

(2003) 08 KAR CK 0093
In the Karnataka High Court
Case No : Writ Petition No. 2953 of 2003

S.A. Mukund

APPELLANT

Vs

Sri Ganapathi Urban Co-operative Bank Limited and Another

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2004) 4 BC 595 : (2004) 121 CompCas 447 : (2003) 6 KarLJ 60 :
(2003) 4 KCCR 256 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; Vishwanath R. Hegde, for Respondent-1 and M. Keshava Reddy, High Court Govt. Pleader for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In this writ petition, the petitioner has assailed the order dated 31-8-2002 passed by the Karnataka Appellate Tribunal in Appeal No. 70 of 2002 vide Annexure-B and also the judgment and award passed by the 2nd respondent in Dispute No. 102/96-97, dated 28-12-1996 vide Annexure-A.

2. It is not in dispute that the petitioner availed loan from the 1st respondent-Bank on 14-8-1990 payable in 48 instalments. The last instalment expired on 30-8-1994. As the petitioner failed to pay the instalments as agreed by him even after the expiry of the last instalment, the 1st respondent raised a dispute u/s 70 of the Karnataka Cooperative Societies Act before the 2nd respondent. The 2nd respondent, after considering the oral and documentary evidence on record and other materials placed before him, has passed the impugned judgment and award on 28-12-1996. Assailing the said judgment and award, the petitioner filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 70 of 2002. The Tribunal, after hearing both the parties and after considering the oral and documentary evidence on record, dismissed the appeal by its order dated

31-8-2002. Feeling aggrieved by the orders passed by both the authorities, the petitioner has presented this writ petition.

3. The only submission canvassed by the learned Counsel for the petitioner is that, the rate of interest awarded by the 2nd respondent and confirmed by the Tribunal, is contrary to the well-settled law laid down by the Division Bench of this Court in the case of Life Insurance Corporation of India Vs. Bettegowda, He further submitted that though this decision was brought to the notice of the Tribunal, the Tribunal has not considered the same and dismissed the appeal. He further submitted that in view of the law laid down by this Court in the case cited supra, the impugned orders are liable to be set aside.

4. Per contra, the learned Counsel appearing for respondent 1, inter alia, contended and justified the impugned orders. Regarding the reliance placed by the learned Counsel for the petitioner, he vehemently submitted that the facts and circumstances of that case are entirely different from the facts and circumstances of the instant case because in the said case, immediately after default of one instalment, the authorities have filed a suit for recovery of the amount along with interest at 11 1/2% and this Court held that additional interest at 21/2% is stipulated only in the event of default in payment of the instalments as and when they become due. He submitted that in the instant case, the last instalment due was on 30-8-1994 and the dispute was raised on 15-5-1996 and therefore, the law laid down by this Court in the said decision has no bearing to the facts and circumstances of the instant case. He further submitted that the petitioner has not made out any good grounds to interfere with the impugned orders and therefore the writ petition is liable to be dismissed.

5. The learned Government Pleader appearing for the 2nd respondent submitted that, the writ petition is liable to be dismissed in view of the concurrent finding of fact recorded by the authorities on the basis of oral and documentary evidence on record.

6. I have heard the learned Counsel for the petitioner and the learned Counsels appearing for the respondents and analysed the entire material available on the file with the assistance of the learned Counsels appearing for the parties.

7. The only question that arises for consideration in this writ petition is, whether the 1st respondent, is entitled to claim interest at 20% p.a. as agreed by the petitioner in the agreement?

8. After careful perusal of the impugned orders, on the face of record, I do not find any error of law as such committed by the authorities. As a matter of fact, both the authorities have recorded a concurrent finding of fact against the petitioner on the basis of oral and documentary evidence on record. The specific contention taken by the learned Counsel for the petitioner before this Court has already been considered and negatived by the Tribunal at para 9 of its order as follows:

"The mortgage deed, which is at pages 17 to 24 of the Lower Court Record, has a interest recital on page 17 wherein it is stated that the present appellant has agreed to repay the loan in instalments with interest at 17% per annum and further states that if there is any default in payment of instalments he has agreed to pay 3% per annum as penal interest. The said mortgage documents also go to show that if any instalments have fallen due, the respondent 1-Bank will be at liberty to recall the loan and proceed for recovery of entire amount due".

But, in the instant case, as rightly pointed out by the learned Counsel appearing for the 1st respondent, after expiry of the date for payment of last instalment in the year 1994 and again after giving sufficient opportunity to the petitioner to repay the loan, the 1st respondent, was constrained to refer the matter for dispute on 15-5-1996. Therefore, the contention of the learned Counsel for the petitioner that interest is awarded contrary to the agreement, has got no substance and it is liable to be rejected. So far as the reliance placed by the learned Counsel for the petitioner in case of Life Insurance Corporation of India, supra, is concerned, the said decision has no bearing to the facts and circumstances of the instant case. In the said case, immediately after default of one instalment, the authorities have filed a suit for recovery of the amount along with 11 1/2% interest with 2 1/2% penal interest and the Court held as follows:

"Therefore, it becomes clear that additional 2 1/2% interest over and above 11 1/2% stipulated under the mortgage deed is nothing but penal. When the entire amount becomes due on the commission of the second default by the mortgagor, the mortgagee would be entitled to recover the entire sum. But allowing 2 1/2% interest over and above 11 1/2% would be nothing but granting double benefit to the mortgagee. It would be highly unfair, unreasonable, oppressive, and would cause great prejudice and loss to the mortgagor, because in the normal course, if the entire amount is paid by the mortgagor without committing any default, the mortgagee as per the terms stipulated in the deed, would not be entitled to more than 11 1/2% and at the same time the mortgagor would be paying the mortgage money not in a lumpsum but in 30 half-yearly instalments. The consequences of second default would be that the mortgagee would be entitled to recover the whole sum at a time. Therefore, in such a situation, it would be highly penal if the mortgagee were to recover 2 1/2% additional interest over and above 11 1/2% interest. Therefore, the mortgagee in such a situation would be entitled to interest only at the rate of 11 1/2% per annum".

9. In the instant case, as rightly pointed out by the learned Counsel for the 1st respondent-Bank, the 1st respondent, waited till the expiry of all the instalments i.e., on 30-8-1994 and thereafter also, it has given sufficient opportunity to the petitioner to pay the loan. As he failed to pay the same, it raised the dispute on 15-5-1996 after lapse of nearly two years. Therefore, the reliance placed by the learned Counsel for the petitioner has no bearing to the facts and circumstance

of the instant case.

10. Further, the writ petition is liable to be dismissed at the threshold in view of the law laid down by the Apex Court in the case of Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, wherein it is held that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The ratio laid down by the Apex Court is clearly applicable to the facts and circumstances of the instant case and hence the writ petition is liable to be dismissed on this ground also.

11. Having regard to the facts and circumstances of the case as stated above, I do not find any good ground to interfere with the impugned orders. Accordingly, writ petition is dismissed. However, 1st respondent-Bank is directed to give deductions of the amount already deposited by the petitioner in pursuance of the interim directions issued by the Tribunal and this Court.

12. The learned Government Pleader is permitted to file his memo of appearance within four weeks from today.