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In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 10864 and 17081 of 2013

Venu APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Banking Regulation Act, 1949 — Section 21, 21(3), 35A
Constitution of India, 1950 — Article 21
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 17

Citation : (2014) 1 BC 478 : (2013) 116 CLA 120 : (2013) 3 ILR (Ker) 638 : (2013) 3 KHC 485 : (2013) 3 KLT 691

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : G. Hariharan, H. Praveen and Abraham Mathew Vettoor, for the Appellant; R.S. Kalkura and N. Rajagopalan Nair, P. Deepak, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.

Every life deserves a certain amount of dignity, no matter how poor or damaged the shell that carries it.

1. Said the Pulitzer Prize winning writer Mr. Rick Bragg in his book - ''All Over But the Shoutin''. The propriety of the bank publishing the photograph of loanees in newspapers prejudicially affecting their dignity falls for consideration in these two Writ Petitions. The State Bank of India (the ''Bank'' for short) has obtained a decree for money against the petitioner in W.P. (C) No. 10864/2013 and another in O.S. No. 643/2010 on the file of the court of the Subordinate Judge of Ernakulam. The same petitioner has also been convicted for dishonour of cheque at the instance of the bank in S.T. No. 4388/2010 on the file of the court of the Judicial First Class Magistrate, Kolenchery. Similarly the bank has filed a suit for

realisation of money against the petitioner in W.P. (C) No. 10781/2013 and two others on the file of the court of the Subordinate Judge of Kottayam wherein the written statements are yet to be filed. It is at this juncture has the bank issued notices to the petitioners threatening to publish their photographs, names and addresses in the leading newspapers. The petitioners challenge the proposed action of the bank as arbitrary and without any legislative sanction besides being violative of the fundamental rights guaranteed under the Constitution of India. The bank maintains that it is entitled to resort to any step for realisation of the amount due including publishing the photographs of the petitioners so long as the same is not forbidden by law. The bank points out that such a course has been approved by the High Courts of Madras and Madhya Pradesh even though frowned upon by the High Court of Kolkata.

2. I heard Mr. Praveen Hariharan, Advocate and Mr. Abraham Mathew, Advocate on behalf of the petitioners and Mr. R.S. Kalkura, Advocate on behalf of the bank. I also heard Mr. P. Deepak, Advocate as Amicus Curiae who deserves a rich encomium for the able assistance rendered to court.

3. No doubt the bank is entitled to file a suit or initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 for realisation of its dues. The bank can also resort to proceedings under the Kerala Revenue Recovery Act, 1968 for realisation of its dues in respect of certain categories of loans advanced. The decree obtained from the civil court can be put to execution or the security interest enforced under the SARFAESI Act or coercive revenue recovery steps initiated against the defaulter. But there is no provision in any of the enactments enabling the bank to threaten the loanees about its intention to publish their photographs in leading newspapers on failure to repay the debt within a specified date. It is to be noticed that publishing the photographs of loanees in newspapers is not a measure permitted u/s 13(4) against which only an appeal would lie u/s 17 of the SARFAESI Act. The property could be restored possession of to the loanees depending on the outcome of the appeal against the decree in the suit or the appeal in the Debts Recovery Tribunal under the SARFAESI Act. But the damage would have already been done by publishing the photographs of the loanees in the newspapers in the interregnum which cannot be undone even if a verdict favourable to them is rendered in appeal. The notice contemplated under Rule 8 of the Security Interest (Enforcement) Rules, 2002 is only intended to notify the details of the property offered as security interest. It may at best caution the public from entering into any transaction with the loanees in respect of the property notified and does not permit the publishing of the photographs of loanees. A public authority like the bank has the power to realise the dues only in a manner authorised by law quite unlike a private financier who can resort to any step unless forbidden by law. Situation may be different where the loanees are proclaimed offenders and are absconders fleeing away from the clutches of law in which case the publishing of their photographs might be justified. Otherwise the threat held out by the banks to publish the photographs of loanees in leading

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newspapers on their failure to repay the debt within a specified date lacks legislative sanction and is wholly illegal and arbitrary.

4. The Reserve Bank of India has issued a master circular (DBOD No. CID.BC 10/20.16.003/2012-13 dated 2.7.2012) on willful defaulters to all the scheduled commercial banks and notified financial institutions. The term ''willful default'' has been defined therein and the penal measures to be adopted for realisation of the dues by the bank have been illustrated with a note that it is not exhaustive. The master circular of the Reserve Bank of India also provides for reporting the details of accounts of willful defaulters to the Reserve Bank of India as also the Credit Information Companies. The Credit Information Companies like the Credit Information Bureau (India) Ltd. (CIBIL) have been registered under the Credit Information Companies (Regulation) Act, 2005. The Credit Information Companies have been advised to disseminate information pertaining to the accounts of willful defaulters and the recovery steps initiated on their respective websites. This also enables any bank to log into the website of Credit Information Companies and verify the credentials of the person applying for fresh loan on the security of the property offered. The power of the Reserve Bank of India to issue such circulars or directions can be traced to Sections 21(3) and 35-A of the Banking Regulation Act, 1949 as has been judicially noticed even recently. The Supreme Court in ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others, held as follows:

Under Section 21(3) every banking company is bound to comply with directions given by R.B.I. at the peril of penalty being levied for non compliance. Section 35-A says that where R.B.I. is satisfied that in the interest of banking policy, it is necessary to issue directions to banking companies, it may do so from time to time and the banking companies shall be bound to comply with such directions. Thus in exercise of the powers conferred by Sections 21 and 35-A of the said Act, R.B.I. can issue directions having statutory force of law.

Thus the circular issued by the Reserve Bank of India does not also clothe the bank with the power to publish photographs of loanees in newspapers though entitled to disseminate information in the website of Credit Information Companies.

5. It remains to be seen as to whether the publishing by the bank of the photographs of the loanees would infringe the fundamental rights guaranteed to them under Article 21 of the Constitution of India. The Supreme Court referring to the human dignity as an intrinsic value of every human being has held in M. Nagaraj and Others Vs. Union of India (UOI) and Others, as follows:

The expression of ''life'' in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity.

Mr. Justice K.S. Radhakrishnan speaking for the Bench in The Deputy Inspector General of Police and Another Vs. S. Samuthiram, has observed as follows as regards the right to live with dignity:

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Every citizen in this country has the right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India.

Even the right to privacy of the loanees enshrined under Article 21 of the Constitution of India is infringed to a certain extent as is evident by the following observations in Mr ''X'' Vs. Hospital ''Z'', :

Disclosure of even true private facts has the tendency to disturb a person''s tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

There is nothing immoral in being unable to repay the loans availed of owing to the floundering of business or due to some other unavoidable reason which can enable the bank to infringe the right to privacy of loanees. There is no compelling public interest warranting the publishing of the photographs of the loanees in newspapers in which case only the right to privacy has perhaps to give way. Some of the loanees may even be driven to commit suicide for fear of ignominy on publishing their photographs in newspapers at the instance of the bank and it will remain a permanent taboo for their family. The publishing of the photographs in newspapers for the inability to clear the loan arrears to the bank in time is clearly an affront to the right to live with dignity and honour as well as the right to privacy of the loanees. I have no hesitation to hold that publishing the photographs by the bank under such circumstances is violative of the rights guaranteed to the loanees under Article 21 of the Constitution of India.

6. The bank desperately wants to justify its proposed step of publishing the photographs of loanees in newspapers by relying on the terms and conditions in the loan agreements which however do not advance its case. The relevant clause in the loan agreement entered into by the petitioner in W.P. (C) No. 10864/2013 with the bank is as follows:

13(a). The borrower (s) hereby further agree that as precondition of the loan advances given to me/us by the Bank, that in case of default to repayment of the loan/advance or in the repayment of the interest thereon or any of the agreed installment of the loan on due date/s, the Bank and/or the Reserve Bank of India will have an unqualified right to disclose or publish my/our name (s) as defaulter in such manner and through such medium as the Bank or Reserve Bank of India in their absolute discretion may think fit.

13(b). The borrower/s hereby agree and give consent for disclosure by the Bank all or any (a) information and data relating to the borrower/s (b) information or data relating to any credit facility availed or/to be availed by the borrower/s and default, if any, committed by the borrower/s in discharge of his/her such

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obligations the Bank may deem appropriate and necessary, to disclose and furnish to Credit Information Bureau (India) Ltd. and any other agency authorized in this behalf by R.B.I. Further, the borrower/s declare that the information and data furnished by him/them to the Bank are true and correct and also agree that the Credit Information Bureau (India) Ltd. and any other agency so authorized may use, process the said information and data disclosed by the Bank in the manner as deemed fit by them and further that the Credit Information Bureau (India) Ltd. and any other agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them to Banks/Financial Institutions and other credit grantors or registered users, as may be specified by the Reserve Bank in this behalf.

Similarly the relevant clause in the loan agreement entered into by the petitioner in W.P. (C) No. 17081/2013 with the bank is as follows:

2. Accordingly, I/We, hereby agree and give consent for the disclosure by the State Bank of India Bank of all any such;

(a) Information and data relating to me/us

(b) the information or data relating to any credit facility availed of/to be availed by me/us, and

(c) default, if any, committed by me/us, in discharge of my/our such obligation, as the State Bank of India Bank may deem appropriate and necessary, to disclose and furnish to Credit Information Bureau (India) Ltd. and any other agency authorised in this behalf by R.B.I.

The above clause in the agreements at best empowers the bank to reveal the name of the loanees in the print media or to disclose the information and data relating to credit facility to the Credit Information Companies. The loan agreements no where enable the bank to publish the photographs of the loanees in newspapers on their failure to repay the debt within a specified date as threatened. The loanees are also not estopped from challenging the action of the bank in publishing their photographs in the newspapers even if there is such a permissive clause in the loan agreement. This is because estoppel is not a defence available to the bank when its action is challenged on the ground of violation of the fundamental rights of the loanees a reference in this context to the dictum laid down by the Full Bench of this Court in Dr. Saurabh Jain and Others Vs. State of Kerala and Others, is very much apposite.

7. The High Court of Madras in Mr. K.J. Doraisamy Vs. The Assistant General Manager, State Bank of India, Erode Branch and The Chief Manager (PBD), State Bank of India, Erode Branch (0837), held that the bank is entitled to invent novel methods to recover its dues if the loanees find newer methods to avoid repayment. The High Court of Madhya Pradesh in Ku. Archana Chauhan Vs. State Bank of India, held that publishing the photographs of loanees cannot be said to be an impermissible mode. The High Court of Kolkata in Ujjal Kumar Das and

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Another Vs. State Bank of India and Others, held that publishing the photographs of loanees is not a mode contemplated under the SARFAESI Act. I respectfully disagree with the conclusion of the High Courts of Madras and Madhya Pradesh and prefer to follow the decision of the High Court of Kolkata although for different reasons as stated supra. The practice of exhibiting a photograph of a person and shaming him in public for the sin of being in an impecunious condition cannot be encouraged in a civilised society like ours. A writ of prohibition is therefore issued restraining the bank from publishing the photographs of the petitioners in the leading newspapers for failure to repay the debt within a specified date. This will not however disable the bank from surging ahead with the proceedings already initiated or anew for realisation of its dues from the petitioners in any manner sanctioned by law.

The Writ Petitions are allowed. No costs.

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