(2003) 03 KL CK 0090

In the High Court Of Kerala

Case No : O.P. No. 38689 of 2002

Paulose APPELLANT

Vs

Assistant Registrar Co-operative Societies RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 31

Citation : (2003) 2 KLT 270

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : George Karithanam Varghese, Joseph A. Vadakkel, V.J. John and Jose Kuriakose, for the Appellant; P. Santhosh Kumar and T.A. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

R. Rajendra Babu, J.—The petitioner - the third defendant in ARC. 392/2002 pending before the 1st respondent - the arbitrator, filed this Original Petition for the issue of a writ of certiorari or an order quashing the above proceedings in ARC 392/2002 and for a declaration that the first respondent has no jurisdiction to proceed with the above arbitration proceedings.

2. The petitioner obtained a loan from the 2nd respondent, Bank, the Peoples Urban Co-operative Bank No. 51, Tripunithura, and defaulted in repaying the same. The Bank filed ARC 392/2002 before the first respondent for realisation of an amount of Rs. 21,00,916.50 u/s 69 of the Co-operative Societies Act. The petitioner raised a contention before the first respondent that the first respondent had no jurisdiction to decide the above matter and the Debt Recovery Tribunal alone had jurisdiction to adjudicate the above claim. As no orders have been passed by the first respondent regarding the above question of jurisdiction, the petitioner filed this Original Petition for quashing the proceedings and for declaring that the first respondent arbitrator has no jurisdiction to try the claim u/

s 69 of the Co-operative Societies Act.

3. Heard the learned counsel for the petitioner, the 2nd respondent and the learned Government Pleader.

4. The learned counsel for the petitioner submitted that the 2nd respondent was a bank coining within the definition of a Banking Company and as the 2nd respondent was doing banking business the claim made by the above Bank exceeding an amount of Rs. 10 lakhs should have to be filed before the Debt Recovery Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act (for short hereinafter referred to as ''the DRB Act''). It was further represented that there was a bar of jurisdiction u/s 18 of the above Act for Courts and other authorities to exercisejurisidiction or powers (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified therein. The learned counsel appearing for the 2nd respondent Co-operative Bank submitted that the DRB Act applies only to the adjudication and recovery of debts due to banks and financial institutions and it does not include the debts and claims in respect of the Co-operative Banks and as such the provisions of the above DRB Act has no application in respect of the debts due to the Co-operative Banks. It was further submitted that the Co-operative Banks has been constituted under the Co-operative Societies Act and special provisions has been made in the Act itself for adjudication of the matters on arbitration and for the constitution of arbitration courts and for recovery of debts due to the above banks and as such the provisions of the above DRB Act cannot have any application in respect of debts due to the Co-operative Banks. In the nature of the claims and contentions it would be relevant to consider some of the provisions of the DRB Act.

5. Section 18 of the DRB Act deals with bar of jurisdiction which reads:

"Bar of jurisdiction - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, anyjurisdiction, powers or authority (except the Supreme Court, and a High Court exercisingjurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17"

Section 17 of the DRB Act deals with the jurisdiction, the powers and authority of the Tribunal. Section 17 reads:

"17. Jurisdiction, powers and authority of Tribunals:- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act"

Section 17 says that the Tribunal shall have jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. In this context it would be relevant to consider the preamble to the above DRB Act and also the objects and reasons for passing such a legislation. Preamble of the above Act reads:

"An Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto".

The preamble would reveal the object and intention of the legislation and the DRB Act was to provide for the establishment of Tribunals for the expeditious adjudication and recovery of debts due to banks and financial institutions. The object and reasons also would reveal that the Debt Recovery Tribunals were constituted under the Act for the expeditious disposal of claims of the banks and financial institutions pending before the courts and other authorities. The Statement of Objects and Reasons reads:

"Banks and financial institutions at present, experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the utilisation and recycling of the funds for the development of the country".

The object of the legislation was to constitute Tribunals for the adj udication of the claims of banks and financial institutions which were pending before the Civil Courts for a pretty long time. The above object is explicit by the provision in Section 31 by which the cases pending before the courts were to be transferred. Section 31(1) reads:

"Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal".

Sub-section (1) of Section 31 would reveal that the cases pending before the courts are transferred to the Tribunal. Sub-section (2) of Section 31 deals with the procedure for the transfer of such cases pending before the courts. Section 31 did not contemplate the transfer of any proceedings pending before the arbitrators constituted under the Co-operative Societies Act. If the law contemplated the transfer of cases pending before the arbitrators or arbitration courts constituted under the provisions of the Co-operative Societies Act, there should have been a direction in Section 31 for the transfer of those cases also before the Debt Recovery Tribunal. On a consideration of the above provisions, it is patent that the Legislature did not intent to have the cases pending before the arbitrators or arbitration courts constituted under the Co-operative Societies Act to be transferred and tried by the Debt Recovery Tribunal.

6. The learned counsel for the petitioner submitted that the definition of a bank would include the Co-operative Banks constituted under the Co-operative Societies Act. Reliance was placed on the provisions in the Banking Regulation Act. It is true that some of the Co-operative Banks have obtained licence from the Reserve Bank under the Banking Regulation Act and doing banking business. A Banking Company is defined u/s 2(e) of the DRB Act as:

"banking company shall have the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulation Act, 1949".

S.5(c) of the Banking Regulation Act, 1949 defines:

"Banking Company" means any company which transacts the business of banking". The Company is defined u/s 5(d) in the same Act as:

"Company" means any company as defined in Section 3 of the Companies Act, 1956: and includes a foreign company within the meaning of Section 591 of that Act;"

The above definition would make it clear that the banking company mentioned in the DRB Act is in respect of a company registered under the Companies Act and doing banking business. But the above definition did not include the Co-operative Banks constituted under the Co-operative Societies Act. Chap. 5 of the Banking Regulation Act deals with the application of the above Act in respect of Banks constituted under the Co-operative Societies Act. For the application of the provisions of the Banking Regulation Act the Co-operative Banks constituted under the Co-operative Societies Act were also brought within the definition of a Banking Company. But the above inclusion of Co-operative Banks constituted under the provisions of the Co-operative Societies Act was only for the purpose of regulating the banking business under the provisions of the Banking Regulation Act and by no stretch of imagination can it be said that it was a bank or banking company as defined under the Recovery of Debts due to Banks and Financial Institutions Act. The definition of a banking company as defined in the above Act cannot be extended to the Co-operative Banks, though the Banking Regulation Act have extended the above provisions by introducing Chap. 5 of the above Act making the above banks also within the ambit of the Banking Regulation Act. Hence, I do not think that the above argument advanced by the learned counsel for the petitioner can be accepted.

7. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in Allahabad Bank v. Canara Bank and Anr. (AIR 2000 SC 1535) to substantiate his argument, that in view of Sections 17 and 18 of the DRB Act, the jurisdiction of the courts and other authorities had been taken away for adjudicating the claims above Rs. 10 lakhs and as sush the arbitrator was not having jurisdiction to proceed with the claim above Rs. 10 lakhs. That was a case where the Supreme Court had considered whether the Company Court had jurisdiction under Sections 442, 537 or u/s 446 of the Companies Act to proceed for the recovery of the amounts. The Supreme Court held that:

"In view of Sections 17 and 34 of the DRB Act which gives an overriding effect to provisions of Companies Act, the Company Court is incompetent to stay or transfer and decide the claims made before the Debt Recovery Tribunal because the Company Court could not decide the claims before the Debt Recovery Tribunal, the said Court cannot decide the claims of Banks and financial institutions. There is no need for the Bank or financial institution to seek leave of the Company Court to proceed with its claim before the Debt Recovery Tribunal or in respect of the execution proceedings before the Recovery Officer. Nor can they be transferred to the Company Court, if the jurisdiction of the Tribunal is exclusive, the Company Court cannot also use its powers u/s 442 against the Tribunal/Recovery Officer. Thus, Sections 442, 446 and 537 cannot be applied against the Tribunal".

The question whether the banks and financial institutions would include the Cooperative Banks consolidated under the Co-operative Societies Act was not a matter for consideration before the Supreme Court and as such, I do not think that the above decision can have any application in the present case. On going through the preamble of the DRB Act, the objects and reasons and Section 31 of the above Act it can be safely held that the legislature has not intended to have the matters pending before the arbitrators constituted under the Co-operative Socities Act also be decided by the Debt Recovery Tribunal. The object of constituting such a tribunal was the expeditious disposal of claims of banks and financial institutions and to constitute a separate tribunal for the same. So far as the Co-operative banks are concerned there is already an equal and effective body constituted under the Co-operative Societies Act for the expeditious disposal of the cases and for the recovery of the amount. The object of constituting the Debt Recovery Tribunal is already achieved by the constitution of the arbitration proceeding and the recovery of the same even under the Co-operative Societies Act. In the above circumstances, I do not think that the legislature intended to have all the matters including the matters to be decided by the arbitrators and arbitration courts constituted under the provisions of the Co-operative Societies Act also to be decided by the Debt Recovery Tribunal. Hence the above argument cannot be accepted. The provisions of Sections 17 and 18 of the Act cannot have any application in respect of the debts due to Co operative Banks and the Co-operative Banks are not obliged to approach the Debt Recovery Tribunal in accordance with the provisions of the above Act. In other words the Debts due to the Co-operative Banks are not within the purview or ambit of the provisions of the above DRB Act and the arbitrators and the arbitration courts constituted under the provisions of the Co-operative Societies Act have jurisdiction to decide the disputes in accordance with the provisions of the Co-operative Societies Act. Hence this Original Petition has only to be dismissed.

In the result the Original Petition is dismissed.