(1982) 03 MAD CK 0063

In the Madras High Court

Case No : C.R.P. No. 70 of 1981

K. Sambandam APPELLANT

Vs

Sirkali Cooperative Urban Bank Ltd. and Another RESPONDENT

Date of Decision : 19-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1983 Mad 36 : (1984) 97 LW 586

Hon'ble Judges : Gokulakrishnan, O.C.J.

Bench : Single Bench

Advocate : P. Veeraraghavan, for the Appellant; S. Jayaraman, for the Respondent

Judgement

1. The first respondent in E. P. No. 66 of 1979 on the file of the District Munsif of Sirkali is the petitioner herein. The first respondent herein as the plaintiff in C. T. I. A. 317 of 1973-74, got an award from the arbitrator of Co-operative Societies, Sirkal, against the petitioner and the second respondent herein on 30th May, 1974 u/s 73 of the Tamil Nadu Cooperative Societies Act(Act 53 of 1961). In that proceedings, the first respondent herein claimed a sum of Rs. 2,270-65 due on a surety bond dated 30-11-1971, with further interest at one paise per rupee per mensem from the making the reference to the date of recovery and costs. During the enquiry, the petitioner and the second respondent herein remained ex- parte. The arbitrator directed the petitioner and the second respondent herein to pay the first respondent a sum of Rs. 2,349.22 with interest thereon at two paise per rupee per mensem from the date of the award till realisation. In order to execute this award, the first respondent herein filed E. P. No. 66 of 1979.

2. The main question that was decided in the execution petition was whether the award and claim of excessive interest beyond six per cent per annum for the period subsequent to the award was valid or not and whether the executing Court can decide that matter at the stage of execution. The executing Court found that it cannot go beyond the decree, that u/s 100 of the Tamil Nadu Co-

operative Societies Act, the jurisdiction of the Civil Court was barred and as such, the validity or otherwise of the interest granted cannot be gone into by the Civil Court and that the objection is barred by constructive res judicata. With these findings, the Court below ordered execution. As against this order, the present revision petition has been filed.

3. Mr. P. Veeraraghavan, learned counsel for the revision petitioner, contended that the grant of interest which works out at the rate of 24 per cent per annum is not correct and that applying the decision in Gurunathan v. Villupuram Co-operative Urban Bank Ltd., 1979 TLNJ 448, the revision has to be allowed. Mr. S. Jayaraman, on the other hand, pointing out the provisions of the Tamil Nadu Co-operative Societies Act, submitted that the Civil Court has no jurisdiction to go into the matter and that the executing Court cannot go beyond the decree or the award passed in this case.

4. It is clear from the facts of the case, that the decree holder claimed interest at one paise per rupee per mensem. But, the arbitrator has given an award to the effect that the decree holder is entitled to interest at award works out to 24 per cent per annum. It is clear from the decisions rendered by our High Court and the Supreme Court that Section 34, C. P. C. though not applicable directly to the arbitration proceedings, the principle of that section can be applied by the arbitrator for awarding interest. This is clear from the decision reported in Seth Thawardas Pherumal Vs. The Union of India (UOI), . Thus, the Supreme Court has placed the subject matter beyond the controversy by holding that Section 34, C. P. C. will be applicable to proceedings before an arbitrator also.

5. The learned Chief Justice of our Court in C. R. Ps. 818 and 819 of 1979 reported in Gurunathan v. Villupuram Co-operative Urban Bank LTD., 19 79 TLNJ 448, after accepting the proposition laid down by the Supreme Court in the decision cited above, interfered with the interest awarded by the arbitrator on the ground that the same is more than six per cent and that such award of interest more than 6 per cent is not envisaged by Section 34, C. P. C. Accordingly the learned Chief Justice modified the award and stated that the award amount will carry interest at six per cent and not at 18 per cent as awarded by the arbitrator. With this modification, the learned Chief Justice dismissed both the revisions.

6. Mr. P. Veeraraghavan, learned counsel for the revision petitioner, submitted that following the above said decision, this Court must interfere and reduce the interest to that of six per cent. I am afraid that I cannot accept this argument. No doubt, Section 34, C. P. C. gives ample power to the Court to award interest. That section has been invoked for awarding interest in cases pending before the arbitrators also. Such a procedure has been upheld by this Court and also by the Supreme Court. Though Section 34, C. P. C. mentions certain rate of interest to be awarded by the Court concerned the awarding of interest more than that is contemplated u/s 34, C. P. C. will not ipso facto make such award illegal or without jurisdiction. If a party is aggrieved by such award, the proper course will

be to have it corrected by way of an appeal or revision before the appropriate forum and cannot at the stage of execution question the same. It is well settled that the executing Court cannot go beyond the decree except in certain cases where the decree itself is ab inition void or that the Court which passed the decree did not have jurisdiction to pass the same. As far as the present case is concerned, there is absolutely no difficulty in coming to the conclusion that the arbitrator has got jurisdiction to go into the matter and he can invoke rightly Section 34, C. P. C. for awarding interest. If such interest awarded is in excess, it is for the aggrieved party to agitate the correctness of the same before appropriate forums and he cannot be allowed to question the same at the execution stage without in any way trying to set aside the same through appropriate proceedings. Further, any arbitration award passed by an arbitrator can be set aside or modified only through the hierarchy of authorities envisaged in the Tamil Nadu Co-operative Societies Act. Section 100 of that Act clearly states that no order or award passed decision or action taken or direction issued under that Act by an arbitrator, liquidator, registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to that, shall be liable to be questioned in any Court. Thus, the executing Court apart from the fact that it cannot go beyond the decree, cannot even consider this question at the time of executing the same in the Civil Court, since S. 100 of the Tamil Nadu Co-operative Societies Act is a bar to the same. The decision reported in Gurunathan v. Villupuram Co-operative Urban Bank Ltd., 1979 TLNJ 448 never considered this question at all, nor laid down any principle after applying Section 100 of the Tamil Nadu Co-operative Societies Act. Further, that decision has not even considered as to whether the executing Court has power to go beyond the award passed by an arbitrator. In such circumstances, and in view of the clear dictum that the executing Court cannot go beyond the decree, unless the decree or award is a nullitty or the award was passed without jurisdiction, the award of interest cannot be questioned at the execution stage. Correctly, the Court below has allowed the execution petition as per the award granted in favour of the first respondent herein. I am in complete agreement with the finding of the Court below.

7. Since there is no question of any jurisdiction as such is involved in this matter, the civil revision petition is dismissed. There will be order as to costs.

8. Petition dismissed.