(1961) 08 KL CK 0038

In the High Court Of Kerala

Case No : O.P. No. 1222 of 1960

Damodaran APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 11-08-1961

Acts Referred:
Kerala Money Lenders Act, 1958 — Section 2, 2(7)

Citation : (1961) KLJ 1316

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, V.S. Moothathu, K.J. Joseph and P.M. Samuel, for the Appellant;

Final Decision : Dismissed

Judgement

Vaidialingam, J.—I do not think, in view of the allegations in this affidavit that the petitioner is a bank carrying on business of banking that the question of the vires of the enactment namely, the Kerala Money Lenders Act, 1958''-Act XXXV/1958 need be gone into. No doubt, there are several grounds of attack made in the affidavit filed in support of this application regarding the validity or vires of the various provisions of the Act as well as the competency of the State Legislature to enact the Act in question. I express no opinion whatsoever one way or the other regarding those grounds of attack raised against the statute or against the sections or the rules framed under the said Act.

2. As pointed, out by the learned Government Pleader, the petitioner himself has stated in paragraph 2 of the affidavit:

The Moothedathu Bank has been carrying on banking business in Moovattupuzha ever since its inception in 1956. It has been accepting deposits of money from the public repayable on demand or otherwise and withdrawable by cheques, draft, order or otherwise.

Therefore, the learned Government Pleader urged that as the Act applied only to

Money-Lenders as defined in section 2(7) of the Act, the petitioner, who claims to be a bank, cannot have any grievance or come to this Court attacking the provisions of the Act which did not apply to him.

3. Sub-section (1) of section 2 of the Kerala Money-Lenders Act, 1958 defines a ''bank'' as meaning a banking company as defined in section 5 clause (c) of the Banking Companies Act, 1949 (Central Act X of 1949) and includes the State Bank of India. Sub-section (7) of section 2 of the Kerala Act XXXV/1958 defines a ''money-lender'' as meaning a person whose main or subsidiary occupation is the business of advancing and realizing loans, but excludes a bank or a Cooperative Society. No doubt, ''co-operative society'' is again defined in sub-section (2) of section 2; but as the petitioner admittedly does not claim to be a cooperative society, it is not necessary to advert to the same.

The preamble to the Act clearly says that it is an Act to provide for the regulation and control of the business of money-lenders in the State of Kerala. As the definition of ''Bank'' in. sub-section (I) of section 2 of the Kerala Act XXXV/1958 takes in a ''banking company'' as defined in section 5 (1) (c) of the Banking Companies Act, 1949-Central Act X/1949, it is desirable to advert to definition of ''banking'' and ''banking company'' as it obtains in clauses (b) and (c) of sub-section (1) of section 5 of the Banking Companies Act, 1949.

4. Clause (b) of sub-section (1) of section 5 of the Banking Companies Act defines ''banking'' as meaning the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. Clause (c) of subsection (1) of section 5 again defines ''banking company'' as meaning any company which transacts the business of banking in India. Therefore, taking clauses (b) and (c) of sub-section (1) of section 5 of the Banking Companies Act along with sub-section (1) of section 2 of the Kerala Money Lenders Act, 1958, it clearly follows that a bank is not within the ambit of the Kerala Money Lenders Act, 1958. In fact, as I mentioned earlier, the expression ''money-lender'' in sub-section (7) of section 2 of the Kerala Act clearly excludes from its definition a bank or a ''co-operative society. In view of the case set up by the petitioner himself especially in paragraph 2 of the affidavit to the effect that it is a bank, it follows that the petitioner cannot come to this Court and challenge the provisions of the Kerala Money-Lenders Act, 1958. I once again state that the petitioner has nowhere made any statement to the effect that he will be a money-lender within the definition of that expression as contained in sub-section (7) of section 2 and that the provisions of the Act directly apply to him. In the absence of any such statements of the petitioner, there is no other alternative for me but to reject this application for reasons mentioned earlier. Accordingly, the writ petition fails and is dismissed with costs of the respondent.

