
(2013) 08 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 961 of 2012

The A.P. State Financial Corporation	APPELLANT
Vs	
Duvvuru Rajasekhar Reddy	RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 6 ALD 175 : (2013) 5 ALT 660

Hon'ble Judges : Vilas V. Afzulpurkar, J;N.V. Ramana, J

Bench : Division Bench

Advocate : Y.N. Lohita, for the Appellant; Mohan Vinod and Associates, for the Respondent

Judgement

Vilas V. Afzulpurkar, J.—State Financial Corporation is in appeal aggrieved by the order passed in WP No. 12409 of 2010, dated 27-03-2012. The said writ petition was filed by the respondent herein questioning the impugned notice dated 16-02-2010 issued by the appellant-Corporation demanding to pay a sum of Rs. 36,157/- towards interest and Rs. 3,550/- towards other expenses, totalling to Rs. 40,242/- and notice dated 20-03-2010 demanding to pay a sum of Rs. 8,95,667/- towards interest and Rs. 3,559/- towards other expenses totaling to Rs. 8,99,226/- in default to pay the amounts, sought to recover the same by invoking the provisions of the AP Revenue Recovery Act, 1891 (for short, "the ROR Act"). Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. It is evident from the record that the respondent-writ petitioner along with one Mr. G. Sridhar Reddy availed loan facility of Rs. 3,92,000/- from the appellant-Corporation for starting a unit by name "UNISIL Products" in the year 1990. Further loan of Rs. 1,11,000/- was sanctioned to the said unit but the said unit has not availed the said loan after completion of legal formalities in terms of the sanctioned letter. The unit of the respondent appears to have been closed down after 1992 and the last transaction between the respondent and the appellant-Corporation was in the year 1995. Appellant-Corporation invoked

Section 29 of the State Financial Corporations Act, 1951 (for short, "the Act") SFC Act and sold the land and building as well as plant and machinery of the unit for Rs. 8,20,000/- and Rs. 10,000/- respectively. The appellant therefore demanded balance amount of Rs. 36,157/- towards interest and Rs. 2,559/- towards other expenses, in all Rs. 40,242/- under notice dated 16-02-2010 and a further sum of Rs. 8,95,667/- under notice dated 20-03-2010 towards interest on the principal amount and other expenses.

3. On 27-01-2009, Government issued GO Ms. No. 80, dated 27-1-2009 u/s 5 of the ROR Act authorizing the Branch Managers of the State Financial Corporations to exercise powers of District Collector u/s 52-A & 52-B of the ROR Act. The Corporation, therefore, issued the impugned notices dated 16-2-2010 and 20-3-2010 seeking to take action under the ROR Act for recovery of the amounts mentioned therein. Respondent-writ petitioner challenges the said notices on the ground that recoveries are barred by Limitation and places reliance upon the decisions of the Hon'ble Supreme Court in *State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr*, as well as the decision of this Court in *N.A. Radha and others Vs. State of Andhra Pradesh and others*,

4. Learned single Judge on consideration of the material on record and following the decisions (1 and 2 Supra) held that the appellant-Corporation cannot recover the debt which is time barred by resorting to provisions of the ROR Act and allowed the writ petition which is questioned in this writ appeal.

5. Shri Y.N. Lohita, learned counsel for the appellant-Corporation contends that for the first time the Government in GO Ms. No. 80, dated 27-1-2009 conferred power on all the Branch Managers of the Corporation to exercise powers of Collector under Sections 52-A and 52-B of the ROR Act for recovery of dues to the Corporation in the manner specified in the said ROR Act. Learned counsel further submits that based on the said GO, the Corporation had issued Office Order No. Legal/29, dated 12-6-2009 and in pursuance thereof, the impugned notices were issued. Learned counsel also placed reliance upon a Division Bench decision of Punjab and Haryana High Court in *Jagdish Rai Vs. The Haryana Financial Corporation*, for the proposition that the proceedings u/s 32G of the SFC Act, provisions of the Limitation Act cannot be made applicable as there is no express provision in the SFC Act making the Limitation Act applicable. Learned counsel, therefore, submits that the decision of the Supreme Court in *Kalliyankutty's case* (1 Supra) as well as the decision of Division Bench of this Court in *NR Radha's case* (2 supra) is distinguishable in view of the circumstances referred to above.

6. Learned counsel for the respondent-petitioner, on the other hand, submits that the last transaction between the writ petitioner and the appellant-Corporation was in the year 1995. Proceedings u/s 29 of the SFC Act concluded on 10-02-1996 and after a lapse of about 14 years impugned notices 16-02-2010 and 20-03-2010 were issued. Learned counsel, therefore, submits that it is clearly time barred as held by the Supreme Court in *Kalliyankutty's case* (1

Supra) as well as the decision of this Court in NR Radha's case (2 supra). Learned counsel also placed reliance on a latter judgment of the Supreme Court in Maharashtra State Financial Corporation Vs. Ashok K. Agarwal and Others, wherein same principle has been reiterated and it was held that Article 137 of the Limitation Act would be inapplicable and the Corporation cannot seek recoveries of the debts which are barred u/s 137 of the Limitation Act.

7. We have considered the rival contentions of the parties. In our view the contention of the learned counsel for the appellant cannot be sustained for more than one reason. Firstly, Section 32G of the SFC Act itself provides as follows:-

32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue--Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorized by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

Thus recovery by invoking the provisions of the ROR Act for recovery of dues of the Corporation through the process of Collector in the manner provided as arrears of land revenue is already contemplated in the said provision itself. Therefore, the contention of the learned counsel for the appellant that the powers conferred under GO Ms. No. 80, dated 27-1-2009 issued u/s 5 of the ROR Act would give rise to cause of action for the first time to proceed against the respondent-petitioner under the provisions of the ROR Act is clearly misconceived. Moreover, Supreme Court in Kallianikutty's case (1 Supra) considered the very same question and answered the point against the appellant. Same issue was also reiterated by Division Bench of this Court in NR Radha's case (2 supra). The latter decision of the Supreme Court in Ashok K. Agarwal's (4 supra), the same principle was reiterated. In addition to the aforesaid decisions, in a latest Division Bench decision (WA No. 1309 of 2012, to be reported) to which one of us (VVA, J) is a party, this Court considered similar question with reference to the SFC Act vis-?-vis the Limitation Act and the ROR Act and held against the SFC. The said decision has already noticed decisions in Kallianikutty's case (1 Supra), NR Radha's case (2 supra) as well as (Maharashtra State Financial Corporation's case (3 supra) and it was held that time barred debts cannot be recovered by the Corporation by taking recourse to the ROR Act. We are therefore not inclined to accept the contention of the learned counsel for the appellant that on the basis of the decision of the Punjab and Haryana High Court in Jagdish Rai's case (3 supra) the provisions of Limitation Act have to be made inapplicable to the proceedings under the ROR Act. The said decision in Jagdish Rai's case (3 supra), with respect, appears to

run counter to decisions of the Supreme Court in Kalliyanikutty's case (1 Supra) & in Ashok K. Agarwal's case (4 supra). We, therefore, do not find any reason to take a different view than the one taken by the learned single Judge in allowing the writ petition. The writ appeal is meritless and it is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall stand closed. There shall be no order as to costs.