
(2004) 06 KL CK 0079

In the High Court Of Kerala

Case No : O.P. No. 24535 of 2002U

Travancore Co-operative Agricultural and Rural Development
Bank Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)
Kerala Co-operative Societies Rules, 1969 — Rule 52, 75, 76

Citation : (2004) 06 KL CK 0079

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : D. Kishore, for the Appellant; Thomaskutty, Govt. Pleader for Respondents Nos. 1, 2 and 7 and S.D. Asokan, Mathew Sebastian and N. Hariharan, for the Respondent

Judgement

M. Ramachandran, J.—The Petitioner, a Co-operative Society, had been moving heaven and earth for executing an order passed by the Arbitrator in its favour, when it was found that there was no payment forthcoming either from the principal debtor (8th Respondent) or the sureties, namely the 5th and 6th Respondents. The claim pertained about a loan transaction which had become sticky. Even though by Ext. P-10 they had been advised by the Joint Registrar, Trivandrum that the matter was being looked into, there was no effective steps forthcoming. The Original Petition is filed for a writ of mandamus, whereby the statutory right of the Petitioner are to be enforced on the strength of the agreements that had been entered into u/s 37 of the Kerala Co-operative Societies Act from the 3rd and 4th Respondents, who were employers of the 5th and 6th Respondents.

2. It is admitted that the 5th and 6th Respondents were parties to agreements as had been envisaged by Section 37 of the Act. Ext. P-3 came to be passed on 14th January, 1998 in proceedings u/s 69 of the Co-operative Societies Act. This had been subjected to a revision, but that was dismissed and the Original

Petition filed therefrom by one of the sureties also came to be dismissed (O.P. No. 33000 of 2001). As at present, there is no challenge subsisting. Thereafter steps for recovery had been attempted. When there was no effective measures or help forthcoming from the concerned Co-operative institutions, who were employers of the sureties, the Petitioner has filed this Original Petition. Resistance had come from the 6th Respondent alone and he had entered through Counsel Sri Asphan.

3. The objection filed by the 6th Respondent appears to be that it was not permissible for the Petitioner to take recourse u/s 37 of the Act at all. Having obtained an Award, it was no more open for the Petitioner to pursue remedies u/s 37, the Counsel submits, since the Act was very definite that in respect of execution of Awards, decrees being equated to Civil Court the procedure to be adopted was an execution as envisaged u/s 76 of the Act. Counsel submits that in respect of debtors as well, the statute had been careful enough to prescribe that they will be entitled to the benefits arising out of Section 60 of the Code of Civil Procedure, as there was safeguard by prescribing limits of the quantum of attachable salary.

4. I find it difficult to accept the contention as above. The possession of an Award could not have operated to the disadvantage of a creditor, and to understand the provisions of the statute as above would be height of perversity, as I find it. Rule 52 of the Kerala Cooperative Societies Rules prescribe the methods by which enforcement could be carried out as spoken to by Section 37. Because of the provisions of Rules 75 and 76, there cannot be a position that a disability is courted. Since their rights are secured by Section 37, a defaulting person cannot be permitted to get away out of the liability, especially when he had entered into an agreement fully knowing the consequences that arose from such agreement. To accept the contention would be to hold that the agreements entered into by them is unenforceable and worthless. I do not think that the statute had ever visualised the above position.

5. Sri Kishore, Counsel for the Petitioner, also invited my attention to a Division Bench decision of this Court reported in 2002 (3) KLT 169 Surendran Vs. Mavelikkara Primary Co-operative A. and R.D. Bank Ltd., Surendran v. Mavelikkara Primary Co-op. A. and R.D. Bank Ltd. The former decision made it clear that application of Section 60(1) of the CPC was to be confined to execution of decrees as prescribed. The bar contained in the said section was not applicable to other agreements which authorised recoveries in larger proportion than the above section prescribed. In the later decision, I had occasion to hold that Section 37 by the very nature of its wordings was enough to include recoveries not only from salary but from other benefits that may be payable to a person who had entered into surety agreements.

6. Taking notice of the above and the circumstances that in spite of decrees passed years back it has not been possible for the Petitioner to make recoveries from the principal debtor or the sureties, I do not think that the objections as

raised by the 6th Respondent has to be seriously taken notice of. The Government Pleader also does not support the arguments of the Petitioner. He submits that whatever necessary steps as are expected of the Respondents would be taken.

7. In the aforesaid circumstances, the Petitioner is entitled to a declaration that steps taken for recovery as against 5th, 6th and 8th Respondents u/s 37 of the Co-operative Societies Act are valid and they do not suffer from any infirmity. The 3rd and 4th Respondents are duty-bound to see that when requisition is made by the Petitioner appropriate recoveries are brought for onward remittance. They have also a community of interest with the Petitioner, and the reluctance shown therefore may be injurious to their well-being.

8. I am not unmindful of the contentions raised by the 6th Respondent when it is stated that there is likelihood of substantial deductions from the salary. Therefore, I direct that the Petitioner should ensure that recovery as against the 8th Respondent, principal debtor, also should be pursued earnestly. Effort should be taken to see that the 8th Respondent is proceeded against appropriately.

The Original Petition is disposed of with the above observations and directions.