

(1972) 01 KL CK 0013

In the High Court Of Kerala

Case No : Application No. 178 of 1971 in B.C.S. No. 9 of 1964 in B.C.P. No. 5 of 1955

Mathu Varkey

APPELLANT

Vs

Grand Eastern Bank Ltd. (In Liquidation) and Others

RESPONDENT

Date of Decision : 07-01-1972

Acts Referred:

Banking Regulation Act, 1949 — Section 45, 45B

Citation : (1972) 01 KL CK 0013

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : George Vadakel, for the Appellant; T.V. Ramakrishnan and Government Pleader, for the Respondent

Judgement

M.U. Isaac, J.—This is an application by the first defendant in the above suit which was instituted in this court by the official liquidator of the Grand Eastern Bank Ltd. (in liquidation) by virtue of the exclusive jurisdiction conferred on this court by Section 45B of the Banking Regulation Act, 1949, to entertain and decide any claim by or against a banking company which is being wound up. During the pendency of the suit, the applicant filed D.R.P. No. 8 of 1965, in the Munsiff's Court, Kottayam, u/s 15 of the Kerala Agriculturists' Debt Relief Act, 1958, for a full settlement of his debts, including the debt for the recovery of which the official liquidator instituted the above suit. The above Act has been repealed and replaced by the Kerala Agriculturists' Debt Relief Act, 1970 ; and Section 15 of the new Act contains the corresponding provision for settlement of debts of an agriculturist debtor. The proceeding before the munsiff was stayed by this court on March 25, 1965, on the application of the official liquidator. The suit was for money due under a mortgage ; and a preliminary decree was passed by this court on July 19, 1966. There was an issue in the suit whether the applicant is an agriculturist entitled to the benefits of the Agriculturists' Debt Relief Act. It was held by this court that he is not an agriculturist as defined in that Act. The final decree in the suit was passed on June 5, 1970. The present application has

now been filed for an order for continuing the proceeding which he has instituted in the Munsiff's Court.

2. The object of the applicant is obviously to subject the official liquidator to the jurisdiction of the Munsiff's Court, and obstruct the proceedings which he is taking under the Banking Regulation Act for recovery of the debt due from the applicant under the decree passed by this court. Counsel for the applicant contended that a proceeding u/s 15 of the Agriculturists' Debt Relief Act like an adjudication proceeding under the Insolvency Act is not a proceeding which falls within the ambit of Section 45B of the Banking Regulation Act, and that, therefore, the Munsiff's Court has jurisdiction to entertain an application u/s 15 of the Agriculturists' Debt Relief Act. In support of the above contention, counsel first relied on the decision of this court in *Jaini Ali v. Narayana Pillai*, [1961] 31 Comp.Cas. 276; [1961] KLT 174 (Ker.). In that case, the question arose whether petitions for adjudication under the Insolvency Act and petitions for settlement of debts under the Agriculturists Debt Relief Act would come within the ambit of the exclusive jurisdiction vested in the High Court u/s 45B of the Banking Regulation Act. Raman Nayar J. held that these proceedings do not involve determination of any claim by or against a banking company ; and they do not, therefore, fall within the ambit of Section 45B of the Banking Regulation Act. The above decision was approved and the same view has been taken by a Division Bench of this court in *Thomas John v. Palai Central Bank Ltd.*, [1962] 32 Comp. Cas. 438 : [1961] KLT 648 . That was a case where a creditor filed an application for adjudication of his debtor ; and a banking company, who was another creditor, was one of the respondents in that application. The court held that the insolvency proceedings did not fall within the ambit of Section 45B of the Banking Regulation Act.

3. A learned single judge of the Orissa High Court has taken a different view in *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das*, . He held that the question whether a debtor of a banking company under liquidation should be adjudged an insolvent and should get the protection of the insolvency law is a matter relating to the winding up of a banking company, and, consequently, the High Court has exclusive jurisdiction to decide this question and all other questions arising therefrom. This view has been accepted by a Division Bench of the Bombay High Court in the *Exchange Bank of India and Africa Ltd. Vs. Laxmichand Kuverji Shah*, . and also by a learned single judge of the Andhra Pradesh High Court in *K.V. Lakshminarayana Sastry Vs. Vijaya Commercial Bank Ltd. and Others*, . A Division Bench of the Madras High Court in *In re In the matter of: A.R. Sivaramakrishna Chettiar*, . dissented from the above decisions of the High Courts of Orissa and Andhra Pradesh, and took the view which the Kerala High Court has taken in the two decisions referred to above. The High Court of Patna has, in *In Re: Chotanagpur Banking Association Ltd.*, . dissented from the Madras decision, and agreed with the decisions of the High Courts of Orissa, Bombay and Andhra Pradesh. Judicial opinion is thus very much divided on this question.

4. Reference may in this context be made to another decision of this court by Raman Nayar J. in *The Bank of Commerce Ltd. Vs. Joseph Abraham*, . That was a case where the debtor of a banking company which was being wound up filed an application in a subordinate court for settlement of his debts including the debt due to the banking company under the Agriculturists' Debt Relief Act. His Lordship, while affirming his earlier view that such a proceeding would not fall within the ambit of Section 45B of the Banking Regulation Act, held that an application to restrain a creditor from executing a decree obtained by him is a proceeding against him, and when the creditor is a banking company that has been ordered to be wound up, both Section 445 of the Companies Act and Section 45B of the Banking Regulation Act are attracted. In that view of the matter, the learned judge stayed the application which the debtor had made in the subordinate court for staying the execution of the decree which the banking company had obtained against him. This creates an interesting position. The subordinate court would proceed with the application and settle all the debts including the one due to the banking company in liquidation in accordance with the provisions of the Agriculturists' Debt Relief Act--and the settlement must be binding on the official liquidator--while the official liquidator would be free to execute the decree simultaneously and recover the whole debt ignoring the proceeding or settlement under the Agriculturists' Debt Relief Act. Such a situation has to be avoided by construing the relevant provisions in a harmonious and practical manner.

5. In my view, the real question that arises in such cases is not whether a proceeding under the Insolvency Act or under the Agriculturists' Debt Relief Act, in which a banking company which is being wound up by the High Court is a party, falls within the ambit of Section 45-B of the Banking Regulation Act, 1949, but whether any court other than the High Court has jurisdiction to deal with a debt due to such a company, whether it be in an action under the insolvency law or the Debt Relief Act. Part III-A, which consists of Sections 45-A and 45-X, in the Banking Regulation Act, contains " Special provisions for speedy disposal of winding up proceedings " of banking companies. The relevant provisions in this Part make it clear that subject to the provisions of Section 45-C, the High Court alone can deal with debts due to a banking company in liquidation ; and that its jurisdiction is exclusive. Section 45-A states that the provisions of this Part and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 45-B provides that the High Court shall, save as otherwise expressly provided in Section 45-C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up, or any application u/s 391 of the Companies Act, 1956, by or in respect of a banking company or any question of priorities or any other question whatsoever, which may relate to or arise in the course of the winding up of a banking company. Section 45-C confers power on the High Court to transfer to the High Court proceedings pending in other courts, or to permit such proceedings to be continued in the courts in which they are

pending. Section 45-D deals with settlement of list of debtors. Sub-section (4) of this section provides that the High Court shall, at the time of settlement of any such list, pass an order for payment of the amount due by each debtor ; and Sub-section (5) provides that every such order shall be deemed to be a decree in a suit. Sub-section (7) confers power on the High Court to pass any order in respect of a debtor for the realisation, management, protection, preservation or sale of any property given as security to the banking company. Sub-section (8) confers power on the High Court to sanction a compromise in respect of any debt or to order the payment in instalments. Section 45-T provides that all orders made in any civil proceeding by a High Court may be enforced in the same manner as a decree of that court, and that any amount due to the banking company by an order or decision of the High Court may with the leave of the court be recovered as an arrear of land revenue. These are some of the exclusive powers conferred on the High Court to decide and entertain any claim made by or against a banking company which is being wound up and to enforce payment of debts due to such a company. These provisions prevail over all other laws, which necessarily means that the provisions of the Insolvency Act or the Agriculturists' Debt Relief Act, in so far as they are inconsistent with the provisions contained in the Banking Regulation Act, would not apply to a debt due to a banking company which is being wound up. Therefore, an insolvency court or a court dealing with an application for settlement of debts under the Agriculturists' Debt Relief Act cannot in any manner interfere with any proceedings taken by the official liquidator of a banking company under the Banking Regulation Act for recovery of a debt due to such a company. In other words, no court other than the High Court, except to the extent provided in Section 45-C of the Banking Regulation Act, has jurisdiction to deal with a debt due to a banking company which is being wound up.

6. A Division Bench of this court had occasion to consider the validity of certain provisions contained in the Kerala Agriculturists' Debt Relief Act, 1970, in *Devassia v. Catholic Bank of India Ltd. (In Liquidation)*[1972] 42 Comp. Cas. 421 vide judgment dated 22nd October, 1971, in Application No. 175 of 1970 in B.C.P. No. 4 of 1961. The question in that case was whether a debtor of a banking company which is being wound up was entitled to the benefits of Sections 4, 5, 7, 10 and 20 of the above Act, which generally deal with scaling down and recovery of debts due from agriculturists, in view of the provisions contained in the Banking Regulation Act in respect of all debts due to such a banking company. This court held that the provisions in the Banking Regulation Act shall have effect, notwithstanding anything contained in any other law, that, in so far as the aforesaid provisions in the Agriculturists' Debt Relief Act are inconsistent with the relevant provisions in the Banking Regulation Act, the provisions in the former Act would not apply to a debt due to a banking company which is being wound up, and that the matter was exclusively governed by the latter Act. This decision supports the view which I have expressed above on the question of jurisdiction of an insolvency court or a court entertaining an

application for settlement of debts under the Agriculturists' Debt Relief Act to deal with debts due to a banking company which is being wound up.

7. The question then arises what is the order that I can properly pass in this case. Counsel for the applicant submitted that the proceedings in a subordinate court should not be indefinitely stayed, and that so long as the application made by the debtor in the Munsiff's Court was one which he was entitled to prosecute under the Kerala Agriculturists' Debt Relief Act, 1970, at least in respect of the debts due to persons other than the banking company in liquidation, he should be allowed to prosecute the said application. Nobody has objected to the applicant prosecuting the application under the Agriculturists' Debt Relief Act against the other creditors. The objection has been only against his dragging in the official liquidator to another court, and attempting to obstruct the proceedings taken by the official liquidator for recovery of the debt due to the banking company under the provisions of the Banking Regulation Act. u/s 45-B of the Banking Regulation Act, this court has got the exclusive jurisdiction, among other things, to entertain and decide any question whatsoever, which may relate to or arise in the course of the winding up of a banking company. The question whether a subordinate court can on the application of a debtor under the Agriculturists' Debt Relief Act deal with a debt due to a banking company which is being wound up is, therefore, a question which falls within the ambit of the above section and which this court has got exclusive jurisdiction to entertain and decide. I have already held that the subordinate court has no jurisdiction to deal with such a debt in any proceeding under the Agriculturists' Debt Relief Act. Accordingly, I direct the Munsiff's Court, Kottayam, to strike off the name of the Grand Eastern Bank Ltd. (in liquidation) from the names and addresses of the creditors in D.R.P. No. 8 of 1965, and restrain the said court from dealing in any manner with the debt due to the said bank in any proceedings. The applicant may, if so advised, continue the proceedings against the other creditors, subject to the above directions.