(1999) 01 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No''s. 11996 and 11997 of 1998

S. Sankaran and Another — APPELLANT

Vs

The Repatriates Co-operative Finance and Development Bank Ltd. — RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (1999) 01 MAD CK 0070

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Swaminathan, for the Appellant; S.R. Sundaram, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—In both these Writ Petitions, parties are the same and facts are also identical.

2. In W.P. No. 11996 of 1998, Petitioner seeks issuance of Writ of Certiorari, calling for the records pertaining to the notice dated 22.7.1998 of 2nd Respondent in form No. 6 in his CEP No. 51/98-99 - ARC No. 115/97-98, and quash the same, and pass such further or other orders as this Court may deem fit and proper.

3. In the other Writ Petition, Petitioner seeks issuance of Writ of Certiorari, calling for the records pertaining to the notice dated 22.7.1998 of 2nd Respondent in Form No. 7 in his CEP No. 51/98-99 - ARC No. 115/97-98 purporting to attach the property of Petitioners, and quash the same, and pass such further or other orders as this Court may deem fit and proper.

4. First Respondent is a multi-purpose co-operative society, and first Petitioner herein had borrowed Rs. 1,50,000/- byway of overdraft. Since he committed default in payment, the Society had to initiate arbitration proceedings u/s 74 of

the Multi-State Co-operative Societies Act, 1984. Second Petitioner herein is the wife of first Petitioner and guarantor to the transaction. An award was passed, and when the same was sought to be executed, two notices were issued to Petitioners herein, one asking them to pay the entire amount within ten days, and the other to attach the property of the Petitioners. Those notices are challenged in these Writ Petitions.

5. The grounds of attack are: The decree being one for recovery of money, the same will have to be proceeded as if it is arrears of land revenue, and the procedure contemplated under the Act has not been followed. Petitioners, therefore, seek to quash the execution proceedings.

6. Common counter affidavit has been filed on behalf of Respondents No. 1. It is said that the Award has become final, and the Award will have to be executed as if it is a decree of Civil Court. The Award was passed on 12.11.1997 by which Petitioners herein were directed to pay a sum of Rs. 2,52,671/- together with interest at 25% p.a. from 1.10.1997, together with costs. In case Petitioners failed to pay the same within the stipulated time, the Bank was allowed to recover the same from the Petitioners jointly and severally. u/s 85(a) of the Multi-State Co-operative Societies Act, 1984, the Award can be executed as decree as per the procedures in execution envisaged under the Code of Civil Procedure. In view of the said provision, an Execution Petition was filed on 12.11.1997, and it was in that proceeding the attachment was sought to be effected. Even though notice of attachment was served on 27.7.1998, the attachment will come into force only with effect from 15.8.1998 in case Petitioners failed to pay the amount within that time. Therefore, there is no illegality committed in the proceedings, and the Writ Petitions are not maintainable. It is said that really the outstanding is against the first Respondent, who is the decree-holder. The decree holder being a Co-operative Society, Writ Petitions are not maintainable.

7. Heard learned Counsel for both parties.

8. Relevant portion of the Award reads thus:

That the Defendants do pay a sum of Rs. 2,52,671/- (Rupees two lakhs fifty two thousand six hundred and seventy one only) together with interest at 25% p.a. from 1.10.97 and together with cost till the date of realisation. In default, the Plaintiff-Bank may recover the amount due together with further interest as above until realisation and together with further cost from the Defendants personally or jointly.

9. From the Award, it is clear that the first Respondent is entitled to collect the Award amount together with future interest and costs from the Defendants jointly and severally. It is not subject to the sale of the pledged shares, nor the execution of the decree is postponed till the pledged shares are sold and adjusted towards the decree amount. So long as the decree has become final, Petitioners cannot challenge the execution of the same on the ground that the shares which were pledged while availing the loan are to be proceeded first, and

only for the balance proceedings should be initiated against them.

10. Further submission of learned Counsel for Petitioner is that the procedure u/s 85 of the Multi-State Co-operative Societies Act has not been complied with. I do not think that there is any substance in the said argument.

11. It is seen that the Execution Petition was filed in May 1998 and thereafter in the proceedings in Execution, Petitioners were given notice to pay the amount within a period of ten days. The grievance of the Petitioners is that even though they were given ten days, attachment was ordered and notice of attachment was also served on them on the same day and, therefore, the procedure is illegal. The said submission is also without any substance. Even though notice of attachment was served on the same day, it is made clear therein that it will take effect only after 15.8.1998, i.e., after the lapse of ten days given to them by the notice in the Execution Petition. Even otherwise, by effecting an'' attachment, without waiting for the time granted, it cannot be said that the Respondent-authorities have committed an illegality, so as to warrant interference of this Court under Article 226 of the Constitution of India. At the most, it could be considered only as an irregularity. In this case, there is no scope for even such an argument.

12. When the Award has become final, and it was admitted that Petitioners have not discharged the debt as directed, the first Respondent is justified in initiating execution against the Petitioners for recovering the amount from them.

13. Apart from the fact that there is no merit in the case, as rightly contended by learned Counsel for Respondents, the Writ Petitions are against the co-operative societies, and, therefore, they are not maintainable.

14. In W.P.N. No. 1678 of 1997 (Amigo Exports Ltd. v. The Co-operative Sub-Registrar, Arbitration and Execution. The Repatriates Co-op. Bank Ltd. Madras-17 and Ors. order dated 7.2.1997), C. Shivappa, J. has taken into consideration an earlier Division Bench judgment of this Court in W.A. Nos. 607 and 608 of 1984 & W.P. Nos. 4124, 4154, 4167 and 6272 of 1986 Kannan P., Tamilarasan and Ors. v. The Director of Sugars, Office of the Director of Sugars, etc. See 1991-2-L.W. 409 at 418, Paras 23 to 25, wherein he has also extracted relevant portion of that judgment, which reads thus:

We are clearly of the view that a co-operative society is a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, a co-operative society does not owe its very existence to any statute which would be the fountain-head of its powers. Still further, it can be held that even if there is no statute, a co-operative society can have a legal existence. If this is the position, applying the tests laid down by the Supreme Court in the above said two cases, a co-operative society is an institution merely governed by the statutory provisions and it cannot be said to be a statutory body. In this connection, the observations of the Pull Bench judgment of the Kerala High Court, at the risk of repetition, can again be extracted:

The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with, the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and persuasive State Control. The management of the Society does not rest in the Government or in the representatives of the Government Bank. The management is under the effective control of a Committee elected by the members of the Societies. The statutory regulation or restriction in the functioning of the Societies is not "an imprint of State under Article 12". Hence no writ will lie against a co-operative Society governed by the Kerala Co-operative Societies Act.

The issue can be looked from another angle. The Supreme Court in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, has held that the bye-laws of a Co-operative Society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. This also supports the view that a Co- operative Society is not a statutory functionary. Whether the fact that whenever the governing body is superseded and in its place a Special Officer or other Government Official is appointed to administer the affairs of the society makes any difference has to be considered now. We are of the view that having regard to the decision of the Supreme Court in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, the position is that it does not make any difference. Any Officer appointed in the place of the governing body stepping into the shoes of the governing body and discharging the functions as such definitely is not a government servant. In the case referred to above the Supreme Court has clearly held that when the services of an Indian Administrative Officer are placed at the disposal of a Co-operative Society, he was not discharging the functions as a public servant.

In that case, the Supreme Court has positively held as follows:

Whatever has been said with regard to the Council of Scientific and Industrial Research which was a society registered under the Societies Act, equally applies to the Co-operative Store Limited, which is a society registered under the Bombay Co-operative Societies Act, 1925. It is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a Statute.

The above passage places beyond doubt that a Co-operative Society is not a statutory body.

It is following the above said judgment, C. Shivappa, J. has held that the Writ Petition against Co-operative Society is not maintainable.

15. Another learned Judge (Jayasimha Babu, J.) has, in W.P. No. 4644 of 1995 (Revathy v. The Chairman and Members of the Sub-Committee for Appeal Repatriates Co-operative Finance and Development Bank Ltd., Madras and Anr. - order dated 13.3.1995), taken a similar view, after following the Full Bench

decision in P. Kannan and Another Vs. The Director of Sugars and Others, , thus:

...the Writ Petition against a Co-operative Society is not maintainable. Following the said judgment of the Full Bench, this Writ Petition must be rejected on the ground that it is not maintainable and without expressing any view as regards the merits of the claim sought to be agitated by the Petitioner in this Writ Petition. Accordingly, the Writ Petition is rejected. The rejection of this Writ Petition will not prejudice the Petitioner in prosecuting any other remedy that may be open to the Petitioner.

16. Very recently, the High Court of Bombay had occasion to consider a similar question, and the decision is reported in Pralhad Vithalrao Pawar Vs. Managing Director and Another, . In paragraphs 3 and 4 of that judgment, a Division Bench of that High Court has held thus:

The first question posed for our decision is no more res Integra. A Full Bench of this Court in the case of The Shamrao Vithal Co-operative Bank Limited and another Vs. Padubidri Pattabhiram Baht and another, held thus:

A Co-operative Society, registered under the Maharashtra Co-operative Societies Act, 1960 and under the Kulti-State Co-operative Societies Act, 1984 which carries on the business of banking and is, therefore, governed by the Banking Regulations Act, 1949, does not thereby fall within the expression "State" under Article 12 of the Constitution of India. Following the law laid down by the Full Bench in Shamrao Vithal Bank''s case (supra) a Division Bench of this Court, in the case of Dayandeo Dattatraya Kale and Others Vs. State Of Maharashtra and Others, held that a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 is not a "State" within the meaning of Article 12 of the Constitution of India. We are bound by the decision of the Full Bench and we are in respectful agreement with the subsequent judgment in the case of D.D. Kale (supra). We, therefore, hold that no Writ of Certiorari quashing the termination order nor a Writ of mandamus directing reinstatement in service can be issued under Article 226 of the Constitution.

17. Following the said legal principle, both on facts and also on merits, I do not think that the Petitioners are entitled to any relief in these Writ Petitions. The Writ Petitions are, therefore, dismissed. No costs. Connected W.M. Ps. are also dismissed.

