(2014) 11 KL CK 0017

In the High Court Of Kerala

Case No : W.P. (C). No. 23672 of 2013. (H)

Sasikumar J. APPELLANT

Vs

Branch Manager Chittur Government Servants RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2014) 4 KHC 801

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. P.R. Venketesh, Advocate, for the Respondent No. 1; Sri . P.K. Mohanan (Palakkad), Advocate, for the Petitioner; Sri. R. Ranjith, Government Pleader, for the Respondent Nos. 2 to 5

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J. - The petitioner is aggrieved with the purported proceedings issued under Section 37 of the Kerala Co-operative Societies Act, 1969 (for short ''the Act''), for recovery of the defaulted amounts in a loan availed by the petitioner from the 1st respondent. The loan transaction is admitted but the contention is that, the loan being of the year 2003, the remedy available to the respondent Bank is barred by limitation.

2. The learned counsel appearing for the petitioner would contend that the proceedings initiated in 2013 are bad for reason of it having been issued after more than 10 years and especially since the Bank has not obtained an Award under Section 69 of the Act.

3. Looking at the provisions of Section 69 and Section 37, it has to be found that they are mutually exclusive. The Bank has two procedures by which recovery could be effected; one by approaching the Arbitrator constituted under Section 69 for an Award and then proceed for recovery as provided under Chapter XI of the Kerala Co-operative Societies Rules, 1969. An alternate method is also provided in Section 37 which also is a non obstante provision. Section 37 states

unequivocally that, notwithstanding any law in force, if there is an agreement between the borrower and the creditor Society/Bank with respect to deduction of salary for satisfaction of debt, then the employer or the disbursing Officer of the borrower shall be obliged to deduct the salary and pay the amounts demanded by the creditor Society/Bank on default being committed.

4. Evidently, the proceedings under Section 69 are resorted to, when sale of mortgaged properties are required for satisfaction of debt, or other proceedings contemplated under the Rules are expedient to effect recovery and satisfaction of defaulted loan accounts. Section 37 can be resorted to only if there is a specific agreement to that end.

5. The 1st respondent is obviously a Government servants'' Co-operative Society, in which the petitioner is a member by virtue of his status, as an employee of the Government. The members of the Society, who are Government employees, are entitled to avail of facilities offered by the Society and with respect to loans, the only security taken by the Society is an agreement under Section 37 along with a salary certificate issued by the disbursing Officer. The employer is then obliged to make such deduction on the requisition made by a Society; failing which there is even threat of penal proceedings.

6. This Court has in Tvm. Co.op. A & R.D. Bank Ltd. v. State of Kerala and Others (2004 (2) KLJ 85) held that, even if an award is passed under Section 69 that will not preclude the Society from initiating proceedings under Section 37. Vilappil Service Co-op. Bank Ltd. v. The Commissioner of Police & Anr. (2008 (1) KLJ 733) found that the responsibility to make deduction under Section 37 was a statutory obligation and did not at all depend upon the volition of the employer. Section 37 being a non obstante clause contained in the primary legislation, the same was held to override the provisions of Section 60 of the Civil Procedure Code, which is incorporated under Rule 77 of the Kerala Co-operative Societies Rules, 1979, in Sasidharan Nair v. Trivandrum Co-op. Urban Bank Ltd. (2009 (2) KLT 280). The provision was found to be not opposed to public policy; to be capable of enforcement without any inhibition, and the concepts of "attachment" and execution" were held to be alien in the context of Section 37.

7. A writ petition moved for enforcing the claim under Section 37, by a society, was dismissed by a learned single Judge, finding that the Society had an alternate remedy by way of proceeding under Section 69 for obtaining an award or to initiate penal proceeding under Section 94(5) of the Act. A Division Bench upholding the same held so in Chengamanad Service Co.op. Bank Ltd. v. Mohanan (2009 (3) KLT 623):

"The right under Section 37(2) of the Act is one created by the provisions of the Act. Normally, if a debtor violates the terms of the loan agreement, the remedy of the aggrieved party is to move the competent court, get a decree and execute the same. In this case, for the benefit of the Society, a special right is created and for implementation of that right, remedies are also provided under the Act. If the employer does not act as mandated by Section 37(2) of the Act, he can be prosecuted under Section 94(5) read with Section 95 of the Act. Section 95 of the Act provides that for prosecution, sanction of the Registrar is required. Section 37(2) of the Act enables the Society to move unilaterally by determining the amount due to it and make a requisition".

The special nature of the powers conferred, notwithstanding any other law in force, and the provision being independent of the dispute resolution under Section 69; needs no reiteration.

8. It is on the security of the salary drawn by the employee that the Society grants loans. In the present case, admittedly the petitioner was under suspension between 2005 and 2013. The loan was availed of in the year 2003 and the period of repayment was five years and sixteen months. Even before the period of repayment was over, the petitioner was suspended from service. No resort could be availed of under Section 37, since the petitioner was not admittedly drawing any salary. Petitioner is said to have been reinstated in service in 2013. Immediately thereafter, proceedings were taken for deduction of salary. This Court cannot find any illegality in such deductions being made.

The writ petition hence, would stand dismissed, leaving the parties to suffer their respective costs.