(1979) 01 KAR CK 0024

In the Karnataka High Court

Case No : W.P. 13852/78

Eswarachari - Petitioner APPELLANT

Vs

The Primary Land Development Dank and Another RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 32

Citation : (1979) 1 KarLJ 353

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

This writ petition is filed by a member of the 1st respondent (Primary Land Development Bank, Malur in Kolar District). Even according to his averments he had borrowed from the said respondent-Bank certain sums of money. He borrowed a sum of Rs. 7,200 on 15-12-72 and a further sum of Rs. 2,420 on 16-8-73 for purposes of digging a well and installing a pump set therein. These two loans were secured loans. From the Bar it is made clear, by securing, the petitioner means that these lands were mortgaged to the 1st respondent-Bank in respect of the said loans. Later on as the amount borrowed was found to be insufficient, he approached the respondent-Bank for another loan in the sum of Rs. 3,000. This loan was sanctioned but it is alleged, it has not been released in his favour so far.

In this writ petition, his chief grievance is that the second respondent has issued two notices as per Exts. ''A'' and ''B'' to the petition. These notices are issued under the proviso to S. 99 of the Karnataka Co-operative Societies Act (hereinafter referred to as the ''Act''). These notices have been issued by the second respondent in consequence of two applications being made by the 1st respondent under S. 99 of the Act as is apparent from the language of the notices.

The object of S. 99 is very clear. It provides a simple mode of recovery of any debt due to a Society by presenting an application to the Registrar or any other officer subordinate to him and empowered by the Registrar in, that behalf to recover the said debt on the basis of the first charge created in accordance with S. 32(1) of the Act. For convenience, S. 32(1) of the Act is reproduced below:

"32 First charge of co-operative society on certain assets-(1) Notwithstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue, or any money recoverable as land revenue, any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished produce manufactured from such raw materials, belonging to such member, past member or forming part of the estate of the deceased member, as the case may be."

Sri K.N. Subba Reddy, learned Counsel for the petitioner contends that the sums demanded under Exts. ''A'' and ''B'' are loans relatable to the loans he obtained by offering his land (immoveable property) as security for the loans mentioned earlier and in that circumstance, the authorities under the Act purporting to act under S. 99, cannot have jurisdiction to have recourse to S. 99 as long as his immoveable property itself is secured. Further elaborating this contention, he submitted that as immoveable property is secured, the first respondent-Bank has no right to move the, second respondent to attach his moveables. If they wanted to recover the debts in question, they could do so only by referring it for arbitration under S. 70 of the Act.

It is difficult to accede to this contention having regard to the plain language of S. 32(1) of the Act. The purpose of S. 32 is to create a statutory charge in favour of the co-operative society subject to the exceptions mentioned in that section and no more. Whether the land on which the crop is to be found is itself secured or the raw materials stored therein or any produce, machinery, cattle, agricultural implements, industrial implements etc., are not secured, the co-operative society which had advanced the loan whether as a Bank or as a Society can recover its debts in more than one manner as is obvious from the provisions made in S. 70 falling within Chapter IX and also under S. 99 which falls under Chapter XII. The clause with which the S. 99. of the Act commences makes a reference to Chapter IX. In other words, notwithstanding the provisions contained in Chapter IX for recovery of debts, the Society is permitted to have recourse to S. 99 of the Act when the Society chooses to proceed, only against his properties in respect of which statutory charge is created automatically by operation of law in terms of S. 32(1) of the Act. There is no difficulty in understanding the meaning, purpose and scheme of the Act and the section, to which I have referred to in the course of this order. The petitioner cannot escape his liability to repay the debts by starting this collateral proceeding by invoking the jurisdiction of this Court under Art. 226 of the Constitution and prevent the 1st respondent from recovering the debts due to it from him. For the reasons already stated, the contentious advanced on behalf of the petitioner by his learned counsel cannot be accepted. The notices issued as per Exts. ''A'' and ''B'' are in order and according to law and there is no infirmity which calls for interference.

In the result, this is not a fit case in which Rule is required to be issued. Hence, it is dismissed.

