
(2014) 08 MP CK 0167
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 68/2013

Nagrik Sahkari Bank Maryadit	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 43
Madhya Pradesh Co-operative Societies Act, 1960 — Section 2(i), 64, 67(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 35

Citation : AIR 2014 MP 151 : (2015) 1 BC 556 : (2014) 5 MPHT 314 : (2014) 4 MPLJ 147

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : N.K. Gupta, Advocate for the Appellant; Abhishek Sharma, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—The question for consideration in this Writ Appeal before this court is that whether in view of Section 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"), the Registrar can entertain a dispute u/s 64 of M.P. Co-operative Societies Act, 1960 (hereinafter referred to the "Act of 1960") in regard to recovery of loan advanced to a member by the Cooperative Bank.

2. The appellant, a Co-operative Bank registered under the provisions of the Act of 1960, granted facility of over draft to the respondent No. 3. Subsequently, the account was transferred as cash credit account. The respondent No. 3 did not pay the amount as received by him from the appellant bank as cash credit, hence, the appellant bank initiated proceeding under the provisions of the

SARFAESI Act. A notice u/s 13(2) of the SARFAESI Act was issued to the respondent No. 3. Respondent No. 3 filed a dispute before the nominee of the Registrar i.e. Joint Registrar, u/s 64 of the Act of 1960 and challenged the action of the appellant bank. Respondent No. 3 also filed an application for grant of temporary injunction. The Joint Registrar vide order dt. 27.12.2012 granted temporary injunction in favour of the respondent No. 3 and restrained the Bank from proceeding further against the respondent No. 3. The aforesaid order was challenged by the appellant Bank in a Writ Petition. The Writ Court dismissed the Writ Petition on the ground that the appellant has an alternative statutory remedy to file an appeal against the order before the Cooperative Tribunal.

3. Learned counsel for the appellant Bank has contended that the appellant questioned the jurisdiction of the Registrar to entertain the dispute u/s 64 of the Act of 1960 in view of the provisions of Section 35 of the SARFAESI Act, hence, the Writ Court has committed an error of law in dismissing the writ petition filed by the appellant on the ground of availability of alternative remedy.

4. Learned counsel appearing on behalf of the respondent No. 3 has contended that the Writ Court has rightly dismissed the petition on the ground of alternative remedy. Learned counsel further contended that the provisions contained in Section 64 of the Act of 1960 would prevail over the provisions of Section 35 of the SARFAESI Act.

5. First of all we would like to consider the question that whether in view of the provisions contained in Section 35 of the SARFAESI Act, the jurisdiction of the Registrar is ousted to entertain the dispute in regard to recovery of the amount of cash credit limit, which was advanced by the Bank in favour of the respondent No. 3.

6. It is not in dispute that initially the Bank had advanced an over draft facility in favour of the respondent No. 3, subsequently in pursuance to the instruction of Reserve Bank of India, account was transferred as Cash Credit Account bearing Account No. 96601. There was outstanding amount in the account of the respondent No. 3, it did not pay the amount, hence, the bank issued notice u/s 13(2) of the Act of 2002 in regard to recovery of an amount of Rs. 1,50,317/-. Notice was also published in a news paper. The respondent No. 3 raised a dispute before nominee of the Registrar i.e. Joint Registrar and pleaded that the appellant Bank is not entitled to recover the amount as claimed in the notice and no amount was due. Alongwith the plaint, an application u/s 67(1) of the Act of 1960 read with Order 39 Rule (1) and (2) and Section 151 of CPC for grant of injunction was also filed.

7. The appellant Bank in the reply to the application for grant of injunction pleaded that an amount of Rs. 1,50,317/- was due against the respondent No. 3. The statement of account was forwarded to the respondent No. 3. The appellant Bank filed an application to dismiss the dispute pleading that in view of the provisions contained in the SARFAESI Act, the dispute is not maintainable.

Thereafter, the Registrar passed the order of injunction.

8. Section 64 of the Act of 1960 prescribes "Disputes", which is as under:-

64. Disputes.-(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following:-

(a) a society, its Board of Directors, any past Board of Directors, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent, or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purpose of sub-section (1), a dispute shall include-

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its Board of Directors, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society;

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

9. Section 64 prescribes that a dispute is maintainable touching the business of the society and the dispute includes as per section 2(i) -a claim by a society for any debt or demand due to it from a member. SARFAESI Act also gives power to the appellant Bank to proceed against the recovery of debt in accordance with the provisions of the Act. Section 35 of the SARFAESI Act excludes the jurisdiction of other enactments. The relevant section is as under:-

35. The provisions of this Act to override other laws.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

10. The Government of India enacted the act named as SARFAESI Act after accepting the reports of the committees named as Narasimham and Andhyarujina. Both the committees suggested enactment of new legislation for securitisation and empowering the banks and financial institutions to take possession of the securities and sell them without intervention of the court. Section 35 of the SARFAESI Act declares that the provisions contained in section shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

11. Provisions of the SARFAESI Act have been considered by the Hon''ble Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and the Hon''ble Supreme Court has held as under:-

36.... One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in

operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy.

12. From the object of the SARFAESI Act and the pronouncement of the Hon''ble Supreme Court it is clear that the purpose of the SARFAESI Act is to provide a speedy remedy to the Bank and the secured creditor to recover the loan amount.

13. Hon''ble Supreme Court in Employees Provident Fund Commissioner Vs. O.L. of Esskay Pharmaceuticals Limited, quoted with approval the passage of earlier judgment in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, in regard to the rule of contextual interpretation in the following words:-

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

14. In paras 44, 45, 46 and 47 of the aforesaid judgment, the court further considered the rule of interpretation of statutes if two special enactments contain provisions which give an overriding effect and held as under:-

44. Another rule of interpretation of statutes is that if two special enactments contain provisions which give an overriding effect to the provisions contained therein, then the Court is required to consider the purpose and the policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions.

45. In Ram Narain v. Simla Banking and Industrial Co. Ltd. this Court was considering the provisions contained in the Banking Companies Act, 1949 and the Displaced Persons (Debts Adjustment) Act, 1951. Both the enactments contained provisions giving overriding effect to the provisions of the enactment over any other law. After noticing the relevant provisions, the Court observed:

(AIR pp. 620 & 622, para 7).

7.... Each enactment being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case.... It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.

46. In Kumaon Motor Owners' Union Ltd. v. State of U.P. there was conflict between the provisions contained in Rules 131(2)(gg) and (i) of the Defence of India Rules, 1962 and Chapter IV-A of the Motor Vehicles Act, 1939. Section 68B gave an overriding effect to the provisions of Chapter IV-A of the Motor Vehicles Act whereas Section 43 of the Defence of India Act, 1962, gave an overriding effect to the provisions contained in the Defence of India Rules. This Court held that the Defence of India Act was later than the Motor Vehicles Act and, therefore, if there was anything repugnant, the provisions of the later Act should prevail. This Court also looked into the object behind the two statutes, namely, the Defence of India Act and the Motor Vehicles Act and on that basis also it was held that the provisions contained in the Defence of India Rules would have an overriding effect over the provisions of the Motor Vehicles Act.

47. In Ashoka Mktg. Ltd. v. Punjab National Bank the Constitution Bench considered some of the precedents on the interpretation of statutes and observed: (SCC p. 442, para 61).

61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of the two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.

15. From the principle of law laid down by the Hon'ble Supreme Court, the position is very clear that the conflict between the provisions of two enactments both of which can be regarded as special in nature has to be resolved in reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. SARFAESI Act has been enacted to provide speedy remedy for recovery of loan amount to a secured creditor. It is a special law in regard to recovery. However, Section 64 of the Act of 1960 provides remedy of dispute resolution between the members of the Co-operative Society, even though the Society has power to recover the loan amount and raise a dispute under the aforesaid provision.

16. Looking to the purpose of the SARFAESI Act and underlying provisions, in our opinion, the provisions contained in the SARFAESI Act would prevail over Section 64 of the Act of 1960. Hence, a dispute is not maintainable before the Registrar questioning the legality and propriety of the proceeding initiated by the Bank under the provisions of the SARFAESI Act.

17. The next question is that whether a writ is maintainable if alternative remedy is provided.

18. It is well settled principle of law that rule of alternative remedy is rule of prudence. Under certain circumstances, the court has power to exercise jurisdiction under Article 226 of the Constitution to quash the proceeding even if the alternative remedy is available. In the present case, the continuation of the proceeding before the Registrar is without jurisdiction.

19. Hon''ble Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, has held as under in regard to exercise of power under Article 226 in the event of availability of alternative remedy:-

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

20. In this view of the matter, Writ Appeal is allowed. The order passed by the Writ Court is hereby set aside. The Writ Petition filed by the appellant is hereby allowed. The proceedings in the dispute pending before the Joint Registrar u/s 64 of the Act of 1960 are hereby quashed.

No order as to costs.