(2011) 07 KL CK 0211

In the High Court Of Kerala

Case No : WA. No. 1015 of 2011

Rehima Beevi APPELLANT

Vs

D. Rajan, Chamakkalayil House and Others RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 60

Citation : (2011) 3 KLJ 597 : (2011) 3 KLT 625

Hon'ble Judges : P.S. Gpinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : M.T. Sureshkumar, for the Appellant; Nagaraj Narayanan, SC, K.S. CO-OP Bank, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—The appellant, a guarantor for the loan availed by the 1st respondent from the 2nd respondent Bank executed Ext.P7 agreement whereby the appellant gave freedom of recovery through attachment of her salary in the event of default in payment of instalments by the 1st respondent. The appellant started realising the consequence of her commitment in Ext.P7 when the 1st respondent committed breach and the 2nd respondent started recovery from her salary through garnishee proceedings issued to her employer. The appellant challenged the recovery proceedings through attachment of her salary before the learned Single Judge contending that Section 37 of the Kerala Co-operative Societies Act authorises the Cooperative Society to enter into agreement with the members of the Society and not with outsiders. The learned Single Judge however refused even to entertain the Writ Petition and by following the judgment of this Court in J. Godwin Vs. Kollam District Co-operative Bank Ltd. and Others, , dismissed the Writ Petition, against which this Writ Appeal is filed.

2. At the admission stage, learned Standing Counsel appearing for the 2nd respondent took notice and we have heard him also.

3. Learned counsel appearing for the appellant reiterated the contention that since the appellant is not a member of the 2nd respondent Bank, the agreement entered into between the appellant and the Bank is unenforceable. To our mind, the contention is quite strange because Section 37 does not deal with the authority of the Bank to enter into agreement with strangers. On the other hand, this provision is only an enabling provision which clarifies that the Society can have agreements with it''s members. There is nothing in the Co-operative Societies Act or the Rules or the buy-laws of the 2nd respondent prohibiting the 2nd respondent from entering into agreement with any stranger. Besides this, the Bank''s operation is lending money and this is the exact transaction which gave rise to this litigation. The essential feature of a loan agreement is that it should be supported by a security arrangement wherein property security or personal security is collected by the Bank from Guarantor to recover the loan in the event of default by borrower. The contention of the Bank''s counsel is that but for the agreement and undertaking given by the appellant, the Bank would not have given loan to the 1st respondent. We are in complete agreement with this argument and in our view the appellant who executed surety bond has no authority to challenge it''s validity because but for the commitment by the Appellant the Bank would have ensured guarantee from another person for releasing loan to the 1st respondent, who is the borrower. We do not find any merit or bonafides in the challenge against the validity of the agreement based on which recovery is continued against the appellant.

4. The appellant has a further case that the 1st respondent has means to repay the liability. Learned counsel also pointed out a decision of this Court whereby recovery through attachment of salary is not hit by Section 60(c) of the CPC, and so much so, the Bank should authorise the employer to recover liability from the salary of the borrower as well. Learned Standing Counsel submitted that already such step is adopted by the Bank and the employer has started deducting and remitting the amount from the 1st respondent''s salary. If there is failure on the part of the employer in recovering salary of the 1st respondent in terms of the request of the 2nd respondent, the appellant can take appropriate step for enforcement of the same and in case of default to proceed against the disbursing officer for releasing payment in violation of the recovery orders issued by the Bank. This Writ Appeal is dismissed but with the above observations.

