(2009) 06 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 15135 of 2009

Muhammed Basheer APPELLANT

Vs

Dy. General Manager, District Co-operative Bank Ltd. RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17, 31

Citation : (2009) 4 KLT 358 : (2010) 6 RCR(Civil) 894

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : V.T. Madhavanunni and V.A. Satheesh, for the Appellant; P. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The petitioner had availed a personal loan to the tune of Rs. Six lakhs from the respondent Bank in March, 2006. However, he was not at all eager to effect any payment under the loan, which made the respondent-Bank to declare the transaction as ''NPA'' followed by appropriate proceedings pursued under the SARFAESI Act, which has been sought to be intercepted by filing this Writ Petition.

2. The one and only contention raised before this Court and sought to be highlighted by the learned Counsel for the petitioner is that the property concerned herein is an agricultural land and as such, it is outside the purview of the proceedings now being stated as pursued by the respondent -Bank against the petitioner in view of the specific clause of ''exclusion'' as stipulated u/s 31(i) of the Act. The petitioner has also placed reliance on ExtP1 permit issued by the Rubber Board and also Ext. P6 title deed produced along with I. A. No. 6821 of 2009 to contend that the concerned property is an agricultural land.

3. The respondents have filed a statement rebutting the averments and allegations raised by the petitioner asserting that absolutely no interference is

warranted in the present case, particularly, the petitioner, at no point of time earlier, had a contention that the property in question was an agricultural land and further that the loan availed by him was only a personal loan on the strength of the property, over which an equitable mortgage was created by depositing title deeds.

4. The learned Counsel for the Bank placed reliance also on the basic documents pertaining to the property, copies of which has been produced as Annexures-I and II. The Schedule to the above documents does never make an inference to arrive at a finding that the property is an agricultural land so as to come within the purview of ''exclusion'' u/s 31(i) of the Act. It is very much relevant to note that the term ''agricultural land'' is not defined under the Statute. But considering the scope and ambit of the relevant provisions of law and also the scheme of the Statute, it can only be read and understood as any common man understands, which cannot include rubber plantation even by the farthest stretch of imagination.

5. The learned Counsel for the petitioner referred to the judgment rendered by a Division Bench of this Court in State of Kerala v. Lucy Kochuvareed 1987 (1) KLT 578, wherein a passing observation has been made in para. No. 15 that ''basically there is no difference between cultivation of rubber and agricultural operation. Cultivation of rubber also involves preparation of land for planting, process of planting, nurturing and the like''. The said observation was made by the learned Judges to negate the contentions raised by the claimants that the observation with regard to the adoption of proper multiplier in respect of fixation of compensation, as observed by the Apex Court in Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, cannot be attracted to the case in hand and it was rightly held as not acceptable. It was in the said circumstances that the above observation was made by the Division Bench holding that there cannot be any difference between cultivation of rubber and agricultural operation. The above decision rendered while considering the matters to be considered for fixing the compensation as contemplated under the relevant provisions of the Land Acquisition Act is not at all attracted to the case in hand and the idea and understanding of the petitioner to the contrary is quite wrong and misconceived.

6. It is also brought to light that the property in question has already been taken possession of, by the respondent Bank and that the remedy of the petitioner, if aggrieved in any manner, can only be by way of appeal as provided u/s 17 of the SARFAESI Act.

In the above facts and circumstances, absolutely no tenable ground has been pointed out calling for interference. The Writ Petition fails and accordingly it is dismissed.