

(2016) 05 KL CK 0020
In the High Court Of Kerala
Case No : W.P. (C) .No. 28444 of 2009 (A)

Shanmughanarayanan

APPELLANT

Vs

The Kerala Co-Operative Tribunal

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 KHC 276 : (2016) 3 KLT 23

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : M. Sasindran, Advocate, for the Appellant; T.R. Rajesh, Government Pleader, N.N. Sugunapalan, Sr. Advocate, Bepin Vijayan, K.K. Premalal, Advocates, Rajit and Ranjit Babu, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.—This writ petition is filed by the 1st petitioner seeking to quash Ext.P1 order of the 1st respondent Tribunal and for other related reliefs. Consequent to the death of the 1st petitioner, his legal heirs were impleaded as petitioners 2 to 5.

2. Brief facts for the disposal of the writ petition are thus:

3. Petitioner has allegedly availed a loan from the 3rd respondent Bank and has defaulted the same. Consequent to which, 3rd respondent has instituted ARC proceedings before the Arbitration Court. After adjudicating the issue, the Arbitration Court has passed an award in favour of the 3rd respondent, by granting a decree for an amount of Rs. 10,39,115-30 with interest at the rate of 12% from 12.09.1995.

4. Aggrieved by the award of the Arbitration Court, petitioner has preferred appeal before the 1st respondent Tribunal. However, after considering the subject issue and providing hearing to the respective parties, 1st respondent has affirmed the order of the Arbitration Court. It is thus challenging Ext.P1 order of

the 1st respondent, this writ petition is filed.

5. Heard learned counsel for the petitioner, learned Government Pleader appearing for 2nd respondent and learned counsel appearing for the 4th respondent.

6. The thrust of the contention raised by the petitioner in this writ petition is that, neither the Arbitration Court nor the 1st respondent Tribunal has taken into account the contention put forth by the petitioner that, petitioner is a victim of fraud practised by the 4th respondent by fabricating a loan transaction misusing the Fixed Deposits the petitioner maintained with the 3rd respondent Bank. Learned counsel for the petitioner has taken me through the proceedings before the Arbitration Court and pointed out to a statement made in Ext.P11 to the effect that such a contention was raised by the petitioner before the Arbitration Court but the same was not considered effectively, which is an act violative of all canons of law and especially amounting to arbitrary exercise of power. It is the contention of the learned counsel that the same illegality was repeated by the 1st respondent Tribunal by not taking into account the predominant contention so raised by the petitioner.

7. The 4th respondent has filed a counter affidavit refuting the allegations made by the petitioner against the 4th respondent. It is also contended by the learned counsel that, 4th respondent was never made a party to the proceedings before the authorities below and that by itself is a substantive evidence to establish that the contention raised by the petitioner is nothing but a blunt allegation in order to make any attempt to wriggle out of the liability created. That apart, it is contended by the learned counsel, in Ext.P11 additional written statement filed by the petitioner, his allegation is that the 3rd respondent Bank has fabricated documents so as to shoulder the liability created by the loan on the petitioner. Therefore, the counsel contends that the blunt allegation made against the 4th respondent in this writ petition is wholly baseless and unwarranted.

8. Having considered the rival submissions of the respective counsel, perusal of the pleadings and the entire document, the question to be considered is whether the issue raised by the petitioner with respect to the alleged fraudulent transaction effected by the 4th respondent against the petitioner is sustainable under law. On verification of the records and appreciation of the arguments put forth by the learned counsel for the petitioner, I am of the considered opinion that, if such a fraudulent transaction has taken place at the instance of the 4th respondent, Manager of the 3rd respondent Bank, definitely, there would have been a complaint preferred by the petitioner before any of the statutory authorities or the Police. Taking into account the allegations raised by the petitioner, that the 4th respondent has indulged in a rank fraudulent transaction by which fraud was played not only on the petitioner but also on the Bank, and the entire society at large, by fabricating a document to suit his convenience to secure a loan amount, definitely, such a pinpointed pleading should have been raised by the petitioner in the proceedings before the court below. Over and

above that, I find from Ext.P11 additional written statement filed by the petitioner that, the allegation is fabrication of documents by the 3rd respondent Bank in order to shoulder the loan liability on the petitioner and there is no allegation at all that the 4th respondent practised any fraud.

9. The said vital circumstance alone is sufficient to arrive at a conclusion that, the present allegation made by the petitioner in this writ petition against the 4th respondent is not only baseless but also reckless and unwarranted. That apart, from the records, I find that petitioner has not even filed a single complaint before any respective statutory authority alleging such a rank offence against the 4th respondent. In that view of the matter, the defence taken by the petitioner in this writ petition alleging forgery against the 4th respondent can only be a defence taken for the sake of defence and the same cannot have any probative value at all in the legal parlance. That apart, if the petitioner had a consistent case against the 4th respondent, petitioner should have definitely made 4th respondent a party to the proceedings before the authorities below, enabling the 4th respondent to defend the proceedings, especially when it is a basic and necessary requirement under law. The said requirement is more so in this case, since the allegation made is fabrication of documents by the 4th respondent. Having not done so, one cannot believe that the story put forth by the petitioner as a defence in the proceedings initiated against the petitioner by the Bank cannot be sustained legally.

10. Learned counsel for the petitioner further submitted that when an iota of doubt is expressed by the petitioner before the primary authority, then there should have been a finding in the order passed by the primary authority, and the 1st respondent Tribunal also. In my view, the authorities below have to arrive at a conclusion by taking into account not only the pleadings put forth by respective parties but also taking into account the reliable evidence on record. Having not produced any document to substantiate the contention raised by the petitioner that the 4th respondent indulged himself in rank fraudulent transaction, the statutory authorities are not expected to enter into a finding traversing through such wild allegations if any made. However, as stated earlier, from the pleadings put forth by the petitioner in Ext.P11, petitioner is not having any case at all specifically against the 4th respondent in any manner of whatsoever nature. Therefore, the defence projected by the petitioner is not at all having any consistency. So also merely because an allegation is made, which is not substantiated by adduction of satisfactory proof and evidence, can be ignored and brushed aside by a competent court or authority, without making any remark at all on the same. Such a course of action adopted by a statutory authority or any court of law cannot be termed as an arbitrary exercise of power. Such a course of action can be termed as ignored by such authorities for want of materials and cogent and substantive proof offered by a party who has put forth such a pleading. Above all these, petitioner has not produced any evidence at all before this Court to establish the case put forth by him. For a writ court, in order to arrive at a logical conclusion with regard to the contentions put forth by the

parties, especially in a proceeding challenging the sustainability of orders passed by statutory authorities or courts, there should be convincing material and substantial circumstances establishing illegality and perversity on finding of facts and law.

11. Taking into account all these factors and circumstances, I am of the considered opinion that, the petitioner has miserably failed to establish the case put forth by him that the order of the primary authority as well as the 1st respondent Tribunal is not in accordance with law and in any manner perverse, grossly illegal, and suffering from any vice of arbitrariness, warranting interference of this court, under Article 226 of the Constitution of India. The inevitable consequence is that, writ petition fails and accordingly the same is dismissed. However, I make it clear that the amounts directed to be retained as per the interim order of this Court dated 04.11.2011 and review order dated 23.11.2011, shall not be disturbed otherwise than for the purpose of recovery or settlement of the dues, from the petitioner with respect to the subject matter of this writ petition or till such time petitioners produce proof for the satisfaction of the award/decreed amount.