(1988) 09 KAR CK 0035

In the Karnataka High Court

Case No : W.P. No. 10454/1986

Bonageri G.K. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 19-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 2 KarLJ 477

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The material facts of this case, in brief, are as follows:

The petitioner, who is the member of the Urban Co-operative Bank Ltd., Bagalkot (respondent-4), contracted a loan by pledging the goods duly insuring with the Union Co operative Insurance Society with the insurance policy being assigned in favour of the 4th Respondent-bank. The loan was given by the 4th respondent.

According to the petitioner, he borrowed a total sum of Rs. 1.54,361,00 and the value of the goods pledged with the 4th respondent was Rs. 2,36,000-00. In 1968, when the pledged goods were in the custody, control and possession of the 4th respondent, there was an outbreak of accidental fire which the gutted the goods and the godown in which the goods had been kept. It is the 4th respondent who preferred a claim before the Insurance Company for payment of compensation of Rs. 2,36,000-00. The question of payment of compensation was adjudicated by an arbitrator in the High Court of Judicature at Bombay in the exercise of ordinary original civil jurisdiction in Arbitration Suit No. 440/1969 and Appeal No. 119/1963. The parties before the Arbitrator were the 4th respondent as the plaintiff and the Union Co operative Insurance Society Ltd., as the defendant.

On 19-4-1974, the Arbitrator passed the award. The relevant portion of the award reads as follows:

"This Court doth hereby confirm the said Award and in accordance therewith doth declare that the amount of loss or damage is Rs. 94,000/- (Rupees ninety four thousand only) being the value of the Goods destroyed in the fire and this Court doth order and decree that the Defendant/Appellant do pay to the plaintiff/ Respondent Bank as loss or damages the sum of Rs. 94,000/- (Rupees ninety four thousand only) being the value of the goods destroyed in the fire and this Court doth further order that there be no order as to the costs of the said Notice of Motion and of this Decree witness Ramanlal Maneklal Kantawala, Esquire, Chief Justice at Bombay aforesaid, this 19th day of April 1974".

Obviously, the award made by the Arbitrator under the provisions of the Indian Arbitration Act (Act X of 1940) was for a sum of Rs. 94,000/- in favour of the plaintiff.

The 4th respondent bank raised a dispute against the petitioner for the recovery of the loan advanced to the petitioner by raising a dispute under Section 70 of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the Act). The Arbitrator passed the award allowing the claim of the 4th respondent against the petitioner. Aggrieved by the award, the petitioner and others preferred an appeal before the Karnataka Co-operative Appellate Tribunal. In fact, several appeals were filed and all of them were dismissed and the award was confirmed.

Questioning the order of the Appellate Tribunal and the award passed by the Arbitrator, the petitioner and several others preferred writ petitions before this Court in W. P. No. 652 of 1970. The connected writ petitions are W.P. No. 697 to 706 of 1970 disposed of by a Division Bench of this Court on 6-4-1971. In the order passed by the Division Bench of this Court, the operative portion reeds thus:

"It will therefore be sufficient in these cases if we make an order that the decree in each of these cases will stand modified by the addition of a clause that the actual recovery of money thereunder will be subject to the decree-holder Bank being in a position to produce or pay back the insurance amount referable to the goods pledged and that the parties to the decree i.e., the decree-holder and the Judgment-debtors will be at liberty to agree what constitutes actual repayment or what may be regarded as equivalent to such repayment entitling the Bank to recovery money".

In the present writ petition, the petitioner is aggrieved by the execution proceedings taken out by the 4th respondent for the enforcement of the award passed on 30-6-1968. The petitioner has actually challenged the notice of attachment dated 19-5-1983 issued by the Assistant Registrar of Co-operative Societies, Bagalkot and has sought for a declaration that the proceedings are illegal, without jurisdiction and barred by limitation.

One of the principal contentions of the petitioner is that a certificate signed by the Registrar or any person authorised by him shall be deemed to be a decree of the civil court in the context of Section 101 of the Act and it can only be executed in the manner in which a decree of a civil court is executed. The petitioner has relied upon the proviso to sub-section (2) of Section 101 of the Act which provides for a limitation of 12 years from the date fixed or from the date of the order, decision or award, as the case may be, for the execution of the award. According to the petitioner, the award was passed in the year 1968 and ultimately came to be confirmed in W.P. 652 of 1970 by this Court on 6-4-1971 and therefore, calculating the period of 12 years from the date on which this Court passed the order modifying the award, 12 years have elapsed and therefore, the execution proceedings are barred by limitation.

The second contention of the petitioner is that the direction issued by this Court in W.P. 652 of 1970 has not been complied with and therefore, the execution proceedings are bad in law. The other contention is that the 4th respondent-bank was not entitled to execute the decree and the third respondent which is a statutory authority under the Act, in order to execute the decree, should have satisfied itself as to whether the decree (award) is capable of execution or not.

The last contention of the petitioner is that the order of attachment is illegal and contrary to Section 99 of the Act in asmuch as the house-hold articles have been attached wrongly.

In para-7 of the writ petition it is stated that he had filed objections bringing all these facts to the notice of the 3rd respondent and had contended that the decree is barred by time and therefore not executable. However, the submissions did not make any impact on the executing authority and the attachment was neither withdrawn nor the objections duly considered. Instructions were issued by the executing authority to the sale officer to proceed with the attachment and sale of the attached articles towards the realisation of the moneys due under the award. This Court on 3-7-1986 stayed the operation of the Attachment notice, Annexure-B. The petitioner, promptly filed the writ petition and obtained an interim order to ward off the imminent evil of the sale of the articles pending disposal of the writ petition, questioning at the same time the legality of the sale proceedings and notice of proclamation of sale.

In these circumstances, the question which arises for consideration is whether the notice of proclamation of sale and the proceedings for sale of the pledged articles is opposed to law and whether the sale proceedings are barred by limitation.

The principal contention of the petitioner is that the objections filed by him before the executing authority were not considered. It was however contended by the learned Government Pleader appearing for respondents 1 to 3 that it was still open to the petitioner to urge the same contentions, which involve not only questions of fact but also question of law before the competent authority i.e., 3rd respondent who was seeking to execute the award. It was submitted by the learned Government Pleader that the petitioner has failed to invoke the jurisdiction of the third respondent and in these circumstances, this writ petition does not deserve to be entertained at all.

The learned counsel for 4th respondent submitted that in exercise of the jurisdiction under Article 226 of the Constitution, this Court should not go into disputed questions of fact and sit in judgment over the proceedings of a subordinate authority as a court of appeal particularly when the petitioner has approached this Court at the stage when only the notice of proclamation of sale was issued by the executing authority and nothing else had happened. The submission of the learned counsel is that, as rightly pointed out by him, it was open to the petitioner to agitate the same points raised in this writ petition before the executing authority and not having exhausted that remedy available to the petitioner under the law, the extraordinary power under Article 226 of the Constitution ought not to be exercised.

However, it was insisted by the learned counsel for the 4th respondent that even in the event of holding that the petitioner could approach the executing authority, namely the 3rd respondent, for the purpose of urging his objections to the execution proceedings, this Court should not continue the interim order granted earlier staying the sale proceedings.

It appears to me that the executing authority, the 3rd respondent, should have considered all the objections raised by the petitioner. It can be fairly said that execution of an award bears similarity in substance to the execution of the proceedings before a civil court. However, the execution proceedings in a civil court cannot be equated with the execution proceedings under the Co-operative Societies Act, unless the Act itself provides that the provisions of the Code of Civil Procedure regulate the execution proceedings for the purpose of enforcement of the award passed by the Arbitrator under the provisions of the Act. However, the Act does not preclude the petitioner from opposing the execution before the executing authority on the very same grounds that are raised before this Court in this writ petition. This remedy is wide open to the petitioner and I am not inclined to go into the merits of these contentions at this stage because that would be substituting the discretion and wisdom of this Court to the discretion and wisdom of the executing authority which is bound to act in accordance with legal imperatives if approached in accordance with law by the petitioner. At this stage it is not possible to go into the legality or otherwise of the proceedings of sale which are still in a fluid state.

Even the question whether or not the directions issued by the Division Bench of this Court in W.P. 652 of 1970 have been implemented by the concerned authorities is a matter that could be gone into by the third respondent. Equally well, it is open to the petitioner to urge all these contentions before the 3rd respondent. The question of limitation raised by the petitioner is also a matter to be considered by the 3rd respondent.

For the reasons stated above, I pass the following order:

This writ petition is disposed of with a direction to the 3rd respondent to consider the objections filed by the petitioner questioning the legality and propriety of the execution proceedings by sale of the property mentioned in Annexure-B dated 19-5-1983 on merit and in accordance with law. It is made clear that the petitioner is entitled to raise whatever objections that have been agitated before this Court in this writ petition before the 3rd respondent and all the parties to this writ petition are entitled to be heard in the matter before a decision is taken by the 3rd respondent. All the question are kept open for decision on merits.

Since the award was passed as far back as 30-6-1968, the object of the Act would be defeated if there is further delay in the disposal of this matter and I therefore direct the 3rd respondent to dispose of the objections filed by the petitioner within 60 days from the date of receipt of this order.

This writ petition accordingly stands disposed of.