

(2008) 02 KAR CK 0068

In the Karnataka High Court

Case No : Regular First Appeal No. 165 of 2008

The Belgaum District Central Cooperative Bank Ltd.

APPELLANT

Vs

The Mahantesh Co Operative Credit Society Ltd. and Another

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26, Order 21 Rule 46

Citation : AIR 2008 Kar 1953 : (2008) ILR (Kar) 1646 : (2008) 3 KarLJ 608

Hon'ble Judges : S.R. Bannurmath, J;Jawad Rahim, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, for B.S. Kamate, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Bannurmath, J.—The appellant - The Belgaum District Central Co-Operative Bank Limited, which is not a party in the Execution Proceedings No. 67/2007, has challenged the order dated 05-01-2008 passed by the Executing Court/IAddl. Civil Judge (Sr. Dvn.), Belgaum, on the application filed by the decree holder - first respondent herein under the provisions of Order 21 Rule 46 of the Code of Civil Procedure, 1908.

2. The judgement debtor, is a co-operative society. As per the provisions of Section 57 of the Karnataka Co-Operative Societies Act, it is required to deposit 25% of the net profit as reserve fund. Accordingly, the judgement debtor has deposited the amount with the appellant herein.

3. The decree holder - society has obtained an award dated 27-10-2006 for recovery of a sum of Rs. 27,00,000/- with interest from the judgement debtor. In this regard the decree holder had filed an application for attachment and prohibitory order for disbursement of the amount in RFD Account No. 8 of the judgement debtor maintained by the appellant bank. There is no much dispute, the said application was allowed and the attachment and prohibitory order was passed by the Joint Registrar of Co-Operative Societies. In this regard the decree

holder has filed the present execution petition.

Feeling that there was no chance of recovery of the amount except by way of recovery from the said RFD Account No. 8, the application in question, namely, under Order XXI Rule 26 CPC came to be filed by the decree holder. The Executing Court issued notice to the appellant and by way of objections the appellant contended that, no doubt, the appellant bank is the custodian of reserve fund deposited by the judgement debtor. But, as per the provisions of Rule 23 of the Karnataka Co-Operative Societies Rules, it cannot invest or deposit the reserve with it except the permission of the Registrar of the Co-Operative Societies. It was also contended that as per Rule 23 of the said Rules, as there is mandatory restriction not only in investing but also withdrawing the reserve fund without sanction of the Registrar, the application of the decree holder under Order 21 Rule 46 CPC, cannot be entertained.

Dis-agreeing with this objection the Executing Court by the impugned order directed the appellant to deposit a sum of Rs. 30,51,785/- (decreetal amount) into the Court from the account of the judgement debtor within 30 days from the date of the order. It is this order, which is impugned before us in the present appeal.

4. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the appellant drew our attention to Sections 57 and 58 of the Karnataka Co-Operative Societies Act and Rules 23 and 24 of the Karnataka Co-Operative Societies Rules and vehemently contended that as per the scheme of the Co-Operative Societies Act, there is prohibition for the appellant bank from depositing the amount out of reserve fund except with the permission of the Registrar of Co-Operative Societies, the impugned order passed by the Executing Court is illegal and contrary to the provisions and the objects as enshrined under these Sections and provisions of the Co-Operative Societies Act.

5. On perusal of the entire records placed before us, we find that there is no much dispute that the appellant is a garnishee. The word "garnishee" has been defined in the Black's Law Dictionary, 8th Edition, as follows:

A person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment bank.

It is also necessary to consider the definition of "garnishment", which is as follows:

A judicial proceeding in which a creditor or potential creditor asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property such as wages or bank accounts held by that third party.

6. If we consider the provisions of CPC, especially execution proceedings governed by Order XXI Rule 46, if a judgement debtor is not in possession of immovable property, the Court can pass an order of attachment and further

prohibit the third party in whose possession such immovable property is there not to disburse the same.

7. Order XXI Rule 46A of CPC provides that the courts may in case of a debt, which has been attached under Rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into court the debt due so as to satisfy the decree in question. The appellant is a garnishee of the judgement debtor is not in dispute. In our view the executing court was justified in passing the impugned order. It is to be noted that mere prohibition under Karnataka Co-Operative Societies Act as pointed out as per the provisions of Rule 23(3) cannot prohibit the court from exercising the jurisdiction as contemplated under CPC.

8. The condition imposed under Rule 23 of the Rules is in respect of the operation of the account by the depositor and does not prohibit any debtor from obtaining the orders under Order XXI Rule 46-A CPC. It is to be noticed that u/s 101(1)(a) of the Co-Operative Societies Act itself, any award passed under the provisions of the Co-Operative Societies Act is deemed to be a decree of a civil court and can be executed in the same manner as a decree of the Court. Once the award is deemed as a decree and it is sought to be executed it is the civil court which has competence/jurisdiction to deal with the same as provided under CPC.

9. The learned Senior Counsel also contended that in view of the restrictions placed by the Reserve Bank of India from utilising the deposit account, the garnishee cannot ask to deposit the amount. Again it is to be made clear that it is an internal arrangement made between the judgement debtor and Reserve Bank of India, which is not bind the decree holder from exercising his right available under General Law.

10. In view of the same we find there is absolutely no illegality in the impugned order by the trial court in exercising the jurisdiction under Order XXI Rule 46A CPC. We find no merit in the appeal. Hence, the same is rejected.

11. In the circumstances, there will be no order as to costs.