

(2005) 04 SC CK 0006
In the Supreme Court Of India
Case No : C.A. No. 2855 of 2005

Jabbar and Another

APPELLANT

Vs

Dhanalakshmi Bank Ltd. and Others

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 71

Citation : (2005) 11 SCC 586

Hon'ble Judges : Ruma Pal, J;C. K. Thakker, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Delay condoned. Substitution allowed. Leave granted.

2. The challenge in this appeal is to the steps taken by the Respondent-Bank to recover the amount lent by the Respondent-Bank to the Appellants under the Kerala Revenue Recovery Act, 1968 (hereinafter referred to as 'the Act'). It is not in dispute that the Appellants had obtained cash credit facilities from the Respondent on 14th January, 2000 upto the limit of Rs. 3,00,000. On failure of repayment by the Appellants of the amount so advanced by the Respondent-Bank, the Respondent initiated proceedings for recovery of the amount under the Act on 21st March, 2002. The Collector rejected the application of the Respondent for proceeding under the Act on the ground that the cash credit facilities for retail trade were not covered by the provisions of the Act. The Respondent challenged the decision of the Collector before the High Court under Article 226. The writ Petition was allowed, the Appellants contend, wrongly.

Section 71 of the Act provides:

71. Power of Government to declare that 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.

Pursuant to the powers conferred by Section 71 of the Act (extracted above), a Notification was issued by the Government in 1987 by which it was declared that the provisions of the 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 scheme".

3. The loan in this case had not been advanced to the Appellants by reason of any development scheme and, therefore, the Appellants are correct that at least till 1987 the Act was not applicable and the procedure provided therein for recovery of dues could not be resorted to by the Respondent-Bank.

4. In 1999 there was an amendment to the 1987 Notification by which the Act was extended to cover "all priority sector advance". The priority sector advance till that time, therefore, had not been covered by the Act. Subsequent to the extension of the Act to priority sector advances, the advances by Banks could be recovered under the Act if the advance was treated as a priority sector advance. This is exactly what was done by circular issued by the Reserve Bank of India on 14-2-2001, in which it was made clear inter alia that advances granted to private retail traders of credit limits not exceeding 5 lacs would be considered to be a priority sector advance.

5. The Appellants' contention before us is that this clarification to the Notification of 1999 would not apply as far as the advances made to the Appellants were concerned because when the advances were made to the Appellants neither the Notification nor the clarification were there. This submission is unacceptable. The inclusion of priority sector advance was only for the purpose of enabling advance covered thereby to be recovered in accordance with the procedure prescribed under the Act. Admittedly, the procedure initiated for recovering the advance granted to the Appellants was initiated subsequent to the Notification issued in 1999, as clarified in 2001.

6. In this background, looking to the circumstances, the appeal is dismissed, but, without any order as to costs.

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