(2012) 02 KL CK 0203

In the High Court Of Kerala

Case No : W.A. No. 1399 of 2011

Kannur District Co-Operative Bank Ltd.	APPELLANT
Vs	
P. Padmanabhan and Others	RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Citation : (2012) 2 KLJ 483

Hon'ble Judges : C.N. Ramachandran Nair, J;Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : P. Narayanan, for the Appellant; T.G. Rajendran, George Mecheil (GP) and C.P. Peethambaran, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The ten Writ Petitions and the one Writ Appeal filed against an interim order of the learned Single Judge reveal the plight of a sinking co-operative society by name Thalassery Taluk Rubber and Agricultural Marketing Co-operative Society Ltd. which has suffered an estimated loss of around Rs. 8 crores in the course of 25 years of it''s operation leading to loss of deposits to hundreds of poor depositors and at least two cooperative banks. When the society failed to repay the deposit amounts many depositors filed arbitration claims u/s 69 of the Co-operative Societies Act which led to awards in their favour. Since the Society has become ba(sic)pt the award could not be honoured which lead to litigation in this Court. The learned Single Judge passed interim orders directing the Joint Registrar to grant permission to the Society to sell some property and settle the decree amount. However, the District Co.-operative Bank, Kannur filed Writ Appeal against the interim order stating that the property proposed to be sold is mortgaged to the bank for the loan advanced by them to the Society which with interest as of now is very close to Rs. 1 crore rupee. When Writ Appeal came up before the Division Bench, we felt that in the case of bankruptcy of a Society, settlement of claims on a first come first served basis will lead to injustice to a large number of depositors and other creditors of the Society. We, therefore, ordered an enquiry into the financial position of the

Society by the Joint Registrar vide order dated 3.10.2011. Learned Special Government Pleader has filed a report prepared by the Joint Registrar who has stated the financial position in which the loss estimated by him a is at Rs. 7 crores and 6 lakhs. We notice that the society''s accounts were audited as per the provisions of the Co-operative Societies Act only upto 31.3.2007 and therefore the financial position and data collected subsequent thereto are not claimed to be complete. The report discloses that the Society is holding public deposits of about 3.8 crores as on 30.9.2011. It has a liability for credit purchase of agricultural produce of around 13 lakhs. Besides this, it has a loan of around 1 crore rupees and interest due to a central Government agency, namely, the National Co-operative Development Council. While the total liability as on 30.9.2011 estimated by the Joint Registrar in the report is 8.45 crores, on the assets side, the Society has only to its credit Rs. 1,39 crores leaving an excess liability of 7.05 crores above the assets. One silver line in the condition of the Society''s sad plight is the substantial increase in the value of land and building. It has 2 acres village land and 13.5 cents land with office building in the town area. Going by the report of the valuer of the land and building, the counsel for the society submitted that the Society may be able to discharge all its liabilities by selling its land and building at the market value. This is flatly refuted by the counsel appearing for the claimants in the Writ Petition because two acres of land is not in the town area and only 13.5 cents of land and office building of the Society has substantial value. Even assuming that the asset value estimated at 1.39 crores by the Joint Registrar can be revised to Rs. 5 crores, still there is an erosion to the tune of 3.5 crores. The Society is defunct for the last four to five years. The depositors who had deposited amounts way back in 2003 have not been paid any amount. However, there is freezing acceptance of fresh deposit probably from 2007-2008. It is in this context the various creditors, some of whom had obtained arbitration awards have approached this Court for appropriate direction to the Joint Registrar and other authorities under the Act for selling the property of the Society and recover the amount.

2. After hearing counsel appearing for the individual and institutional creditors and also counsel appearing for the Society and the Special Government Pleader, we are of the view that, in the first place, the interim order passed by this Court will work injustice for similarly placed creditors. Since the Society has become bankrupt, which is evident from the financial position disclosed in the report of the Joint Registrar, the only solution is to go for winding up the Society for equitable distribution of the amounts recovered on sale of land, building and other assets of the Society. Counsel for the Society submitted that the Society has again approached National Co-operative Development Council for financial assistance and it is hopeful of getting funds. As of now, the State Government has not come forward with any proposal for rehabilitation of the Society. Probably, the delay in auditing itself prevents disclosure of financial plight of several Societies and if an enquiry is conducted u/s 65, as was done in this case under our orders, probably, many Societies would be in the same plight or in

worse position than the Society in this case. A few other cases are pending in this Court pertaining to recovery against societies, which have become bankrupt. The creditors of the Society are essentially public who have made term deposits with the society on attractive rate of interest ranging from 10 to 11 percentage per annum even for deposits as short a period as six months to one year. High rate of interest, offered by the co-operative bank itself is indicative of its financial plight which poor depositors do not realise. For some time, the Society served as a trap for these gullible depositors who continued deposits until the Society turned bankrupt. In our view, the peacemeal execution of decrees by sale of properties of the Society in part, will certainly lead to injustice to those who have not approached the court but who are similarly placed as the depositors before us pressing for recovery.

3. Counsel for the Kannur District Co-operative Bank submitted that the bank has clear mortgage over an item of property which is the prime property of the Society which has sufficient market value to absorb the debt of the District Co-operative Bank. The Cooperative Societies Act does not give any priority for secured creditors and probably this will have to be considered in liquidation proceedings under general law. So far as the acceptance and repayment of deposits are concerned, Section 74E was introduced in Chapter XB of the Statute by Act 7 of 2010. However, Government has not made any Rules as contemplated under the said Section. So much so, deposits are governed by the terms of contract and it is seen that the Assistant Registrar passed arbitration awards granting interest at agreed rate upto the maturity period and thereafter considering the financial plight of the Society, he has granted interest at 4.5 percent per annum for the period thereafter. The petitioners in the Writ Petitions pray for a direction to the Joint Registrar to permit the sale of the property of the Society and repay the deposits with agreed rate of interest.

4. Petitioners in WP(C) No. 26269 of 2009 and connected cases, being family members, have deposited Rs. 25 lakhs with the Society. For this, they have got arbitration awards for recovery. These depositors have filed said WP(C) challenging the lower rate of interest of 4.5 percent per annum awarded for period subsequent to maturity of deposits by the Arbitrator on the award amount comprising of deposit amount with agreed rate of interest upto the maturity of the deposit. We do not think this issue should engage our attention now because it is a matter to be seen whether the petitioners will get even the amount awarded in liquidation proceedings. It is the conceded position that since the Society remains defunct, the members of the managing committee are not active. It is reported that the managing committee is not functioning and the Society''s counsel submitted that there is no quorum for even holding meetings. So much so, appointment of administrator is the only solution either to wind up or to rehabilitate the Society if Government or NCDC chooses to finance the Society at their own risk. On the facts stated above, we dispose of all the Writ Petitions and the Writ Appeal with the following directions:

1) The Joint Registrar will immediately issue orders superseding the managing committee and appoint a senior official, not below the rank of Assistant Registrar of proven capacity and ability as Administrator of the Society to immediately take over the management of the Society. This should be done within a period of two weeks from the date of receipt of a copy of this judgment.

2) The Administrator will immediately get the accounts audited up-to-date as a special case.

3) Based on the audit report and based on the enquiry to be conducted by the Assistant Registrar, if there is any mismanagement or loss caused to the Society by the members of the Managing Committee or employees, past or present, he will recommend the matter to the Joint Registrar for initiation of surcharge proceedings u/s 68. This also should be done without any delay. The Joint Registrar should also pass orders within a time frame, after getting report from the Assistant Registrar.

4) The Assistant Registrar should complete the auditing and prepare his final report to the Joint Registrar within a period of two months from the date of receipt of a copy of this judgment and the Joint Registrar should pass orders for initiating surcharge proceedings, if any required, within one month thereafter.

5) The Registrar will consider the report submitted by the Joint Registrar along with audit report and final report prepared by Assistant Registrar and if he finds that the society has suffered loss beyond rehabilitation, then he will order winding up the Society u/s 71 of the Act and proceed to appoint Liquidator at the earliest.

6) The Liquidator will proceed to prepare the list of creditors including depositors and array them in accordance with priorities. It would be within the powers of the Liquidator to ensure that the not recovered amounts are distributed in an equitable manner. We leave it open for the Liquidator to decide on the priority claim by the mortgagee-Bank.

7) So far as the sale of the landed properties and the building are concerned, which are only the valuable assets of the Society, the Assistant Registrar and the Liquidator should give maximum publicity for sale and sell the property only after getting approval from the Joint Registrar.

5. Before parting with the matter, we feel, the sad plight of the society and the depositors is a reflection of the total inaction and indifference of the Registrar and statutory authorities. In fact, if enquiry was conducted, as envisaged u/s 65, on a periodical basis, the mismanagement and continuous loss suffered by society would have been exposed in time preventing the Society from functioning as a trap for the poor people who trusted the Society with their hard earned money. Similarly, the delay in the auditing is a matter which should engage the attention of the Registrar. We, therefore, direct the Registrar to conduct enquiries u/s 65 of the Act in case of all Cooperative Societies offering high rate of interest

on its deposits which is the intrinsic evidence of financial difficulties for such societies and also ensure that auditing is done up-to-date.

6. We dispose of the Writ Petitions and the Writ Appeal with the direction that the Society''s property should be sold in full and payments should be made to award holders, depositors and other creditors only in liquidation proceedings. We are also constrained to observe that it would not be desirable for the Government to fund sick societies because public money should not be utilised for funding mismanaged societies. We also do not think there is any need for every depositor to approach the Arbitrator u/s 69 because so long as society does not deny liability there is no need for any arbitration and the deposit, receipt itself is the admission of liability by the Society based on which the liquidator can enlist creditors. If genuineness of deposit receipt is doubted, it is for the Liquidator to verify its authenticity with reference to the books of accounts of the bank and settle dispute if any. We, therefore, direct the Assistant registrar not to entertain any application for arbitration from depositors who may be advised to register as creditors in the Society in the winding up proceedings. In view of the judgment, execution proceedings before the civil court will not be maintainable and it is for the Society to inform the court so that all such applications are closed as not maintainable.

7. So far as WP(C) No. 24731/10 filed by the Society is concerned, the direction sought is against the recovery proceedings initiated by the NCDC and State. In view of the directions above, no independent proceedings of recovery will lie against the Society to be liquidated. It is for the NCDC or State to register as creditors before the liquidator. This Writ Petition is therefore allowed vacating the impugned proceedings for recovery leaving it open to the creditors to approach the liquidator. The question whether. District Co-operative Bank, which has obtained mortgage of property has priority over other creditors is a matter which will be examined by the Liquidator. While releasing payments in liquidation, the Liquidator should keep in mind the interest of the depositors particularly the small depositors. If any amount is recovered in surcharge proceedings the same will also be treated as assets of the Society to be distributed in liquidation proceedings. In appropriate case, the Joint Registrar can also initiate criminal proceedings for misappropriation or any fraud committed against the Society by any member of managing committee or by the employees.

Writ Petitions and Writ Appeal are disposed of as above.

