

(2013) 12 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No. 58970 of 2013 (GM-RES)

Fayaza Ahmed

APPELLANT

Vs

Muslim Co-Operative Bank Limited

RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2014) 2 BC 625 : (2014) 1 KarLJ 571

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : H.S. Santhosh, for the Appellant;

Judgement

A.N. Venugopala Gowda, J.—Petitioner availed loan of Rs. 8,00,000/- from the respondent. Since there is default in the matter of payment of the loan instalments, the respondent having issued a notice dated 7-10-2013, the petitioner submitted a reply dated 15-10-2013. A further notice having been served by the respondent on 7-11-2013 and petitioner having remitted Rs. 10,000/- on 21-11-2013, this writ petition was filed on 23-12-2013, questioning the 7 days' notice dated 21-12-2013 issued by the respondent, notifying the petitioner that his name will be published in the newspaper after 28-12-2013 and possession of the secured property would be taken and dealt with in accordance with law. As per the impugned notice, the petitioner is overdue Rs. 97,239/-, out of the full due balance of Rs. 8,23,913/-. Sri H.S. Santhosh, learned Advocate for the petitioner, by placing reliance on the decision in the case of Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, , contended that the respondent being a Co-operative Bank, established under the Karnataka Co-operative Societies Act, 1959, the impugned proceedings are ultra vires and hence, interference is warranted. Alternatively, learned Counsel contended that the petitioner having paid substantial amount and in view of the dire circumstances in which he is placed, being unable to pay an instalment amount due, the respondent is unjustified in serving the notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short, the Act) on 7-10-2013 and also serving a 7 days" notice vide Annexure-A on 21-12-2013. Learned Counsel contended that the impugned action being arbitrary and illegal, writ petition may be entertained and appropriate relief granted.

2. In the case of The Authorised Officer/General Manager, Sri. Basaveshwar Co-operative Bank Ltd. Vs. Sri. Balappa Fakkirappa Gurlahosur, , the appellant, which is a Co-operative Bank, issued demand notice to the respondent/borrower and in view of the default committed, initiated proceedings under the Act. Learned Single Judge having been approached for relief by the borrower, the writ petition having been allowed, by holding that the Bank cannot invoke the provisions of the Act, the Bank filed writ appeal, wherein the point for consideration being that, the recovery proceedings having been initiated by the appellant-Bank under the Act, whether a Co-operative Bank could fall under the definition of a Bank as contemplated u/s 2(1)(c)(iv) of the Act. The Division Bench has held that, when once there is a Notification dated 28-1-2003 prior to the grant of loan to the respondent, describing "Co-operative Bank" as "Bank" attracting the provisions of the Act, for all practical purposes of the Act, the appellant-Co-operative Bank also falls under the category of "Banks" attracting the provision of the Act and therefore, the proceedings initiated under the Act by the appellant-Co-operative Bank against the respondent is justified. The order passed by learned Single Judge impugned in the writ appeal was set aside and the writ petition was dismissed, more particularly, after referring to the decision of the Apex Court in the case of Greater Bombay.

3. In the case of Karnataka Rajya Kaigarika Sahakara Bank Niyamita and Another Vs. V. Krishnaswamy and Another, , it has been held that, whether a Bank is in public sector or private sector or in Co-operative sector, the problem is the same and the Karnataka Co-operative Societies Act, 1959 also does not provide any machinery for similar purpose. Therefore, by virtue of the power conferred, the Parliament has enacted the SARFAESI Act as banking falls within List I of Seventh Schedule and the constitutional validity of the Act having been upheld by the Apex Court in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , the proceedings initiated by the Bank was held as justified and the writ petitions filed by borrowers were dismissed. Incidentally, the decision of the Apex Court in the case of Greater Bombay was also noticed apart from catena of judgments of the Supreme Court on the subject-matter.

4. In view of the declaration of law in the two judgments, noticed supra, the contention of Sri Santhosh that the respondent cannot invoke the provisions of the Act to realize the loan dues of the petitioner is unacceptable.

5. In the case of GM, Sri Siddeshwara Co-operative Bank Ltd. and Another Vs. Sri Ikbali and Others, , borrower instead of availing the remedy u/s 17 of the Act, approached this Court with a writ petition and the same was allowed and the writ appeal filed by the Bank having been dismissed by the Division Bench on the ground that when a constitutional right of an individual is affected by Statutory

Authorities by trampling upon the mandatory requirements of law, the Court cannot be a silent spectator and it becomes not only a right, but the duty of the Court to interfere and strike at these illegal activities and uphold the constitutional right of a citizen of this Country, feeling aggrieved, the Bank having preferred a Special Leave Petition, Apex Court, after noticing the ratio of law in the case of United Bank of India Vs. Satyawati Tondon and Others, , has held that availability of alternative remedy though is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, but in view of the well-settled position, that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a writ petition under Article 226 and on misplaced considerations, the statutory procedure cannot be allowed to be circumvented and allowed the appeal.

6. Sri Santhosh does not dispute the fact that the petitioner can approach the Tribunal u/s 17 of the Act for relief. Learned Counsel submitted that the petitioner having shown bona fides by remitting Rs. 10,000/- even on 21-11-2013, may be granted reasonable time to clear the overdue balance of Rs. 97,239/-. In my opinion, the petitioner should have approached the respondent with a request to give reasonable time for payment of the overdue balance amount with an assurance to pay the future instalments regularly or ought to have approached the DRT for relief. In view of the availability of statutory remedy which is alternative and efficacious, the writ petition cannot be entertained.

In the result, the writ petition is rejected. However, if the petitioner were to approach the respondent with a representation, to grant reasonable time to clear the overdue balance amount, with an assurance that he would honour the future installments without default, the respondent shall consider the prayer of the petitioner sympathetically and permit him to discharge the loan obligation, since the respondent is only interested in recovery of its dues and not otherwise.

Ordered accordingly.