(2009) 10 KL CK 0066

In the High Court Of Kerala

Case No : AS. No. 143 of 1999 (A)

K.M. Thomas APPELLANT

Vs

Kerala Khadi and Village Indus. Board RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14
Kerala Revenue Recovery Act, 1968 — Section 7, 71, 72

Citation : (2009) 10 KL CK 0066

Hon'ble Judges : M.L. Joseph Francis, J

Bench : Single Bench

Advocate : Babu Karukapadath, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joseph Francis, J.—This appeal is filed by plaintiffs 1 to 6 in O.S. No. 118 of 1994 on the file of the Sub Court, N. Parur. Respondents 1 to 6 herein are defendants 1 to 6 in that suit, which was filed for permanent prohibitory injunction restraining defendants 1 to 5 from proceeding against the plaintiffs for realisation of amounts due under the revenue recovery demand notice.

2. The allegations in the plaint are that the plaintiffs, along with one K.O. Jose, were the promoters of the 6th defendant Society in the year 1979. The plaintiffs and K.O. Jose being the promoters of the society became the first director board members of the Society. During their period of office, Rs. 50,000/- as working capital loan and Rs. 22,000/- as capital expenditure loan were granted by the first defendant for the smooth establishment and functioning of the Society. The plaintiffs entered into an agreement, in their capacity as director board members of the Society, for repayment of the said loan. Subsequently election was conducted to elect the new office bearers. None of the plaintiffs became the director board member in the subsequent election.

3. Subsequently the first defendant sent a registered notice dt. 14.4.1984 to the plaintiffs demanding payment of Rs. 72,000/- with interest. The plaintiffs sent a reply stating that they are not personally liable for the amount. They contended that they have agreed for repayment of the amount only as the director board members of the society and not in their individual capacity. Thereafter, another notice was issued on 13.3.1994 demanding a sum of Rs. 1,35,681/- with interest at the rate of `12.5% from 1.9.1989 for Rs. 72,000/- The plaintiffs contended that the defendants are not entitled to realise any amount personally from the plaintiffs. The defendants can realise the amount from the 6th defendant and its assets.

4. Defendants 1 and 2 filed written statement contending that the suit is not maintainable either under law or on facts. The suit is bad for notice u/s 80 C.P.C. and for non- joinder of necessary parties. The plaintiffs along with some others approached the first defendant for the registration of the 6th defendant society under the Co-operative Societies Act and the second defendant registered the 6th defendant society under the Kerala Co-operative Societies Act. The plaintiffs being members of the Board of Directors of the 6th defendant applied for loan and availed loan after executing an agreement. The plaintiffs executed the agreement on behalf of the 6th defendant undertaking personal and joint liability of the debt. Hence the plaintiffs are jointly and severally liable to pay the amount. The newly elected Director Board members did not execute any fresh agreement and therefore the first defendant is entitled to realise the amount from the plaintiffs.

5. Defendants 3 to 5 filed a written statement contending that the suit is not maintainable u/s 69 of the Kerala Co-operative Societies Act. The Secretary of the Khadi and Village Industries Board, Thiruvananthapuram had sent a requisition u/s 69 of the Kerala Revenue Recovery Act to the District Collector to realise a sum of Rs. 1,35,601/- and interest from the plaintiffs towards the loan agreement. The District Collector sent a notice u/s 7 of the Revenue Recovery Act for realisation of the said amount. No objection was sent by the plaintiffs to the above notice. The action initiated by defendants 3 to 5 are legal and valid, it is contended.

6. The 6th defendant also filed a written statement contending that the new committee members were elected as per the bye-law of the Society, which was requested to shift the business from the rented building, where the 6th defendant was conducting the Match factory. The 6th defendant started to construct a building, but was not able to complete the construction of the building. The plaintiffs are not entitled to any relief''s sought for in the suit, it is contended.

7. In the Sub Court PW1 was examined and Exts.A1 to A4 and B1 to B5 were marked. The learned Sub Judge, on considering the evidence, dismissed the suit on finding that the suit is barred u/s 72 of the Kerala Revenue Recovery Act. Against that judgment and decree the plaintiffs filed this appeal.

8. Heard the learned Counsel for the appellants and the learned Counsel for the respondents.

9. The learned Counsel for the appellants submitted that the Sub Judge, on the basis of Exts.B4 and B5, came to the conclusion that the plaintiffs agreed to repay the loan amount personally as well as from their properties and as such the plaintiffs are personally liable to pay the debt. The learned Counsel for the appellants submitted that Exts.B4 and B5 are not signed by the plaintiffs but by the subsequent members of the Board of Directors of the 6th defendant Co-operative Society and therefore the learned Sub Judge went wrong in finding that the plaintiffs are personally liable for the loan amount.

10. The learned Counsel for the respondents submitted that the suit is barred u/s 72 of the Kerala Revenue Recovery Act and the proviso so that the suit may be brought in a civil court on the ground of fraud is omitted by Act 31 of 2007 w.e.f. 12.12.2005. But that amendment has no retrospective operation.

11. In the plaint it is alleged that the plaintiffs, along with one K.O. Jose, were promoters of 6th defendant Co-operative Society in the year 1979 and that society was registered under the Kerala Co-operative Societies Act, 1966 and they became the Director Board Members of the 6th defendant society and they availed Rs. 50,000/- as working capital loan and Rs. 22,000/- as capital expenditure loan, which were sanctioned by the first defendant and availed by the 6th defendant Society and utilised by the 6th defendant society. It is further alleged that the plaintiffs, who being Director Board members of the 6th defendant Society, entered into an agreement with the first defendant for availing the loan for and on behalf the 6th defendant Society. It is further alleged that the second defendant issued notification dt.21.5.1981 for conducting election to the Board of Directors and the new Board of Directors were elected on 26.7.1981 and they assumed management of the 6th defendant Society.

12. Ext.B1 is the copy of the bye-law of the 6th defendant society. In Clause 4 of Ext.B1 it is stated that the liability of the members of the Society is limited to the extent of their share value. Ext.B2 is the copy of the proceedings of the Committee of the 6th defendant Society showing that the Administrative Committee headed by one T.D. Jose took charge on 6.7.1981 from the plaintiffs. Ext.B4 is the application for financial assistance for Rs. 40,000/- dt.2.6.1982 submitted by the Director Board members headed by T.D. Jose to the first defendant. Ext.B5 is the resolution dt. 4.4.1982 authorising T.D. Jose and the Committee members to approach the first defendant to avail a loan of Rs. 40,000/- for the development of cottage match industry of the 6th defendant society.

13. Exts.B4 and B5 are not signed by the plaintiffs and as such they cannot be made personally liable for the liability of the 6th defendant society covered by Exts.B4 and B5. But Ext.B4 file produced by the first defendant contained the loan application filed by the plaintiffs and K.O. Jose as Board of Directors of the

6th defendant society undertaking personal liability to pay back Rs. 50,000/- availed towards working capital loan and Rs. 22,000/- towards capital expenditure loan of the 6th defendant society, which is contained in page 75 of that file. In view of that undertaking it cannot be said that the liability of the plaintiffs is limited.

14. Ext.A4 is the demand notice u/s 7 of the Kerala Revenue Recovery Act dt.12.1.1994 issued by the 4th defendant Deputy Tahsildar to the plaintiffs and K.O. Jose asking them to remit Rs. 1,35,681/-, which includes the interest and penal interest on the loan amount of Rs. 72,000/- availed by them as office bearers and committee members of the 6th defendant society. In that notice it is stated that default was committed in the year 1979 - 80. Therefore, it is clear that the notice was issued after more than 12 years of the date of default.

15. The learned Counsel for the appellants invited my attention to the decision of the Supreme Court reported in State of Kerala v. V.R. Kalliyanikutty 1999 (2) KLT 146 (SC), in which it was held:

An amount due normally refers to an amount which the creditors has a right to recover. The word due always imports a fixed and settled obligation or liability; but which reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. In every case the exact meaning of the word due will depend upon the context in which that word appears. If a wide interpretation is put on the words amount due under the Kerala Revenue Recovery Act, there is every likelihood of the provisions of Article 14 being attracted. A wide interpretation of amount due which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic of an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims. Agricultural loans and loans by the State Financial Corporation are also loans given in public interest for the purpose of economic advancement of the people of the State, to help them in agricultural operations or establishment of industries. For this reason the Kerala Revenue Recovery Act has been made applicable to such loans so that there can be a speedy recovery of such loans and the amounts can be utilised for similar objects again.

The Kerala Revenue Recovery Act does anot create any new right. It merely provides a process for speedy recovery of moneys due. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceedings be taken away under the provisions of the Kerala Revenue Recovery Act. The provisions in the present case are statutory provisions for coercive recovery of amount due. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act.

Under Section 71 of the Kerala Revenue Recovery Act claims which are time-barred on the date when a requisition is issued u/s 69(2) of the said Act are not amounts due u/s 71 and cannot be recovered under the said Act.

Since defendants 1 to 5 are trying to recover the loan amounts, which is barred by limitation in view of the above cited decision, I am of the view that defendants 1 to 5 have no right to claim that amount from the plaintiffs as per Ext.A4 demand notice.

16. The learned Counsel for the respondents submitted that the suit is barred by the provisions of Section 69 of the Kerala Co-operative Societies Act. The dispute is not between the 6th defendant society and the members and the society or any person claiming through a member of the society. Therefore, the suit is not barred u/s 69 of the Kerala Co-operative Societies Act.

17. In the decision reported in Chinnaswamy S. v. State of Kerala and Ors. 2009 20 KHC 430, it was held:

Section 72 of the Act comes into operation only when a question arises between the Collector or the authorised officer and the defaulter or his representative or any other person claiming any right through the defaulter, relating to the execution, discharge or satisfaction of a written demand issued under the Act or relating to the confirmation or setting aside by an order issued under the Act of a sale held in execution of such demand which is required to be determined by the Board of Revenue or the Collector, and not by suit. Proviso to Section 72 only saved a suit in respect of the question referred to in the earlier part of that section which is otherwise required to be decided by the Board of Revenue or the Collector, provided such suit is brought on allegation of fraud. In this case the relief of injunction sought against recovery of the amount stated in the demand notice issued under the Act is consequential to the declaration appellant has prayed for, that he is not liable to pay any amount as he has already returned the materials to respondent No. 3. Section 72 of the Act does not take away the jurisdiction of the Courts to grant declaratory relief''s and consequential relief''s. The questions whether appellant has returned the materials to respondent No. 3 and any amount is due from the appellant to respondent Nos. 1 to 3 and whether appellant is entitled to the declaration and consequential relief''s are not matters required to be decided by the Board of Revenue or the Collector under any of the provisions of the Act. Those questions are required to be decided by a suit. If the Court decides those questions in favour of the appellant, he is entitled to the consequential relief of injunction against recovery of the amount, be it under the provisions of the Act or any other mode available to the respondents. A suit for a declaration of the nature prayed for and a consequential injunction is one of a civil nature triable by the Civil Court. That jurisdiction is not expressly or impliedly barred by the provisions of the Act. In that view, Section 72 of the Act has no application to the facts of this case. Learned Sub Judge was not correct in holding that the suit is not maintainable for want of sufficient pleadings as to fraud to bring the suit within the scope of the proviso to Section 72 of the Act. I hold that the suit is maintainable in the Civil Court.

18. In the present suit, the main question to be considered is whether the debt due from the plaintiffs is barred by limitation or not and that the question has to be decided on taking evidence. This is not a question to be decided by the Board of Revenue or the Collector under the provisions of the Revenue Recovery Act. In view of the principles laid down in the above cited ruling, I am of the view that the present suit is maintainable before a Civil Court.

19. Since the claim under Ext.A4 notice is barred by limitation, I am of the view that the plaintiffs are entitled to get a permanent prohibitory injunction restraining defendants 1 to 5 from proceeding against the plaintiffs for recovery of Rs. 1,35,681/- with interest as stated in Ext.A4 notice. Therefore, the learned Sub Judge is not justified in dismissing the suit.

20. Accordingly this appeal is allowed. The judgment and decree dismissing O.S. No. 118 of 1994 is set aside and that suit is decreed and defendants 1 to 5 are restrained by a permanent prohibitory injunction from proceeding against the plaintiffs for recovery of Rs. 1,35,681/- with interest as stated in Ext.A4 notice dt. 12.1.1994. The parties are directed to suffer their respective cost in this appeal and in the suit.

