
(2007) 01 OHC CK 0015

In the Orissa High Court

Gajendra Behera and Another

APPELLANT

Vs

Secretary, Balasore-Bhadrak Central Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Orissa Co-operative Societies Act, 1962 — Section 67, 68

Citation : (2007) 2 ARBLR 463 : (2007) 103 CLT 231 : (2007) 1 OLR 370

Hon'ble Judges : I.M. Quddusi, J;A.K. Samantray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—A short question is involved in this case to the effect that whether after an award passed by the Arbitrator, the Opposite party can proceed otherwise than the procedure given in the Orissa Co-operative Societies Act, 1962 (for short "the Act") for execution of award by making an order to the effect that an amount of Rs. 1,000/- per month shall be realized from the monthly salary bills of the Petitioners who are the guarantors to the loan amounting to Rs. 9,00,000/- granted to the original borrower.

2. The brief fact of the case are that one Agani Sahu approached the Opposite party for granting loan to the tune of Rs. 9,00,000/-. The Petitioners-the employees of the bank were the guarantors for the loan which was granted and disbursed in the year 1997 by the Opposite party. After receiving the amount of loan, the original borrower, i.e., Agani Sahu defaulted in making payment of instalments. Thereafter though the bank took the recourse of attaching the mortgage property of the original borrower and sold out the the same, it could not realize the default amount inclusive of interest.

3. The Opposite party issued notice to the guarantors who are the Petitioners before us and then a dispute was referred to the Arbitrator u/s 68 of the Act. The Arbitrator made the following award in the Dispute Case No. 44/99 vide order dated 27.11.1999,:

xx xx xx Held that Sri Agani Sahu, s/o Bauli Sahu of Chhatrikhunta the principal borrower, Sri Gajendra Behera, s/o Khetramohan Behera and Sri Khagendra behera, s/o Pranabandhu Behera both of Mitrapur, the Surities, jointly and severally do pay the Balasore Cooperative Central Bank Ltd. the following decreetal amount including further interest @ 19% per annum quarterly compoundable on principal with all future costs till to the date of full realization:

Principal Rs. 11,34,915.00 (as on 30.6.99) Dispute cost Rs. 90.00 Other cost Rs. 45.00 Rs. 11,35,050.00

(Rupees eleven lakh thirty five thousand and fifty) only. Pronounced the decision in presence of both the parties. Given under my hand and seal this the 27th day of November "99.

Sd/- P.C. Mishra, Arbitrator

The Petitioners did not challenge the aforesaid award and as such the same has become final. But the Opposite party issued the impugned order dated 10.5.2006 (Annexure-8) directing realisation of Rs. 1,000/- per month from the salary bills of each of the Petitioners as they are the employees of the bank.

4. Now the question has arisen as to whether after the arbitration award being made final, it is open for the Opposite party to pass a suo motu order attaching the salary of the Petitioners instead of taking recourse of law for the execution of the award. In this regard Section 103 of the Act provides:

103. Execution of order, etc. - (1) Every order made u/s 67, Sub-section (1) of Section 102 or Sub-section (1) of Section 108, every decision or award made u/s 70, and every order made under Sees. 75, 111, 112, 113 and 114 shall, if not carried out-

(a) on a certificate signed by the Auditor-General, or any person authorized by him in that behalf, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court, or

(b) be executed according to the law, and under the rules for the time being in force, for the recovery of arrears of land revenue:

(c) Provided that any application for the recovery in such manner of any sum shall be made to the Collector within twelve years from the date fixed in the order, decision or award, and if no such date is fixed from the date of the order, decision or award, as the case may be, and shall be accompanied by a certificate signed by the Auditor Generator any person authorized by him in that behalf; or be executed by the Auditor-General or any person empowered " by him in that behalf by the attachment and sale, or sale without attachment of any property of the person or a Society against whom the order, decision or award has been obtained or passed;

(2) The provisions of Clause (c) above shall apply with such modifications, if any, as may be directed by the State Government, in regard to the recovery of like

sums due to Societies registered or deemed to be registered in and other State of India under any law relating to Societies for the time being in force in that State as if such Societies had been registered in the State of Orissa under this Act.

Mr. Mohanta, Learned Counsel for the Bank has submitted before us that the bank has already approached the State Government for the purpose of getting the award executed. But the State Government has not made any response towards the same.

5. If the State Government have not made any response, it does not mean that it would be open for the Bank to realize the amount or in other words execute the award suo motu by realizing Rs. 1,000/- from the salary of each of the guarantors who are the employees of the bank. Once an arbitration award has been made, it has to be executed in accordance with the statutory provisions. The bank cannot act beyond the statutory provision.

6. Therefore, we are of the opinion that the impugned order passed by the Opposite party for deduction of Rs. 1,000/- from the salary of each of the Petitioners during the pendency of the execution of the arbitration award, is bad in law and is liable to be quashed.

7. In the result, the writ petition is allowed. The impugned order dated 10.5.2006 passed by the Opposite party as contained in Annexure-8 of the writ petition, is quashed. However, it would be open for the Opposite party to get the arbitration award executed in accordance with law and file application before the State Government for expeditious disposal of the pending execution application of the award.

The interim order passed earlier, stands discharged.

A.K. Samantray, J.

8. I agree.