

(2002) 11 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 6093 of 1999

V. Ramanujam

APPELLANT

Vs

Karnataka State Financial Corporation and Others

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Contract Act, 1872 — Section 126, 126 A, 127
Karnataka Public Monies (Recovery of Dues) Act, 1979 — Section 3, 4
State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 2003 Kar 176 : (2003) 3 BC 20 : (2003) 1 KarLJ 585 : (2003) 1 KCCR 469

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Lawyers Inc, for the Appellant; K. Gopala Hegde, for Respondents-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

H. Rangavittalachar, J.—Petitioner claims to be the absolute owner of the immovable property bearing No. 189, Sy. No. 4/1, Binnamangala Manavartha Kaval Village, K.R. Puram, Bangalore. His wife-R. Mallika was a partner of the 3rd respondent-M/s. British Instrumentation Systems. The firm was sanctioned a loan of Rs. 11,50,000/- by the Karnataka State Financial Corporation (KSFC). For the due repayment of the said loan, petitioner stood as a guarantor and the property in question was furnished as a collateral security. When the firm defaulted in paying the loan, the KSFC issued a certificate addressed to the Deputy Commissioner bringing to his knowledge the debt due by the firm and the tact of the petitioner standing as a guarantor by furnishing immovable property as collateral security. On the basis of the said certificate, the Deputy Commissioner, in exercise of powers under the Karnataka Public Monies (Recovery of Dues) Act (hereinafter referred to as the "Act" for brevity), has directed that the property of the petitioner be sold by public auction for recovery of the dues. The Special Tahsildar, 2nd respondent herein, has notified the

property for public auction vide Annexure-J and K. These sale notifications are questioned by the petitioner.

2. The main contention of Sri Amar Kumar, appearing for the petitioner is that the provisions of the Act cannot be used against the guarantor to a loan transaction. The said provisions apply only against a principal debtor. Therefore, the sale notifications are void ab initio. In support of the said contention, learned Counsel read to me Sections 3 and 4 of the Act and submitted that a close reading of the said sections in conjunction, will clearly show that the KSFC is entitled to proceed only against the assets of the principal debtor and not against the guarantor. According to the learned Counsel, the assets of the guarantor may be liable under the provisions of the other Acts, not under the provisions of the Act. The argument no doubt looked attractive but, on a closer analysis of the provisions of Sections 3 and 4 of the Act and Sections 126 and 127 of the Indian Contract Act, the same has to be discarded.

3. The Karnataka Public Monies (Recovery of Dues) Act, is an Act which was enacted mainly for the purpose of providing for speedy recovery of public monies of Financial Institutions and Banking Companies defined under the Act. u/s 3, the heads of the institutions or the persons defined are entitled to send certificates after following certain procedure of notifying the borrowers or other parties to the jurisdictional Deputy Commissioner who is empowered to act on the basis of the said certificate to recover the monies as arrears of land revenue. The parties against whom such a certificate can be issued is spelt out in Section 3(1)(A) to 3(1)(D). Section 3(1)(A) which is relevant for the present purpose is extracted herein omitting what is not relevant.

"Section 3. Recovery of certain dues as arrears of land revenue.-

(1) Where any person is a party-

(A) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by the State Government or the Corporation, by way of financial assistance;

(B).....

(C) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

(D) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue; and such person-

(a) makes any default in payment of the loan or advance or any installment thereof; or

(b) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any installment thereof; or

(c) otherwise fails to comply with the terms of the agreement, then-

(i) in the case of the State Government, such officer as the State Government may, by notification, authorise in this behalf;

(ii) in the case of a Corporation or a Government Company, the Managing Director thereof; and

(iii) in the case of banking company, the local agent thereof by whatever name called, may send a certificate to the Deputy Commissioner, mentioning the sum due from such persons and requesting that such sum together with the cost of the proceedings and future interest at the prescribed rate upto the date of recovery be recovered as if it were arrear of land revenue. A certificate sent to the Deputy Commissioner may be withdrawn at any time.

(2) The Deputy Commissioner on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) On an application made by a banking company and on its furnishing a statement of accounts in respect of any sum due to it from any person in respect of a loan given to him under a socially desirable scheme the prescribed officer may, after making such enquiry as he deems fit, and after giving such person a reasonable opportunity of being heard, grant a certificate specifying the sum due.

(4) A certificate so granted by the prescribed officer shall be final and may be sent to the Deputy Commissioner by the banking company. The sum stated therein to be due and interest thereon at the prescribed rate upto the date of recovery together with the cost of the proceedings shall be recoverable as an arrear of land revenue. A certificate sent to the Deputy Commissioner may be withdrawn at any time".

A reading of the said section shows that any person who is a party to the agreement relating to loan is liable to pay the amount stated in the loan transaction.

4. Section 126 of the Indian Contract Act defines a contract of guarantee as follows.-

"Section 126A Contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written".

Section 127 states the consideration for the guarantee.

"Section 127.--Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee".

5. A contract of guarantee is a single transaction to which there are three parties--creditor, principal debtor and Guarantor. Therefore, the clause "where any person is a party to any agreement relating to loan" in Section 3(1)(A) includes a guarantor. However, Sri Amar Kumar submitted by reading Section 4(1)(b) to contend that by a reading of the said section the intention of the Legislature is to exclude the sureties from the ambit of the operation of the Act. A reading of the said section does not give such a meaning. The relevant Section 4(1)(b) is extracted omitting the other clauses of Section 4 as being unnecessary.

"Section 4(1)(b).--Nothing in Section 3 shall affect any right or remedy against any person other than a person referred to in that section, in respect of a contract or indemnity or guarantee entered into in relation to an agreement referred to in that section or in respect of any interest referred to in Clause (a)".

A closer reading of Section 4(1)(b) clearly means that the remedy of the KSFC to proceed against the principal debtor or the guarantor under any other laws like for e.g., the State Financial Corporation Act, the Transfer of Property Act or ordinal civil laws, is not affected by mere exercise of its option to proceed u/s 3. The State Financial Corporation admittedly has remedies to proceed under Sections 29 and 31 of the State Finance Corporation Act both against the principal debtor and the guarantor, u/s 69 of the Transfer of Property Act against the immovable property, and in certain cases it may file a civil suit to recover its dues. It may exercise the best option which suits it. Merely exercising its option under the Act would not be a bar for it to exercise option under other laws, is all what is meant by Section 4(1)(b). It does not give a meaning that the KSFC cannot proceed against the guarantor as suggested by the learned Counsel. Therefore, there is no merit in this contention of the learned Counsel.

6. Other contentions raised in the petition are disputed questions of fact. Therefore, the same cannot be gone into in exercise of the powers under Article 226 of the Constitution of India. For the reasons stated in the petition, I find no merit in the petition.

7. Petition is dismissed. No costs.