(1997) 07 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 17638 of 1993

Shivayya Basayya Mathad APPELLANT

Vs

Vijaya Bank and another RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60 (1) (b)

Citation : (1998) 1 CivCC 282 : (1998) 94 CompCas 16 : (1998) ILR (Kar) 386 : (1997) 4 KarLJ 401

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Judgement

R.V. Raveendran, J.—The petitioner claims to have borrowed a loan of Rs. 1,12,000 on September 17, 1985, from the respondent-bank for the purpose of purchasing a tractor and trailer. The petitioner has not given the particulars of the loan documents executed by him in that behalf, viz., on-demand promissory note, hypothecated deed and other documents. On the ground that petitioner had failed to pay the amounts due, the bank seized the tractor and trailer of the petitioner bearing Registration Nos. CNB 6511 and 6512. The bank has issued an auction sale notice in the newspaper (annexure "E") proposing to auction the seized tractor and trailer, on June 9, 1993. The petitioner claims that the amount claimed by the bank is excessive and he also claims that the tractor and trailer being agricultural implements, they cannot be seized and sold for recovery of the amount due by him. Hence, the petitioner has filed this petition (i) for a declaration that the amounts paid by him exceed the amount actually due to the bank; (ii) for a declaration that the seizure of the tractor and trailer by the bank is without jurisdiction and a direction to the bank to release the same in favour of the petitioner; (iii) for quashing the auction sale notice; (iv) to direct the bank to deduct the alleged earnings of the bank by the seized tractor and trailer towards the amount due by him.

2. On June 9, 1993, this court granted an interim stay of further action in

pursuance of annexure E, subject to the petitioner paying the amount due to the respondents within a period of two weeks from that date. This court also made it clear that if the amount was not paid, the respondents were at liberty to proceed with the matter. Learned counsel for the petitioner states that in pursuance of the said interim order, the petitioner has paid the entire amount claimed by the bank and had obtained release of the tractor and the trailer, by paying the amounts claimed.

3. The transaction between the bank and the petitioner is one of finance governed by contract. The amount due depends on the amounts advanced, the contract regarding interest, the revisions in rates of interest from time to time, the amounts paid by the borrower towards the loan account. Determination of the amount due in a loan account, in the event of a dispute or difference, is purely a question of fact requiring oral and documentary evidence. Hence, if a borrower wants to dispute the claim of the bank as being excessive, the proper course for him is to file a civil suit where these matters can be gone into. A writ proceeding is not a proper remedy to decide a disputed question of fact relating to a contract. Further, neither party has produced the loan documents, accounts, proof of payment and circulars regarding revision of interest rates. Hence a prayer for a declaration that a borrower has paid amounts in excess of the amounts due to the bank, will not be entertained in this writ proceeding.

4. The next contention of the petitioner is that the bank cannot seize the tractor and trailer as they are agricultural implements. The petitioner relies on section 60 of the Civil Procedure Code, 1908, which lists the movables which are not liable to attachment and sale in execution of a decree. Sub-section (1)(b) of section 60 provides that the implements of husbandry of an agriculturist are not liable to be attached and sold in execution of a decree. This raises two questions for consideration : (a) whether tractor and trailer are implements of husbandry of an agriculturist; (b) if so, whether the bar u/s 60 will apply to seizure and sale of hypothecated tractor and trailer in terms of the deed of hypothecation and other loan documents executed by an agriculturist in favour of the bank.

Re : Point (A) :

There is divergence of judicial opinion as to whether tractor and trailer are agricultural implements which are exempted u/s 60(1), proviso (b). The said section provides that the following shall not be liable to attachment and sale in execution of a decree :

"(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ..."

In Shrimant Appasaheb Tuljaram Desai and Others Vs. Bhalchandra Vithalrao

Thube, , the Supreme Court held, with reference to section 60(1)(b), as follows :

"In the case of an agriculturist his implements of husbandry must therefore mean implements with which he tills the soil. These are saved from attachment .... on a fair reading of the provisions of clause (b), that which is saved to an agriculturist are his implements with which he tills the soil and such cattle and seed-grain which, in the opinion of the court, are necessary for him to use in order to enable him to maintain himself ..."

5. In Shiva Gowda v. Syndicate Bank [1976] 2 Kar LJ 391, a Division Bench of this court held that what are saved to an agriculturist under proviso (b) to section 60 are only such implements as are ancillary to and concomitants of the actual tilling of the soil and necessary to enable him to earn his livelihood; and that a motor tractor is not such an implement as would admit of being considered necessary to enable the agriculturist to earn his livelihood as such and is, therefore, not exempt from attachment.

It is of some interest to notice that this court followed the decision of the Nagpur High Court in Shaligram Shriram Dangra v. Sheopratap Wallabhadas AIR 1939 Nag 3, which considered the case of a tractor, and the decisions of the Madhya Pradesh High Court in Mathrabai Bhat and Another Vs. Kanhaiyalal Baluram Agrawal, , and the Madras High Court in Arumugha Gounder v. Marappa Gounder , which considered the case of irrigation pump sets. There is a very vibrant contrary view expressed by the Sind High Court (Udharam Dalumal v. Rozi Shambe AIR 1939 Sind 96), the Allahabad High Court Dwarka Prasad Vs. Municipal Board, Meerut, , the Kerala High Court [1974] Ker LT 137) and a Full Bench of the Madhya Pradesh High Court Nar Singh Vs. Kamandas and Another, . With changing times, there is a Change in perceptions as to what is a "necessity". Having regard to changes in the methodology of agriculture, what was earlier considered only a quicker method, might now be considered as the normal method. For example, half a century ago, an irrigation pumpset was not considered indispensable for cultivation of land. It was considered as only a quicker mode of drawing water and very few agriculturists used pumpset, to draw water. Therefore, it was not considered as an "implement of husbandry". Does that perception hold good now ? In these days of borewells and free energy for irrigation pump sets, can it be said that irrigation pump sets are not implements of husbandry. What applies to a pumpset today may equally apply to a tractor tomorrow. Be that as it may, it is unnecessary to examine this aspect further in this case as I am bound by the decision of the Division Bench in so far as tractor/trailer is concerned. This matter can, however, be disposed of on the basis of the decision on the second question.

6. The first question is, therefore, answered in the negative.

Re : Point No. (b) :

Even assuming that tractor and trailer are implements of husbandry of an agriculturist, the question is whether section 60 will apply to the facts of this case. Section 60 deals with attachment and sale in execution of a decree. In this case, the respondent-bank has not seized the petitioner''s tractor and trailer by way of attachment in execution; nor is it sought to be sold in execution of a decree. The petitioner claims to have purchased the tractor/trailer by availing of a loan from the respondent-bank on September 17, 1985, and secured the tractor-trailer in favour of the bank by way of hypothecation, as security for repayment of such loan. It is not disputed by the petitioner that in terms of the documents executed by him in favour of the bank securing the tractor-trailer, the bank is entitled to seize and sell the tractor-trailer for recovery of its dues. It is in exercise of such power, the bank has seized the tractor-trailer and notified its proposed sale in the newspaper. Such seizure and sale, which is not by way of attachment or sale in execution of a decree, but in exercise of power under the loan documents securing the tractor-trailer, will not fall u/s 60 of the Civil Procedure Code, 1908, or the proviso thereto.

7. In Shambhoo Khimiji v. Baloch Roze AIR 1947 Sind 32, a Division Bench of the Sind High Court had occasion to consider the question whether sale of an agricultural pumpset subject to a "mortgage lien" could not be sold for recovery of the decretal amount, having regard to section 60(1), proviso (b). It was further held that section 60 applied only to money decrees and not generally to all decrees; the words "attachment and sale" in section 60(1) do not apply to enforcement of mortgages or liens; the use of the words "such attachment and sale" occurring in the proviso to section 60(1) cannot extend the scope of the section, as a proviso to a section is to be taken only as limiting the operation of the section; and, therefore, the creditor was entitled to seek the assistance of the executing court for sale of the pumpset to recover the amount due to him. A similar view was taken by the Madras High Court in A. Nabisa Beevi Vs. The Manager, Canara Bank, Nagarcoil, , by the Nagpur High Court in Ramadhin v. Sheodutt AIR 1938 Nag 544, and the Kerala High Court in Kochumariam Vs. Kishema Vilasam Co., , wherein it is held that section 60 and the proviso to sub-section (1) of section 60 are inapplicable to sales in pursuance of mortgage decrees. It was further held that section 60 and the proviso thereto apply only where a decree is sought to be put into execution by praying for the relief of attachment and sale; and where a decree itself directs sale of the property, there is no need for attachment of property in execution of the mortgage decree, and section 60 and the proviso thereto will be inapplicable.

8. Hence, the second question is also answered in the negative. Consequently, this petition is dismissed. This dismissal will not come in the way of petitioner approaching the civil court, if he has any dispute in regard to the amount claimed by the bank.

