charges.

11. The rule making authority is empowered to make appropriate rules to implement the Act. The purpose of revenue recovery action is to collect the arrears due to the Government and other institutions coming within the purview of Section 71. Rules under the Revenue Recovery Rules should not result in oppression of the defaulters Defaulters are of several kinds. In a given case, a default may not be intentional, in another it may be intentional; in yet another, the defaulter may protract the avenue recovery proceedings. That a person was unable to pay the arrears due rom him within the time stipulated should not be a

ground for penalizing him. Arrears may occur in different types of transactions, viz. agricultural industrial, commercial, etc., An agricultural loan and an industrial loan cannot be equated. So also, loan granted to a small scale industrial unit commenced by an entrepreneur cannot be equated with loan sanctioned to an established industrial concern. For realising the arrears by selling an item of immovable property, whether it be for realisation of Rs. one lakh or Rs. One crore, the expenditure to be met and effort to be taken may sometimes be the same. If the same rate of collection charges at 5% are to be levied from the defaulters irrespective of the amount involved and irrespective of the nature of arrears, it may work out injustice. In a given case, the arrears could be recovered by resorting to a single step in the revenue recovery proceedings. In yet another case, repeated sale notices and attempts to sell the property of the defaulter may become necessary. There is no logic or reason in recovering the same rate of collection charges in all such cases. Taking into account the various relevant factors, the rule making authority may consider whether Rules 4 and 5 are to be suitably amended to minimize the burden of defaulters, particularly, agriculturists and persons who run small scale industrial units with relatively small investment. Rules under similar enactments in other States also can be taken into account in this regard. Making the poor, poorer, is not what is intended by the Revenue Recovery Act and the Rules made thereunder. The Registry shall forward a copy of this judgment to the Chief Secretary to the Government and the Secretary to the Government, Law Department, for appropriate action.

The Original Petition is allowed to the extent indicated above.