(2003) 12 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25371 of 2003

S. Umesh and Another APPELLANT

Vs

Charminar Co-operative Urban Bank Limited and Another RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

Citation : (2004) 1 ALD 532 : (2004) 1 ALT 642

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : T. Vidya Rani, for the Appellant; Nooty Ramamohan Rao, for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner availed loan from Charminar Co-operative Urban Bank Ltd., ("the Bank") the first respondent herein. As the petitioner failed to repay the loan, the Bank initiated proceedings u/s 74 of the Multi State Co-operative Societies Act, 1984 (Central Act of 1984). The Joint Registrar or Co-operative Societies/ OSD, the second respondent herein, in proceedings dated 28-8-2002 passed an award directing the petitioner and two others to pay an amount of Rs. 4,13,328/-(Rupees Four lakhs thirteen thousand three hundred and seventy eight only) jointly and severally with interest at 22% per annum from 1-4-2002 as per the agreement executed by the petitioner on 21-8-2000. Still thereafter, the petitioner did not comply with the award. Therefore, the first respondent initiated execution proceedings presumably u/s 70 of the A.P. Co-operative Societies Act, 1964 ("Co-operative Societies Act") and the second respondent issued notice of sale to the petitioner in Form No. 8 and also Form No. 9. Assailing the same, the present writ petition is filed contending that the respondents have no authority to take out execution proceedings in respect of an award passed by the second respondent under the Central Act of 1984.

2. At the time of admission stage itself, the first respondent filed a counter-affidavit stating as follows. The Bank was initially registered under the Co-operative Societies Act and commenced its operations on 7-9-1985. As the Bank

wanted to expand its operations to the municipal limits of Mumbai in the State of Maharashtra, the Bank amended its bye-laws and converted the Bank into a society under the Central Act of 1984. It was approved by the Government of India in Ministry of Agriculture, Department of Agriculture and Co-operation. With effect from 6-7-2001, the Bank could not commence its operations at Mumbai as contemplated and, therefore, the Government of India issued a notice dated 19-6-2002 u/s 77(2) of the Central Act of 1984 informing that the registration under the Multi State Co-operative Societies Act stands cancelled. The Bank was advised to revive its registration under the Co-operative Societies Act. Accordingly, steps were taken. With effect from 9-11-2002, the Bank has now come under the purview of the Co-operative Societies Act.

3. It is further stated in the counter-affidavit that the Bank suffered severe liquidity crisis due to withdrawal of Rs. 120 crores by Bombay Mercantile Co-operative Bank and therefore, Reserve Bank of India issued directions u/s 35A of the Banking Regulation Act, 1949 restricting the operations of the Bank with effect from 25-2-2002. As the petitioner committed default in making payment, the Bank initiated proceedings u/s 74 of the Central Act of 1984. The petitioner appeared before the second respondent and admitted the claim. Accordingly, the second respondent passed orders on 28-8-2002 directing the petitioner to pay Rs. 4,13,328/-. The Bank thereafter initiated execution proceedings in accordance with Section 70 of the Co-operative Societies Act for recovering the amount.

4. Learned Counsel for the petitioner, Ms. T. Vidya Rani submits that when action is initiated u/s 74 of the Central Act of 1984, the loan cannot be recovered under the provisions of the Co-operative Societies Act. Therefore, the action taken by the second respondent for recovering the loan is not in accordance with law. The execution petition filed is illegal and void. She would submit that under the Multi State Co-operative Societies Act, 2002 (2002 Act), the Bank is required to refer the matter to the Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 and the order passed by the second respondent dated 28-8-2002 is unenforceable.

5. Learned Standing Counsel for the Charminar Bank, Sri P.S. Rajasekhar, placed reliance on Section 126 of the 2002 Act and submits that the award/order passed by the second respondent is enforceable and that the execution taken out u/s 70 of the Co-operative Societies Act is valid.

6. Multi State Co-operative Societies Act, 1984 has now been repealed by Multi State Co-operative Societies Act, 2002 (2002 Act). As per Section 126 of the 2002 Act, legal proceedings pending before the Court, Central Registrar or any other authority on the commencement of the Act are to be continued before such authority or the Court as if Act of 2002 had not been passed. Though proceedings were initiated u/s 74 of the Central Act of 1984, by reason of Section 126 of the 2002 Act, it is permissible to the second respondent to continue the proceedings and issue an order. Accordingly, the order passed by

the second respondent cannot be invalidated on that ground. After the Charminar Bank again came under the purview of Co-operative Societies Act with effect from 9-11-2002, by reason of Section 70 of the Act, it is permissible for the respondents to initiate execution proceedings in accordance with Section 70 and the procedure laid down under Rule 52 of the A.P. Co-operative Societies Rules, 1964 (''the Rules''). It would be clear by reference to Section 70 of the Co-operative Societies Act which reads as under.

70. Power of the Registrar to recover certain amount by attachment and sale of property and execution of orders :--(1) The Registrar or any person authorised by him in this behalf may, without prejudice to any other mode of recovery provided by or under this Act, recover--

(a) any amount due under a decision or an order of the Registrar, or any person authorised by him, or an Arbitrator;

(b) any amount ordered to be paid towards the expenses of a general meeting of a society called u/s 32;

(c) any amount awarded by way of costs u/s 56 to a society including a financing bank or a Federal society;

(d) any amount payable towards fees u/s 58;

(e) any amount ordered u/s 60 to be repaid to a society or recovered as a contribution to its assets; or

(f) any amount ordered u/s 66 to be recovered as a contribution to its assets, together with interest, if any, due on such amount and the costs of process by the attachment and sale or by sale without attachment of the property of the person or the society against whom such decision or order, has been passed or obtained.

(2) Every order or decision made u/s 60, Section 71 Section 76, Section 77 or Section 78 for the recovery of any amount may be executed in the following manner: -

(a) by the Civil Court having local jurisdiction on a certificate signed by the Registrar or any person authorised by him in this behalf as if the order or decision were a decree of that Court; or

(b) by the Collector, on an application made to him within twelve years from the date fixed for payment in the order or decision and if no such date fixed from the date of the order or decision, along with a certificate signed by the Registrar or by any person authorised by him in this behalf, as if the amount due under the order or decision were an arrear of land revenue; or

(c) by the Registrar or any other person authorised by him in this behalf, in the manner provided under Sub-section (1).

7. By reason of Clause (a) of Sub-section (1) of Section 70 of the Co-operative

Societies Act, any amount due to a society can be recovered by attachment and/ or sale of the property or a person. Every order or decision u/s 71 or Section 76 of the Co-operative Societies Act can be executed inter alia by the Registrar or any person authorised by the Registrar in the manner provided under Sub-section (1) of Section 70. Rule 52 of the Rules contains elaborate procedure for execution of decrees, decisions and orders. The impugned sale notice issued by the second respondent is in accordance with Clause (e) of Sub-rule (11) of Rule 52 of the Rules. If the petitioner is aggrieved by such decision, by reason of Section 76 of the Co-operative Societies Act, he has an effective alternative remedy of filing appeal before the jurisdictional Tribunal constituted u/s 75 of the Co-operative Societies Act. As held by this Court in A. Vemanaidu Vs. Erracheruvupalle Primary Co-operative Society, Chittoor District and Others, , even in respect of execution proceedings taken out in accordance with Section 70 of the Co-operative Societies Act, an appeal would lie to the Tribunal u/s 76(1) of the said Act. The relevant observations are as under.

.... Section 76 of the Act provides that any person aggrieved by any decision passed or order made under various provisions of the Act, inter alia, may file appeal to the Tribunal. An order for execution of a certificate of recovery u/s 71 of the Act and auction notice consequent thereto can only be u/s 70(2) of the Act read with Sub-rule (11) of Rule 52 of the Rules. Therefore, the impugned action is clearly appealable u/s 76 of the Act...................

8. In the result, for the above reasons, no relief can be granted to the petitioner in this writ petition. If so advised, the petitioner may avail the remedy of appeal before the A.P. Co-operative Tribunal within a period of two weeks from the date of receipt of a copy of this order.

9. The writ petition is accordingly disposed of at the admission stage.

