(2010) 03 KL CK 0112

In the High Court Of Kerala

Case No : C.R.P. No. 59 of 2002

Cochin Stock Exchange Ltd. — APPELLANT

Vs

Dhanalakshmi Bank Ltd. — RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Citation : (2010) 159 CompCas 365 : (2010) 2 ILR (Ker) 337 : (2010) 2 KLT 510

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Koshy George, George Zachariah Eruthickel and Mathew Zachariah, for the Appellant; P. Jacob Varghese P.J. Vinod Joseph and P.J. Vivek Varghese, for the Respondent

Final Decision : Allowed

Judgement

S.S. Satheesachandran, J.—Revision petitioner is the Cochin Stock Exchange Ltd. In the revision, challenge is against an order passed by the learned Principal Sub Judge, Ernakulam in the execution proceedings from the decree passed in O.S. No. 495 of 1997 directing the Cochin Stock Exchange to sell the membership card of the 1st judgment debtor in that exchange and deposit the amount after deducting the dues from that member, to the exchange.

2. Notice given, the decree holder (1st respondent) alone entered appearance. Service by publication was ordered against the other respondents, co-judgment debtors, but after such service, none of them has turned up.

3. I heard the learned Counsel for the revision petitioner and also the decree holder. The decree holder is a bank. The suit was filed for realisation of the amount due from the defendants 1 and 2 (2nd and 3rd respondents) on a loan transaction availed by them from the bank. In that suit, the revision petitioner was impleaded as the 3rd defendant seeking a decree against it for realisation of the plaint claim by sale of the membership card of the 1st defendant in the exchange. Though the 3rd defendant exchange had filed written statement

resisting the relief so canvassed, a decree had been granted in the suit allowing the plaintiff to realise the decree debt by taking steps for sale of the membership card of the 1st defendant in the exchange. The decree also contained a direction to the 3rd defendant exchange to sell the membership card of the 1st defendant and, after realising its dues, payment of the balance amount to the plaintiff. In execution of the decree, the decree holder bank applied for sale of the membership card of the 1st defendant by the exchange. Revision petitioner/ Cochin Stock Exchange filed objections to the execution contending that the membership card is not a private property of the 1st defendant and it cannot be attached and sold in execution. It was further contended that the Cochin Stock Exchange cannot be compelled to sell the membership card to the 1st judgment debtor in auction and to pay the proceeds or part thereof to the decree holder. Negativing the objections raised by the exchange, the learned Sub Judge directed it to sell the membership card of the 1st judgment debtor and to deposit the balance sale proceeds, after satisfying the dues of the member to the exchange, before the court within a period of three months. Propriety and correctness of that order is challenged in the revision.

4. I heard the counsel on both sides. Sole question that emerges for consideration is whether the decree passed by the court directing the Cochin Stock Exchange to sell the membership card of the 1st defendant in the exchange and to deposit the sale proceeds after satisfying its dues is executable ? What could be sold in execution is only the property of the judgment debtor and in the present case those belonging to the 1st and 2nd judgment debtors against whom alone a decree had been passed for realisation of the debt. True, in the suit, the 3rd defendant exchange had been made a party and a decree was passed directing it to sell the membership card of the 1st defendant in the exchange to satisfy the decree debt. The direction so issued by the execution court under the decree has to be examined with reference to the question whether the civil court has got jurisdiction to direct for sale of a card of a member in a Stock Exchange. The court which passed the decree has proceeded on the mistaken notion that membership card of the 1st defendant in the exchange was his property which can be sold to realise the decree debt due to the bank. The ingenious attempt of the bank of filing a suit impleading the Cochin Stock Exchange as the 3rd defendant and seeking a decree against that defendant when it had no privity of contract with plaintiff bank or any role in the loan transaction of the defendants 1 and 2, with no cause of action against the exchange, was not taken note of by the court, and despite the specific challenges raised by the exchange, a decree had been passed with some directions as indicated above. Merely because a decree had been passed with such directions, it does not follow it is clothed with inviolable legal sanctity insulating it from a challenge against its executability. The question whether the direction issued is executable has to be examined with reference to the question whether the card of a member in an exchange is his property which can be brought to sale in execution by the process of the civil court. The Apex Court in Bombay Stock

Exchange Vs. Jaya I. Shah and Another, has considered whether a card issued to a member from an exchange is his property or not. In the above decision, the Apex Court has held thus:

It is not in doubt or dispute that membership conferred upon a person is a personal privilege. He holds such privilege so long as he complies with the Rules, Bye-laws and Regulations framed by the Exchange. In the event of a default committed by a member, having regard to Rule 53 as also Bye-law 316, he would cease to enjoy any right as such. His right in terms of Rule 54 lapses and vests in the Exchange immediately upon a declaration that he has become a defaulter. His right of nomination in view of Rule 9 ceases upon default and vests in the Exchange. In terms of Rule 10, the membership belongs absolutely to the Exchange free of all rights, claims or interests in such manner as it may think fit.

5. So much so, the membership conferred on a person by a Stock Exchange is only a personal privilege and it is not his property. In the event of default and the member on a declaration that he has become defaulter, his right vests in the exchange immediately and it belongs absolutely to the exchange free of all rights, claims or interests. It is only the Defaulters'' Committee as per the Rules and Regulations which can proceed with distribution rights on a pro rata basis among the creditor constituents of the defaulter member normally as per the Rules and Regulations of a Stock Exchange. When such rules and bye-laws of the exchange regulate how the sale proceeds in an auction of the membership card in an exchange of a defaulter are to be dealt with and where the membership card issued is only a personal privilege of the member, which on the declaration that he is a defaulter vesting with the Stock Exchange absolutely, no doubt, the direction issued by the court in the decree in the present suit was one without jurisdiction violating of the statutory provisions. The Stock Exchange has not challenged the decree and has dealt with the matter in such an ignoble manner, to say the least, is unfortunate. But the same will not confer validity to the direction under the decree for sale of the membership card of the 1st defendant and deposit of the amount before the court to satisfy the decree debt. Such direction in the light of the statutory provisions and interdictions placed thereunder cannot be set at naught and rendered meaningless by a court exercising its jurisdiction irregularly and granting a decree for sale of the card of a member in an exchange. Such a direction issued in the decree passed in a suit is inexecutable. The order passed by the learned Sub Judge directing for sale of the membership card of the 1st defendant by the Stock Exchange is set aside. The decree holder is free to realise the decree debt from the property of the judgment debtors 1 and 2 in accordance with law and also against their person, if so provided under the decree. Revision is allowed.

