(2000) 07 MP CK 0016

In the Madhya Pradesh High Court

Case No : First Appeal No. 49/90

State Bank of Indore APPELLANT

Vs

Munnalal and Another RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 96
Madhya Pradesh Co-operative Societies Act, 1960 — Section 85
Madhya Pradesh Krishi Udhar Pravartan Tatha Prakiran Upbandha (Bank) Adhiniyam, 1972 — Section 11, 11(1), 11(3), 21

Citation : (2001) 5 MPHT 495

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.R. Bhargava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This appeal u/s 96 of C.P. Code is by the unsuccessful plaintiff whose suit was dismissed by the impugned judgment/decree, dated 19-01-1990 passed by IIIrd A.D.J., Ujjain, in C.S. No. 52-A/88. To appreciate the issue involved in suit and now in appeal, few facts need mention.

2. Appellant is the plaintiff whereas respondents are the defendants.

3. Appellant (plaintiff) - a Nationalised Bank, filed a suit out of which this appeal arises for the recovery of Rs. 35,222/- against the respondents (defendants) on the strength of loan advanced to the respondents. It was alleged that in lieu of security, the respondents (defendants) had executed various documents in favour of plaintiff - such as mortgaged deed, guarantee agreement, demand promissory notes etc. In effect, it was lleged that defendants did not repay the loan despite giving notices and reminders and that too after acknowledging their liability to pay and hence suit was filed claiming a money decree and in alternative for redemption of mortgaged property by putting it to sale for realisation of loan amount together with interest.

4. The respondents (defendants) denied their liability while defending them. After denying their liability by denying the plaint allegations, one legal objection regarding tenability of suit was raised. According to defendants, the plaintiff before filing the suit had filed an application u/s 11(1) of the Madhya Pradesh Krishi Udhar Pravartan Tatha Prakiran Upbandha (Bank) Adhiniyam, 1972 (for short called Act) before the prescribed authority being case No. 48/11/30/81-82 for the recovery of the same loan amount and the prescribed authority by its final order dated 20-03-1982 was pleased to allow the application of the Bank thereby granting a decree in favour of Bank for the amount due. It was therefore alleged that subsequent suit to claim the same amount is not maintainable in as much as the cause of action itself is extinguished once the earlier order was passed by a competent Authority under the Act. It was therefore prayed that the suit be dismissed on this ground alone.

5. The Trial Court by impugned judgment and decree sustained the legal objection raised by the defendants and dismissed the suit. It was held that the suit is misconceived and not maintainable in view of the remedy having been resorted to by the plaintiffs before filing the suit under the Act. It is against this judgment and decree dismissing the suit, the plaintiff has felt aggrieved and has filed this appeal.

6. Heard Shri S.R. Bhargava, learned counsel for the appellant (plaintiff), None for the respondent (defendant).

7. While attacking the finding of Trial Judge, learned counsel for the appellant (plaintiff) argued that trial court committed an error in dismissing the suit. According to learned counsel, the suit was very much maintainable. It was urged that filing of application u/s 11 of the Act and obtaining an order for recovery would not come in their ways in filing suit in case if they failed in their attempt to recover the dues in execution of an order from the defendants. Learned counsel relied on Sub-section (8) of Section 11, ibid, to support his submission and contended that it be held that cause of action to file suit did survive and that suit was very much maintainable for recovery of a loan amount.

8. Having heard the learned counsel for the appellant (plaintiff) and having examined the entire record of case and the legal provisions of the Act, I am of the view that this appeal must fail. In other words, the impugned judgment/ decree deserves to be upheld.

9. There are two sections of the Act that need mention. They are Section 11 and 21.

Section 11. Recovery of dues of Bank through prescribed authority:- (1)

An official of the State Government notified by the State Government as the prescribed authority for the purpose of this section may, on the application of a Bank, make an order on any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein or any other immovable property upon which the payment of such money is charged or mortgaged (or by attachment and sale of any other immovable property or any interest therein of such agriculturist):

Provided that no order shall be made under this sub-section unless the agriculturist or the heir or legal representative of the agriculturist, as the case may be, has been served with a notice of not less than fifteen days by the prescribed authority calling upon him to pay the amount due.

(3) Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner open to it under any other law for the time being in force.

Section 21: Recovery of dues and money:- (1) Every order passed by the prescribed authority under Sub-section (1) of Section 11 and every award given by the Registrar or the Registrar''s nominee or the Board of nominee u/s 20 shall, if not carried out on a certificate signed by the prescribed authority in the case of an order passed under Sub-section (1) of Section 11 and by the Registrar in the case of an award made u/s 20.--

(a) be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such court; or

(b) be executed according to the law and under the rules for the time being in force for recovery of arrears of land revenue; or

(c) be executed by the Registrar or any other person empowered by the Registrar in that behalf in accordance with the provisions contained in Clause (c) of Section 85 of the Madhya Pradesh Cooperative Societies Act, 1960 (No. 17 of 1961) and rules made thereunder :

Provided that any application for recovery under clause (b) shall be made:--

(i) to the Collector and shall be accompanied by a certificate referred to above; and

(ii) within five years from the date fixed in the order or award, as the case may be.

(2) The bank or person in whose favour order or award has been passed shall be liable to pay such charges for preparation of certificate and such fees for supply of certified copies of order, award or certificate as may be prescribed."

10. Perusal of Section 11 shows that it gives right to Bank to apply to the prescribed authority for an order directing the payment of any sum due to the Bank on account of any financial assistance availed of by the agriculturist by sale of any land or any interest therein or any immovable property upon which the payment of such money is charged or mortgaged or by attachment and sale of any other immovable property or any interest therein of such agriculturist, Proviso to Section 11 cast duty on the prescribed authority to issue notice to the

concerned agriculturist or his heir as the case may be of not less than 15 days calling upon him to pay the amount due. Sub-section (3) retains the right of Bank to enforce their right to recover the dues in any other manner open to them and which is available to them under any other law for the time being in force.

11. Section 21 deals with recovery of dues and money. It is akin to Order 21 of C.P. Code which deals with execution of an order passed by the prescribed authority u/s 11 ibid. It says that an order passed by the prescribed authority u/s 11 (a) will be deemed to be a decree of a civil court and the same shall be executed in the same as a decree of such court.

12. The conjoint reading of aforementioned two sections make it manifest that the order u/s 11 (1) is a decree of a civil court and shall be executed in the same manner as a decree of such Court. The word "such Court" mean Civil Court. In other words, once the Bank resort to the remedy provided in Section 11 of the Act for recovery of loan amount and obtains an order from the prescribed authority, the order becomes a decree of a Civil Court entitling the Bank to execute the same as if it is a decree obtained from the Civil Court.

13. In my opinion, there was no need for the Bank to have filed the suit for the recovery of same loan amount after obtaining the order from the prescribed authority u/s 11 ibid on 20-03-1982 in Claim Case No. 48/11/30/PP/81-82. Indeed in my opinion, cause of action to file a suit got extinguished once the Bank invoked Section 11 of recovery of their loan. The State by enacting the Act in question provided additional but speedy mode for the Banks for recovery of their loan extended to certain specified categories of loan for development of agricultural production to agriculturist. Sub-section 3 of Section 11 has preserved the right of Bank to recover the loan amount by resorting to any other mode available to Bank under any other law for the time being in force in addition to mode available u/s 11(1) ibid. This does not mean that having resorted to the remedy provided u/s 11 (1) and having obtained the order u/s 11(1), the bank can still file a suit to recover the same amount.

14. In view of aforesaid discussion, I do not find any merit in this appeal. It is accordingly dismissed. No cost.

