(2002) 09 KL CK 0031

In the High Court Of Kerala

Case No : O.P. No. 10514 of 2002

Theccanad Tiles (P) Ltd. APPELLANT

Vs

Kerala State Co-operative Bank RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Citation : (2002) 2 KLJ 500

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Mathew John K and Baby Thomas, for the Appellant; M.M. Monaye and M.K. Aboobacker, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Ext. P3 order passed by the Kerata Co-operative Tribunal, is under challenge. By the said order the Tribunal held that arbitration case A.R.C. No. 31 of 1998 initiated by respondents 1 and 2 before the 4th respondent is maintainable and that the preliminary objection of the petitioners that the arbitration case unsupported by a resolution of the managing committee is not maintainable was overruled.

2. That the petitioners had availed the loan of Rs. 22.31 lakhs as early as in 1986 from the first respondent is not in dispute. The dues as on 1.4.1997 was Rs. 66,73,378.86. Arbitration proceedings were initiated for realisation of the said amount. Proceedings were initiated based on and pursuant to resolution adopted by the Executive Committee of the first respondent. It is the main contention of the petitioners that since Rule 67 of the Kerala Co-operative Societies Rules mandates resolution by the committee, the committee being the Managing Committee according to the petitioners, the case itself is not maintainable. Rule 67(2) of the Kerala Co-operative Societies Rules reads as follows:-

"67(2). The application shall be accompanied by a list of relevant records on which the dispute is based and a receipted chalan to evidence, payment of the fees fixed under Clause (a) of Sub-rule (7) for deciding the dispute. In the case of an application filed for and on behalf of a society, a certified copy of the resolution adopted by the committee resolving to file the application, shall also be filed."

Section 2(e) of the Kerala Co-operative Societies Act defines Committee as follows:-

''''2(e) "Committee" means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the society is entrusted."

According to the petitioner a resolution by the Board of Directors of the first respondent is sine qua non for a valid dispute. I am afraid the contention cannot be appreciated. It is not in dispute that there is a resolution by a Committee namely the Executive Committee of the first respondent. u/s 69 of the Act a dispute between the Society and a person who has been granted a loan by the Society is to be decided through arbitration. There is no case for the petitioners that there is no dispute to be thus decided. Rule 67 only provides that an application filed by a Society should be accompanied by a certified copy of the resolution adopted by the Committee resolving to file the application. The byelaws of the first respondent society, the relevant extract of which is produced as Ext. R2(a), at Clause 23 provides as follows:-

"23. Executive Committee:

There shall be an Executive Committee consisting of nine members, including the President, Vice-President, the Registrar of Co-operative Societies, the Managing Director and five other Directors elected by the Board from among themselves. The members of the Executive Committee shall hold office for the full term for which they are members of the Board. The quorum for a meeting of the Executive Committee shall be such number of members just above fifty percent of the total number of members of the Executive Committee. Any interim vacancy caused by resignation or otherwise shall be filled by re-election by the Board. The President or, in his absence the Vice-President shall preside at the meeting of the Executive Committee. The Executive Committee shall meet once in a month or oftener, if necessary for the transaction of the business of the Bank."

It is the Executive Committee which transacts the business of the first respondent Bank. It is pertinent in this context to note also that in exercise of the power vested in the Executive Committee under Rule 24(vi) only, loan was sanctioned to the petitioners. Under Rule 24(vii) it is the duty of the Executive Committee to examine all cases of arrears and take proper action for the recovery. In exercise of such power only, proper action by way of a resolution by the Committee, namely the Executive Committee, was taken and the arbitration case was filed. It would be too much to hold that even for filing an arbitration case, the Board of Directors of the said Co-operative Bank should meet and pass a resolution. Express power is delegated to and vested in the Executive Committee. If the petitioners could avail the loan as sanctioned by a resolution of the Executive Committee, the petitioners cannot demur that steps taken pursuant to resolution by the Executive Committee for recovery of the sanctioned loan is incompetent. The requirement under Rule 67 for a resolution by the Committee can only mean resolution of the Committee competent in that behalf. That need not invariably be the managing committee contemplated u/s 2(e) of the Act. It can only mean the Committee competent to deal with such matters. In the instant case the competence to sanction loan and the competence to take steps to recover the loan is delegated to and vested in the Executive Committee and hence the expression ''Committee'' has to be understood as the appropriate Committee, namely the Executive Committee in the instant case. This Court in John v. Nalumakkal Service Co-operative Bank Ltd. 1991 (2) KLT 527 had made it clear that the purpose of Rule 67 is only to see that the Society is not dragged into unnecessary legal proceedings. The order passed by the Tribunal is proper and valid.

I dismiss the Original Petition with a direction to the Arbitrator to take expeditious steps for conclusion of the proceedings in the arbitration case since it is of the year 1998 and even as on 1.4.1997 the dues is around Rs. 67 lakhs. In any case the proceeding shall be concluded within a period of three months from today.

