(2010) 02 KL CK 0094

In the High Court Of Kerala

Case No : W.A. No. 2078 of 2007 in O.P. No. 9984 of 1997

Salini Ravindran APPELLANT

Vs

Deputy Tahsildar (Revenue Recovery) and Another RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 36, 44
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 32, 34, 34(2)
State Financial Corporations Act, 1951 — Section 29, 32G
Transfer of Property Act, 1882 — Section 53

Citation : (2011) 162 CompCas 650

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K.P. Dandapani and Millu Dandapani, for the Appellant; R. Bindu and R.S. Kalkura, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan Nair, J.—The writ Petitioner is the Appellant. The writ petition was filed by her, challenging exhibit P9 order of the Deputy Tahsildar (Revenue Recovery), Kerala Financial Corporation, Kozhikode and exhibit P10 notice issued u/s 36 of the Kerala Revenue Recovery Act.

2. The brief facts of the case are the following:

The Appellant was a director of M/s. Southern Poly Bags P. Ltd. (hereinafter referred to as "the company"). According to her, she was in its board only for a period of one year from February 14, 1987. The company availed of a term loan of Rs. 26,20,000 and a bridge loan of Rs. 3,52,000 from the Kerala Financial Corporation (for short "KFC"). According to the Appellant, the term loan was availed of on February 2, 1987 and the bridge loan on March 18, 1988, when she was not a member of the board of directors of the company. Since the company defaulted to pay the amounts due under the loan agreements, the second

Respondent KFC took over the factory run by the company u/s 29 of the State Financial Corporations Act, 1951, in 1991. In March, 1994, the properties of the company were auctioned for an amount of Rs. 18,10,000. Since the amount so raised by auction was not sufficient to wipe off the liability of the KFC, revenue recovery proceedings were taken against the Appellant, on the ground that she was a guarantor for the said loans. There is some dispute regarding the date of service of notice by affixture. But it is common ground that the same was served by affixture in 1995, at the last known address of the Appellant. The Appellant owned a landed property with a building thereon in Kozhikode district. That property was sold by her to a third party by sale deeds dated September 3, 1995, October 2, 1995 and October 4, 1995. The revenue recovery officials took steps against the property covered by those sale deeds, ignoring the sale made to the third party. In that context, motion was made before this Court and as per the direction of this Court, exhibit P9 order was passed by the Deputy Tahsildar (Revenue Recovery), KFC, Kozhikode. The said officer decided to ignore the sale deeds, for the reason that the transfer was made after the notice of default was served on the Appellant. Pursuant to exhibit P9, notice of attachment u/s 36 of the Revenue Recovery Act was served as per exhibit P10. In the above context, the original petition was filed, challenging exhibits P9 and P10. The learned single judge dismissed the original petition, taking the view that since the property was sold by the Appellant after the initiation of the revenue recovery proceedings, by virtue of Section 44 of the Kerala Revenue Recovery Act, 1968, read with Section 53 of the Transfer of Property Act, 1882, the transaction was invalid. Therefore, the original petition was dismissed. Challenging the said judgment, this writ appeal is preferred.

3. We heard learned senior counsel Sri K. P. Dandapani for the Appellant and learned standing counsel for the second Respondent KFC. We also heard the learned Government pleader for the first Respondent. Learned senior counsel mainly raised two points before us. The first point was that in view of the interpretation given to Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act"), the provisions of the Kerala Revenue Recovery Act cannot be invoked. It is brought to our notice that the apex court in AIR 2003 SC 2103 held that for recovery of moneys due to the U. P. Financial Corporation, the provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972 cannot be invoked, as the said Act is not specifically mentioned in Sub-section (2) of Section 34 of the Act. Going by the said reasoning, learned senior counsel submitted that in the absence of specific saving of the Kerala Revenue Recovery Act, the provisions of the same cannot be pressed into service, to recover the amounts due to the second Respondent. The second point urged by learned senior counsel was that the loan was barred by limitation and therefore, a time barred debt cannot be recovered invoking the provisions of the Revenue Recovery Act. In support of that submission, reliance was placed on the decision in State of Kerala and Ors Vs. V.R. Kalliyanikutty and Anr, . Therefore, learned senior counsel prayed for allowing the appeal.

4. Learned standing counsel for the second Respondent, on the other hand, submitted that the first point regarding inapplicability of the Revenue Recovery Act for recovering the moneys due to the KFC, is covered by the decision of this Court in Amritha Cyber Park (P) Ltd. Vs. Kerala Financial Corporation, and the Division Bench decision of this Court in M. Usman v. Kerala Financial Corporation (2007) 136 Comp Cas 454 : (2007) 2 KLT 604. Learned standing counsel also submitted that since the loan sanctioned was to be repaid in 94 monthly instalments commencing from March 10, 1990 and ending on February 10, 1997, the recovery of the loan was not time barred in 1994-95, when steps were taken under the Revenue Recovery Act.

5. Learned senior counsel for the Appellant, in answer, submitted that the decision of the Division Bench of this Court in M. Usman [2007] 136 Comp Cas 454 ; [2007] 2 KLT 604, cannot stand with the[2003] 113 Comp Cas 374 decision of the apex court in AIR 2003 SC 2103 . So, the said decision requires re-consideration.

6. We considered the rival submissions made at the Bar and perused the materials on record. We will first deal with the contention of the Appellant regarding limitation. In paragraph 3 of the counter affidavit filed by the second Respondent, it is stated as follows:

Without prejudice to the aforesaid objection the second Respondent respectfully submits as follows. The Petitioner was one of the directors of a private limited company by its name M/s. Southern Poly Bags P. Ltd. The said company had availed of a term loan of Rs. 26,20,000 and bridge loan of Rs. 3,52,000 from the Respondent-Corporation for the purpose of setting up an industrial unit. The borrower company had executed agreements undertaking to repay the loan in 94 monthly instalments commencing from March 10, 1990 and ending on February 10, 1997. The Petitioner and other directors of the company had executed a deed of guarantee dated March 2, 1987, by which they had personally guaranteed the repayment of all the amounts due from the borrower company to the second Respondent-Corporation. A true copy of the deed of guarantee dated March 2, 1987, is produced herewith and marked as exhibit R2(a). The borrower company had mortgaged and hypothecated immovable and movable properties in favour of the Corporation towards security. The borrower company and the guarantors including the Petitioner had committed default of payment of instalments of principal and interest due under the agreements executed by them. In these circumstances the Respondent-Corporation took possession of the properties mortgaged and hypothecated by the borrower company. Therefore the Respondent-Corporation took possession of the assets in exercise of the powers u/s 29 of the State Financial Corporations Act. Thereafter the aforesaid properties were sold for a sum of Rs. 18,10,000 and sale proceeds were credited in the account of the company on March 21, 1994. After giving credit to the sale proceeds a sum of Rs. 42,69,225 was outstanding in the load account of the company. The second Respondent issued a requisition dated November 3, 1994, to the District Collector for initiating revenue recovery proceedings under the Kerala Revenue Recovery Act against the Petitioner and other guarantors for realization of the balance amount due under the load account. Accordingly the first Respondent initiated proceedings under the Revenue Recovery Act against the Petitioner and other directors and their assests. It is submitted that there is no illegally or irregularity in the action taken by the Respondents.

7. Since the time for repayment of the loan granted was to end only on February 10, 1997, it is manifest that the recovery of the amounts due under the loan was not barred by limitation, as the proceedings were initiated to recover the amount under the Revenue Recovery Act during 1994-95. So, the said plea fails.

8. The next point to be considered is whether the decision of the apex court in AIR 2003 SC 2103 relied on by learned senior counsel, will apply to the facts of this case. It was a case of recovery of amounts due to the U.P. State Financial Corporation, which is admittedly, a Corporation constituted under the State Financial Corporation Act, like the second Respondent herein. The amount were sought to be recovered, invoking the provisions of the U.P. Public Money (Recovery of Dues) Act, 1972. The apex court, after referring to Section 32 of the Act, held that since the U.P. Public Moneys (Recovery of Dues) Act, 1972, is not mentioned in Sub-Section 2 of Section 34, the recovery was bad. According to learned senior counsel, the provisions of the Kerala Revenue Recovery Act are similar to the provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972. Therefore, the said decision of the apex court will squarely apply to the facts of this case.

9. Section 34 of the Act reads as follows:

34. Act to have overriding effect.-(1) Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provision of the Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Financial Corporation Act, 1948 (15 of 1948), the State Financial Corporation Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

10. So, the provisions of the Act are not in derogation of the provisions of the various enactments mentioned in Sub-section (2), quoted above. The same includes the State Financial Corporations Act, 1951. Section 32G of the State Financial Corporations Act, 1951, reads as follows:

32G. Recovery of amounts due to the financial corporation as an arrear of land revenue.: Where any amount is due to the financial corporation in respect of any accommodation granted by it to any industrial concern, the financial corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

11. Going by the above provision, any amount due to the KFC can be recovered, in the same manner, as recovering arrears of land revenue. Arrears of land revenue are recoverable under the provisions of the Kerala Revenue Recovery Act, 1968. Since the provisions of the State Financial Corporations Act, 1951, including Section 32G, are not affected by the provisions of the Act, we find nothing illegal in the second Respondent invoking the provisions of the Kerala Revenue Recovery Act, to recover the amounts due to it. A decision is an authority for what it decides and not what logically flows from it. So, in the face of Section 32G, the decision in AIR 2003 SC 2103 , cannot be pressed into service, to contend that the provisions of the Kerala Revenue Recovery Act cannot be invoked, to recover the amounts due to the KFC. This view taken by us finds support from the decision in M. Usman v. Kerala Financial Corporation (2007) 136 Comp Cas 454 : (2007) 2 KLT 604, wherein a Division Bench of this Court upheld the decision of the learned single judge in Amritha Cyber Park (P) Ltd. Vs. Kerala Financial Corporation, , that recovery proceedings under the Revenue Recovery Act can be resorted to to recover the amounts due to the KFC. In view of the above position, the second ground urged by the Appellant also cannot be accepted.

12. In the result, the writ appeal fails and it is dismissed.

