

(2003) 01 KL CK 0052
In the High Court Of Kerala
Case No : O.P. No. 24812 of 2002

Dhanalakshmi Bank

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 71

Citation : (2004) 1 BC 261 : (2003) 1 KLT 1024

Hon'ble Judges : Jawahar Lal Gupta, C.J.;M. Ramachandran, J

Bench : Division Bench

Advocate : P. Jacob Varghese and G. Venkateswara Prabhu, for the Appellant;
T.N. Manoj and C.K. Abdul Rahim, Government Pleader, for the Respondent

Judgement

Jawahar Lal Gupta, C.J.—Is the action of the District Collector in refusing to initiate revenue recovery proceedings against respondent Nos. 2 and 3 on the ground that the amount to be recovered exceeds Rs. 5 lakhs legal and valid? This is the short question that arises for consideration in this petition under Article 226 of the Constitution.

2. The petitioner is a scheduled commercial bank. The 2nd respondent availed of an open cash credit facility of Rs. 3 lakhs on January 14, 2000 from the petitioner bank. The 3rd respondent, who is the father of the 2nd respondent, was the guarantor and provided the collateral security by way of deposit of title deeds of the property. Necessary documents were executed.

3. On account of failure of the respondents to make the deposit, an amount of Rs. 4,30,684.50 had become due from them on December, 30, 2000. Respondent Nos. 2 and 3 failed to make the deposit. On January, 14, 2002, the bank issued a demand notice for the recovery of Rs. 4,78,250/- which was found to be due on December 31, 2001. The respondents asked for time. Since the deposit was not made the bank approached the District Collector for initiating proceedings for recovery. The letter was returned in original with the following observation:

"N.Dis-13321/02/313 Returned to the Branch Manager, Dhanalakshmi Bank, Muvattupuzha.

As per the judgment as W.A. 3590/2001 dated 18.1.2002 the Revenue Recovery proceedings can be adopted only if the amount to be recovered does not exceed Rs. 5 lakhs. Hence the Request returned to the Manager, Dhanalakshmi Bank, Muvattupuzha, Br.

Sd./- For Collector 28.5.2002."

4. Aggrieved by this order, the bank has filed the present petition under Article 226 of the Constitution. It maintains that the provisions of the Kerala Revenue Recovery Act, 1968 are attracted to the facts of the present case. The order dated May 28, 2002 passed by the respondents is illegal. Thus, it is prayed that the order, a copy of which has been produced as Ext.P7 be quashed and that the authority be directed to proceed to make the recovery from respondent Nos. 2 and 3.

5. On behalf of respondent Nos. 2 and 3 a counter affidavit has been filed by the 2nd respondent. It has been inter alia averred that in view of the judgment in W.A. No. 3590 of 2001, the claim as made in this petition is not tenable. On merits, it has been submitted that respondent Nos. 2 and 3 purchase timber sold in public auction by the Department of Forest. He carries it to his timber yard for sale. The loan was not sanctioned under any development scheme. Sufficient security was furnished. The bank is not entitled to proceed against respondent Nos. 2 and 3 under the provisions of the 1968 Act. Since the cash credit facility availed of by the respondents is not a loan sanctioned under a development scheme the claim as made by the petitioner bank cannot be sustained. Thus, the respondents pray that the Writ Petition be dismissed.

6. No reply has been filed on behalf of respondent Nos. 1 and 4.

7. Counsel for the parties have been heard. Mr. Varghese, learned counsel for the petitioner, contends that the provisions of the Kerala Revenue Recovery Act, 1968 are fully applicable. The view taken by the authority is wholly illegal. Thus, it cannot be sustained. On the other hand, Mr. Manoj, learned counsel for respondent Nos.2 and 3 has contended that in view of the decision of their Lordships of the Supreme Court in *Califf India Chambers v. Syndicate Bank* (1999 (1) KLT 155 (SG)) the provisions of the Act cannot be invoked.

8. The short question that arises for consideration is: Are the provisions of Kerala Revenue Recovery Act, 1968 applicable in the present case?

9. The Act was promulgated with the object of amending and consolidating the law relating to the recovery of arrears of public revenue in the State of Kerala. The purpose was to secure public funds. Under the Act provisions for expeditious recovery of public dues were made. In Chapter IV Miscellaneous provisions, for enforcing payment by sureties and recovery of dues by Government etc. are made. In particular, a power was also conferred on the State Government to

extend the application of the Act to other institutions. This power is contained in Section 71.

"71. Power of Government to declare the Act applicable to any institution:- The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

In exercise of the power under the above provision, the State Government has issued various notifications. One of these was issued vide S.R.O. No. 1465/87. It was inter alia provided as under:

"S.R.O. No. 1465/87.- In exercise of the powers conferred by Section 71 of the Kerala Revenue Recovery Act, 1968 (15 of 1968), the Government of Kerala, being satisfied that it is necessary to do so in public interest, hereby declare that the provision of the said Act shall be applicable to the recovery of amounts due from any person or class of persons to any bank on account of any loan advanced by that bank under various development schemes."

A perusal of the above would show that by the notification issued u/s 71 the provisions of the Act have been extended to the recovery of amounts due to a bank "on account of any loan advanced by that bank under various development schemes". It is not disputed that the petitioner falls within the ambit of "Bank" as defined in Explanation (a). However, it is contended on behalf of the respondents that the bank had not advanced any loan under a development scheme. Thus, the provisions of the Act not attracted to the facts of the present case. Is it so?

10. A development scheme has been defined in CI.(b). It includes "all priority sector advances". Still further the petitioner has placed on record the Circular issued vide letter dated February 14, 2001 in which the details regarding priority sector have been given. The relevant provision reads as under:

"At present, the priority sector broadly comprises the following:

(i) Agriculture

(ii) Small Scale Industries

(iii) Other activities/borrowers (such as small business, retail trade, small transport operators, professional and self employed persons, housing, education loans, microcreditetc.)"

"3.2 Retail Trade

Advances granted to

3.2.1. Retail traders dealing in essential commodities (fair price shops) and consumer cooperative stores, and

3.2.2. Private retail traders with credit limits not exceeding Rs. 5 lakhs.

(Retail traders in fertilisers will form part of indirect finance for agriculture and those to retail traders of mineral oils under small business.)".

A perusal of the above shows that the priority sector advances are not confined to agricultural or small scale industries. Even persons engaged in retail trade are covered. The advances given to private retail traders with credit limit not exceeding Rs. 5 lakhs fall within the ambit of the scheme.

11. On a cumulative consideration of the relevant provisions, it is clear that by virtue of the notification u/s 71, advances given by banks to the priority sector fall within the ambit of a development scheme. Thus, the provisions of the 1968 Act can be invoked. In the present case it is the admitted position that the 2nd respondent purchases timber in open auction and sells it in retail. He is thus engaged in retail trade and had been given a cash credit facility of Rs. 3 lakhs. Thus, he falls strictly within the ambit of the circular which covers cases of advances of cash credit facility upto Rs. 5 lakhs. In case of default the provisions of the Act can be invoked,

12. Mr. Manoj contends that in view of the decision of their Lordships of the Supreme Court in *Califf India Chambers v. Syndicate Bank* (1999 (1) KLT 155 (SC)) the Act is not applicable. This contention cannot be accepted. A perusal of the judgment shows that their Lordships were considering the matter in pursuance to the notification dated October 13, 1987 where in the development scheme did not include the priority sector advances. This provision was introduced vide notification dated July 30, 1999. It appears that it was in pursuance to the decision of their Lordships, which was delivered on July 25, 1997, that the amendment in the definition of "Development Scheme" was made by the Government of Kerala. The amendment having been made, the decision in *Califf India Chambers*" case can be of no assistance to the respondents.

13. Faced with this situation, learned counsel for respondent Nos. 2 and 3 has referred to the decision of a Division Bench of this Court in W.A. No. 3590 of 2001. He contends that in view of this decision the District Collector had rightly refused to invoke the provisions of the Act. A copy of the decision has been produced as Ext.P10 with the petition. The matter was decided by their Lordships with the following observations:

"2. Learned counsel for the 5th respondent, who is the contesting party, does not dispute that the revenue recovery notice, Ext. P6 in the Original Petition, could not have been issued to the present appellants, as according to the guidelines issued by the Reserve Bank of India, revenue recovery proceedings can be adopted only if the amount to be recovered does not exceed Rs. 9 lakhs.

3. Admittedly, Ext.P6 is for an amount of Rs. 6,31,741/- plus 5% collection charges. In the circumstances, learned counsel for the 5th respondent states that revenue recovery proceedings have been initiated contrary to the guidelines

issued by the Reserve Bank of India and the only option is to file a suit before the Tribunal. We accept the statement made by the learned counsel for the 5th respondent.

In the result, the Writ Appeal is allowed. The order of the learned single Judge is set aside and Ext.P6 revenue recovery notice is quashed without prejudice to the right of the 5th respondent to recover the amounts due by adopting any other means of recovery."

A perusal of the above shows that learned counsel for the 5th respondent viz. the bank in the aforesaid case had conceded that the revenue recovery notice should not have been issued as the amount to be recovered exceeded Rs. 5 lakhs. The decision was, thus, based on a concession by the counsel. However, nothing has been pointed out by the respondents to show that the Act or Rules prescribe such an embargo. In the absence of a provision placing specific limit we find no ground to uphold the contention that the provisions of the Act cannot be invoked in cases where the amount to be recovered exceeds Rs. 5 lakhs. It appears that the District Collector had wrongly relied upon the decision.

14. No other point has been raised.

In view of the above, we are unable to sustain the impugned order. It is quashed. The respondent authority is directed to proceed for recovering the amount due from respondent Nos. 2 and 3 in accordance with the provisions of Kerala Revenue Recovery Act 1968.