(2011) 10 MAD CK 0032

In the Madras High Court

Case No : Writ Petition (MD) No''s. 9139 to 9146 of 2011 and M.P. (MD) No''s. 1, 1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2, 2, 2 and 2 of 2011 W.P. (MD) No. 9139 of 2011

P. Ponnusamy — APPELLANT

Vs

The District Consumer Disputes Redressal Forum, District Court Complex, Theni District and R. Karthiga — RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Companies Act, 1956 — Section 391, 392, 394, 58A
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 14, 15, 19, 21, 24
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 14, 6(2), 6(3)

Citation : (2011) 10 MAD CK 0032

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Muthuvijayapandian, for the Appellant; T S. Md. Mohideen, AGP for R1, for the Respondent

Final Decision : Dismissed

Judgement

Honorable Mr. Justice K. Chandru

1. The petitioner in all these writ petitions is one and the same person. He is set to be a shareholder of Sri Udayam Motors Auto Finance having office at Kamagoundampatti, Theni District.

2. The contesting respondents filed application before the District Consumer Redressal Forum at Theni complaining of the non payment of their deposit amount made by him. The order passed by the District Consumer Redressal Forum against the petitioner was not challenged in appeal u/s 15 of the Consumer Protection Act, 1986 and was allowed to become final. It was thereafter, the contesting respondent filed execution applications in terms of Section 25 of the Consumer Protection Act for executing the decrees. Those

applications were numbered and assigned various E.A. Numbers. Notices were ordered to the petitioner. It was at this stage, the petitioner is seeking to set aside the order dated 03.08.2008. Challenging the original order of the District Consumer Forum seeking to set aside the direction to refund to each a sum of Rs. 50,000/-to the complainants (Respondents herein) in various complaints and to pay each Rs. 5,000/- as compensation for the mental agony together with interest.

3. It is not clear as to how such a Writ petition is maintainable. The petitioner is not only seeking to set aside the final order passed by the 1st respondent / District Consumer Redressal Forum, Theni, dated 03.08.2008, but, after setting aside the same, seeks for a direction to transfer the complaint to the Special Court constituted under the Tamil Nadu Protection of Investment Depositors Act (for short TNPID Act) at Madurai in terms of Section 6(3) of the Act.

4. The contention raised by the petitioner was that already the matter has been seized by the authorities under the TNPID Act, 1997. Hence, the Consumer Forum has no jurisdiction. Section 6(2) of the Act 44/97 bars the jurisdiction of all Courts including the Courts constituted under the Presidential Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. It is only the Special Courts constituted under the TNPID Act alone will have jurisdiction and for any matter the provisions of the TNPID Act will alone apply. Therefore, the petitioner seeks for transfer of the proceedings, which had already come to an end before the Consumer Court. It is also claimed that a charge sheet had already been filed in C.C. No. 5 of 2009 before the Special Court.

5. When these matters came up for admission on 23.08.2011, this Court recorded, that similar matters in W.P. (MD) No. 5543 to 5545 of 2008 were dismissed by this Court on 27.08.2010. Therefore, the Registry was directed to post these remaining matters along with this matter. The Writ petitions are yet to be admitted by this Court.

6. The learned counsel for the petitioner strenuously contended that the dismissal of the earlier writ petitions dated 27.08.2000 were in the nature of Writ of prohibition. In the batch of Writ petitions referred a contention was made that the District Consumer Forum cannot deal with the matter and the aggrieved must only go before the authority constituted under the TNPID Act. Those writ petitions were dismissed by this Court stating that the Supreme Court vide judgment in The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, . In that case the Supreme court held that the forum created under the Consumer Forum is a Special Forum. Merely because other forums are available, it will not take away the jurisdiction or the additional remedies provided under the 1986 Act. In paragraph 18 of the said Act it was observed as follows:

The decision in Dhulabhai case also does not help the appellant.

The present case is not one where the question to be considered is as to the exclusion of jurisdiction of Civil Court in view of the provisions of Section 90 read with Section 156 of the Act. Provisions of 1986 Act, as already made clear above, apply in addition to the other provisions available under other enactments. It follows that the remedies available under the 1986 Act for redressal of disputes are in addition to the available remedies under the Act. Under the 1986 Act we have to consider as regards the additional jurisdiction conferred on the forums and not their exclusion. In Dhulabhai case consideration was whether the jurisdiction of the Civil Court was excluded. Propositions (1) and (2) indicate that where the statue gives a finality to the orders of the special tribunals the jurisdiction of Civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Further, where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. The remedies that are available to an aggrieved party under the 1986 Act are wide. For instance in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering, etc., which possibly could not be given under the Act in relation to dispute u/s 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it can not take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above, When the decision of Dhulabhai''s case was rendered the provisions similar to 1986 Act providing additional remedies to parties were neither available nor considered. If the argument of the learned counsel for the appellant is accepted it leads to taking away the additional remedies and forums expressly provided under the 1986 Act, which is not acceptable.

(Emphasis added)

7. In the present case the question now raised is whether the TNPID Act 1997 excludes the jurisdiction of the Consumer Forums constituted under the Consumer Protection Act, and by virtue of Section 6(3) of the Act cases pending in any other court to which the provisions of TNPID Act applies will have to be transferred to the Special Court has to be considered. Reliance was also placed upon the overriding provisions found u/s 14 of TNPID Act.

8. Before going into the jurisdiction of the Consumer Forum, it must be noted that in the present case the order dated 03.08.2008 passed by the 1st respondent District Consumer Forum has become final. It is in the stage of execution proceedings. Section 24 of the Consumer Protection Act, 1986, makes it clear that every order of the District Forum, if no appeal has been preferred against such order under the provisions of the said Act, will become final. Further an order passed by the District Consumer Forum is appealable to the State

Consumer Forum u/s 15 of the Consumer Protection Act. The appeal time given is only 30 days with powers to condone further delay. Similarly, further appeal is also provided to the National Consumer Commission u/s 19. When hierarchy of forums are provided under a special law, even the question of lack of jurisdiction, will have to be raised only before the appellate forum provided under the said Act.

9. The Supreme Court very recently took exception to the High Court to entertain Writ petition against orders of the District Consumer Forums and emphasized that when there is a two tier appellate system provided under a special law, parties will have to go only before that forum and not file a writ petition. In this context it is necessary to refer to the decision of the Supreme Court in Om Prakash Saini Vs. DCM Ltd. and Others, . In paragraphs 12 to 14 it was observed as follows:

12. Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission. Elaborate procedure has been laid down for filing of the complaints and disposal thereof. Since the 1986 Act is a special statute enacted by Parliament for better protection of the interest of consumers and a wholesome mechanism has been put in place for adjudication of consumer disputes, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot but be treated as an effective alternative remedy.

13. Admittedly, Respondent 1 had availed the alternative remedy available to it u/s 21 by filing an appeal against the order of the State Commission. During the pendency of the appeal, Respondent 1 chose to challenge the order of the State Commission by filing a petition under Article 227 of the Constitution, which was entertained by the learned Single Judge on the basis of the assurance given by the learned counsel that the appeal filed before the National Commission will be withdrawn. The order passed by the learned Single Judge on 21-3-2007 or the one by which the petition filed by Respondent 1 was finally disposed of does not contain any indication as to why the learned Single Judge thought it proper to make a departure from the rule that the High Court will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person.

14. In our view, during the pendency of the appeal filed by Respondent 1 u/s 21 of the 1986 Act, the learned Single Judge was not at all justified in entertaining the petition filed under Article 227 of the Constitution merely because he thought that the State Commission did not have the jurisdiction to entertain the complaint in view of the scheme sanctioned by the Company Judge u/s 391 read with Sections 392 and 394 of the Companies Act.

(Emphasis added)

10. In the present case, even against the orders passed u/s 25 in execution proceedings, appeal lies to the State Commission interms of Section 27-A. Therefore, it is not as if the petitioner cannot raise such issues before the forum created under the Act and those forums are incompetent to decide such matters both on questions of law and facts. Hence, the Writ petitions are liable to be rejected on this short ground.

11. But, however, it was contended by the learned counsel for the petitioner that if there is jurisdiction to entertain proceedings or if an order is a nullity, then the remedy under Article 226 is available. It is no doubt true that the state had enacted law i.e., the Tamil Nadu Prohibition of Interest of Depositors and Financial Establishment Act, 1997, providing for a speedy recovery of amounts from the defaulting financial establishments. It not only provides for prosecution of offenders, but, also provides for attachment and recovery of the amounts converted into different properties. When the provisions of the Act came to be challenged before this Court, a Full Bench judgment of this Court in Ms. S. Bagavathy Vs. State of Tamil Nadu rep. by the Secretary to Government Law Department and another reported in 2007 (2) MLJ 526. In paragraph 149.1 the full bench summarized its final orders which are as follows:

149.1 To sum up

a. the filed of legislation, viz., Tamil Nadu Act, is traceable to Entries 1 and 32 of list it, besides failing under Entries 1, 7 and 8 in the Concurrent List, which as already observed needs no deliberation;

b. the impugned Tamil Nadu Act does not fall within the legislative field of the Union list (List I); and

c. though there is trenching, the same is only incidental, which is permissible in law.

12.The matter was taken to the Supreme Court and the Supreme Court while upholding the constitutional validity of the said Act vide judgment in K.K. Baskaran Vs. State rep. by its Secretary, Tamil Nadu and Others, in paragraphs 24, 25, 26 and 30 has observed as follows:

24. The Tamil Nadu Act was enacted to find out a solution for the problem of the depositors who were deceived on a large scale by the fraudulent activities of certain financial establishments. There was a disastrous consequence both in the economic as well as social life of such depositors who were exploited by false promise of high return of interest. These financial institutions/establishments did not come either under the Reserve Bank of India Act or the Banking Regulation Act, and hence they escaped from public control. By the impugned Act the State not only proposed to attach the properties of such fraudulent establishments and the mala fide transferees, but also provided for the sale of such properties and for distribution of the sale proceeds amongst the innocent depositors. Hence, in

our opinion, the doctrine of occupied field or repugnancy, has no application in the present case.

25. The object of the Tamil Nadu Act was to give a speedy remedy to the innocent depositors who were vulnerable to the temptation of earning high rates of interest and were victimized by the financial establishments fraudulently. As regards Section 58-A of the Companies Act, this prescribes the conditions under which the deposits may be invited or accepted by the companies. On the other hand, the aim and object of the Tamil Nadu Act is totally different.

26. The Tamil Nadu Act was enacted to ameliorate the conditions of thousands of depositors who had fallen into the clutches of fraudulent financial establishments who had raised hopes of high rate of interest and thus duped the depositors. Thus the Tamil Nadu Act is not focused on the transaction of banking or the acceptance of deposit, but is focused on remedying the situation of the depositors who were deceived by the fraudulent financial establishments. The impugned Tamil Nadu Act was intended to deal with neither the banks which do the business or banking and are governed by the Reserve Bank of India Act and the Banking Regulation Act, nor the non-banking financial companies enacted under the Companies Act, 1956.

30. The Court should interpret the constitutional provisions against the social setting of the country and not in the abstract. The Court must take into consideration the economic realities and aspirations of the people and must further the social interest which is the purpose of the legislation, as held by Holmes, Brandeis and Frankfurter, JJ. of the US Supreme Court in a series of decisions. Hence the courts cannot function in a vacuum. It is for this reason that courts presume in favour of constitutionality of the statute because there is always a presumption that the legislature understands and correctly appreciates the needs of its own people, vide Govt. of A.P. v. P. Laxmi Devi.

13. Therefore, the observation of the Supreme Court quoted above will make it clear that it is not as if it is the only forum for executing or recovering amounts from the financial establishments which is in default. The act namely TNPID Act is quasi criminal given equal power of recovery by attaching the properties of defaulter. The non obstante clause provided u/s 14, can never override a Central Act i.e., the Consumer Protection Act. Both acts do not bar, the remedies open to the depositors for recovering the amounts from the defaulting financial institutions.

14. Further, Section 24 of the Consumer Protection Act, 1986 makes an order of the District Forum or at State Commission or the National Commission as final if no appeal is preferred against such orders. The petitioner by raising such technical contentions cannot get over the orders passed by the District Consumer Forum, which had become final as no appeal have been filed and the limitation for filing appeal have already come to an end.

15. The defaulters who manipulate money of the depositors cannot make use of

such technical pleas to get over their legal liabilities and in returning the amounts back to the consumer / depositors. This Court do think that there is any real conflict exists between the Consumer Protection Act, 1986 and the Tamil Nadu Protection of Interest of Depositors and Financial Establishment Act, 1997.

16. Further, in the present case since notice only been ordered in the execution petitions and nothing prevents the petitioner from contesting the execution application failing which, avail the remedies by way of appeal u/s 27-A of the Consumer Protection Act.

17. In view of the above, there is no case made out to entertain the Writ petitions. Hence, the Writ petitions stand dismissed. No costs. Consequently, connected M.Ps. are closed.

