

(2015) 02 KL CK 0132
In the High Court Of Kerala
Case No : W.A. No. 1147 of 2014

State Bank of Travancore and Others

APPELLANT

Vs

Chinchumol M.S.

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 41
Constitution of India, 1950 — Article 226
Kerala High Court Act, 1958 — Section 5

Citation : (2015) 2 KHC 104

Hon'ble Judges : K. Harilal, J.; T.B. Radhakrishnan, J.

Bench : Division Bench

Advocate : R.S. Kalkura, for the Appellant; A.G. Basil, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.B. Radhakrishnan, J.—Heard the learned counsel for the appellants and the learned counsel for the respondent. Pitted in this writ appeal against the appellant State Bank of Travancore is a 20 year old girl, who is aspiring to be a Nurse. She has got admission in a recognised institute for B.Sc. Nursing Course. She wanted a loan to support the education, i.e., for an amount of around Rs. 2 lakhs. She and her mother moved the District Collector complaining that the Bank is not acceding to the request for the grant of loan. The Bank then informed that the applicant was already intimated that the loan could not be extended since the student did not have 60% marks in aggregate in Physics, Chemistry and Biology and 60% marks for each of those subjects separately. The writ petition, challenging the aforesaid decision, was adjudicated by the learned Single Judge and decided upon relying on the decision rendered in Runa Varghese Vs. Federal Bank, . The Federal Bank, which was the financing institution involved in that litigation, had carried an appeal against that judgment as WA 715 of 2014. However, on 21/10/2014, the Federal Bank informed the Division Bench that it has done away with the requirement of minimum cut off

marks for the grant of educational loans and it has provided the loan to the writ petitioner in that case. The writ appeal, which arose from Runa Varghese (Supra), was thus closed recording that submission.

2. When the writ appeal in hand came up, it was attempted to be pointed out that Runa Varghese (Supra) was not correctly decided inasmuch as relevant materials are not seen produced in that case.

3. In the meanwhile, we have yet another judgment of the Division Bench reported as *The Manager Vs. Reshma Syam S., .*, which dealt with a case of denial of admission by relying on 65% as the qualifying marks. When this appeal is heard today, the learned counsel for the Bank and the learned counsel for the writ petitioner attempted to raise different issues, including certain findings as are available in the judgment in *A. Kasinathan Vs. The Branch Manager, Canara bank, Town Hall Road, Madurai-625001, .* which dealt with some other provisions contained in the modified scheme for grant of loan, as also, another judgment of the Madras High Court in *Branch Manager, Indian Overseas Bank v. A. Ravi Laws (Mad.) 2014 (6)269*. Be that as it may we may note that in the case in hand, the first issue to be decided is as to whether we should, in exercise of intra-Court appellate jurisdiction, interfere with the judgment rendered in a writ petition under Article 226 of the Constitution of India. For one thing, the pleadings of the Bank before the learned Single Judge did not raise all issues, which are now attempted to be argued on behalf of the Bank in this appeal. Settled precedents of this Court are certain to the effect that an intra-Court appeal under Section 5 of the Kerala High Court Act, 1958, for short, the "Act", including a writ appeal would be governed by the provisions of Order XLI of the Code of Civil Procedure. This is so even as per the provisions of that Act and the Kerala High Court Rules, 1971. Admission of additional evidence under Order XLI Rule 27 of CPC can be done only in cases where grounds necessary for such admission of additional evidence are established. But, primarily, and more fundamentally, such question would arise only if pleadings are on record to examine any such evidence. On the totality of the facts and circumstances of the case, we are satisfied that the pleadings are insufficient to undertake any particular appellate appraisal of the facts to see whether the learned Single Judge has erred in law in exercising jurisdiction under Article 226 of the Constitution. We also notice that issues may still loom large in the light of the aforementioned judgments of this Court as well as that of the Madras High Court. But, we are of the firm view that they do not call for resolution in the case in hand to render justice between the parties, more particularly, because the impugned judgment of the learned Single Judge stands only to aid a girl student apparently belonging to a needy sector of the society, to pursue education that would bring home to her sufficient support in life. With this view of the matter, we decline jurisdiction under Section 5 of the Act and hold that this judgment as well as the judgment that we affirm hereby does not stand in the way of the Bank raising appropriate plea in any other case. Subject to the aforesaid, this writ appeal fails.

In the result, this writ appeal is dismissed.