
(1999) 10 KL CK 0067
In the High Court Of Kerala
Case No : C.R.P. No. 1316 of 1998

Edappal S.C.B.

APPELLANT

Vs

Malappuram Dist. Co-op. Bank

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Citation : (1999) 2 KLJ 1009

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : T. Krishnanunni, for the Appellant; T.R. Ramachandran Nair and T.R. Harikumar, for the Respondent

Judgement

M.R. Hariharan Nair

1. The judgment debtor in an Arbitration Award is the revision petitioner. The question posed for decision in the case is whether a civil court can execute an award passed by an Arbitration under the Co-operative Societies Act when the judgment debtor-Society itself is under liquidation. The respondent in the revision obtained a decree against the petitioner society. Petition was filed before the Sub Court, Tirur for executing the said award by attachment and sale of the Society's properties. The Judgment Debtor Society resisted the move and pointed out that since it is under liquidation, the civil court has no jurisdiction to proceed with the matter. It was also pointed out that under the Co-operative Societies Act and Liquidator alone is the person competent to handle and distribute the assets and liabilities of the society. Continuance of the execution proceedings before the civil court was thus resisted.

2. The court below considered the content and noted that the Liquidator had himself filed a written statement in the Arbitration Proceedings wherein the claim of the creditors had not been disputed. The contention raised was only relating to the matter of future interest and the like. The Execution Court found that the awards passed by the Arbitrator are not liable to be challenged except in the

manner provided in the Act and as such only an appeal would lie before the Tribunal if liability under the award is to be challenged. It was therefore further found that a contention of the present nature cannot be raised in the execution proceedings.

3. I have heard both sides. It is useful to refer to the relevant provisions of the Co-operative Societies Act. Sec.72(2) and Sec.73(1) of the Act provide as follows:

Sec.72. Liquidator (1): x x x.

Sec.72(2): The liquidator shall, on appointment take into his custody or under his control all the property, effects and actionable claims to which the society, is or appears to be entitled and shall take such steps as he may deem necessary or expedient to prevent loss or deterioration of, or damage to, such property, effects and claims.

Sec.73.Powers of liquidator:-- (1) Subject to any rules made in this behalf, the whole of the assets of a society in respect of which an order of winding up has been made shall vest in the liquidator appointed under Sec.72 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

4. In view of the taking over and vesting contemplated above it is the liquidator alone who can proceed to collect and distribute the assets and credits of the society and the civil court or the execution court vanish from the scene. Under Sec.73(2)(c) and (d) it is his duty to investigate all claims against the society and to decide the question of priority arising between the claimants and to pay claims against the society including interest up to the date of winding up according to their respective priorities if any, either in full or rateably as the assets of the society may permit, and to apply the surplus, if any, remaining after payment towards interest from the date of winding up also. If the execution proceedings as sought before the court below are allowed to continue, the above power of the Liquidator to decide the question of priority between claimants and to make rateable distribution to the creditors will be defeated.

5. In these circumstances, I am of the view that the court below has erred in overruling the objections raised by the judgment debtor society and in finding that the civil court has jurisdiction to proceed with the execution steps. The impugned order, in the circumstances, is set aside. The decree holder will be at liberty to approach the liquidator for reliefs allowed under the aforesaid provisions. E.P.45 of 1997 of the Sub Court, Tirur is dismissed.