

(2003) 07 KAR CK 0117

In the Karnataka High Court

Case No : Writ Petns. No's. 5876 and 6165 of 2001

Vijayendra Shenoy

APPELLANT

Vs

South Canara District Central Co-op. Bank Ltd. and Another

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Citation : AIR 2003 Kar 484 : (2005) 1 BC 74 : (2003) 4 KCCR 216 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : K. Gopal Hegde, for the Appellant; K. Srinivasa Upadhyaya, for No. 1 and I. Taranatha Poojari, for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In these petitions, the petitioner has sought for a declaration, declaring that the seizure of vehicles bearing No. KA-20/9036 and KA-20/C/9036, is illegal and also further sought for a direction, directing the respondents to deliver the vehicle bearing No. KA-20/9036 and KA-20/C/ 9036 to the petitioner forthwith. He has further sought for a direction, directing the respondents to re-schedule the loan by receiving Rs. Two lakhs and to waive the interest for the period during which the vehicles were in illegal custody of the respondent-Bank.

2. It is hot in dispute that the petitioner has obtained loan from the first respondent -- The South Canara District Central Cooperative Bank Ltd. Mangalbre (hereinafter referred to as the "Bank"), for purchasing the two vehicles bearing No. KA-20/9036 and KA-20/C/9036 and hypothecated both the vehicles in favour of the Bank authorities and executed an agreement to that effect. But due to financial constrains, he could not maintain the payment of instalments. When the petitioner defaulted for payment of regular instalment, the Bank has seized the vehicles as per the terms and conditions of the agreement. Feeling aggrieved by the seizure of vehicles, as stated above, and

other relief as stated supra, the petitioner has presented these petitions.

3. It is the case of the learned counsel appearing for the petitioner that as per the sanction order, the petitioner has complied with the hypothecation of the vehicles and furnished the collateral security of the value of Rs. 15 lakhs and also furnished the personal guarantee. Even though the petitioner was in arrears of only two months' instalments, the Bank has; seized the vehicles without any authority of law and therefore, the Bank has taken the law in their Own hands and have kept the vehicles in their custody right from November 2000 till the date of filing the writ petitions. Therefore, he submits that the Bank has violated Articles 14, 19, and 21 of the Constitution of India. Further, he specifically contended that no notice was issued to the petitioner for recalling the loan. Therefore, the statement that petitioner is due in a sum of Rs. 30,50,872/- as mentioned in Annexure H is wholly illegal, unfair and unjust. Further, to substantiate his submission that the Bank cannot proceed against the petitioner without filing a dispute as provided under per the Karnataka Co-operative Societies Act, ("Act" for short), he placed reliance on the judgment of this Court reported in (1991) 1 Kar LJ 41 and contended that this Court has clearly laid down that the proper course for the Bank to proceed is to raise a dispute u/s 70(2) of the Act and not to take action by seizure and sale of the vehicles. He submits that therefore, the said law laid down by the Court is binding on the Bank and the entire proceedings initiated by the Bank in taking the vehicles into its custody is contrary to the well settled law laid down by this Court. Further, he specifically urged that by illegal seizure of the vehicles by the Bank and keeping the same in their custody from 17th November, 2000 till this date, the petitioner has been deprived of his livelihood, which is in violation of Article 21 of the Constitution of India, There fore, the action of the first respondent- Bank is high handed, un authorised, and contrary to the law.

4. Per contra, the learned counsel appearing for the first respondent-Bank, inter alia, contended and justified the seizure Of the vehicles, Further, he is quick to point out that the prayer sought for by the petitioner in the instant writ petitions does not survive for consideration on the ground that after the seizure of the vehicles, the said vehicles have been sold by way of public auction and since the second respondent is the highest bidder, his bid has been accepted and vehicles which were seized have been delivered to him. Therefore, the question of releasing the vehicle as sought for by the petitioner does not arise and hence, the said prayer of the petitioner is liable to be dismissed as having become infructuous. Further, he submitted that the prayer of the petitioner for re-scheduling of the loan by receiving two lakhs and waiving the interest during which the vehicles were in the illegal custody of the Bank also does not arise. He specifically pointed out that ground (c) urged by the petitioner is not sustainable and the said stand taken is a misconceived one. To substantiate his submission, he placed reliance on the judgment of the Division Bench of this Court in the case of Tumkur Town Veerashaiva Co-operative Bank Ltd. Vs. H.C. Shyamala, . He submitted that the reliance placed by the petitioner on the judgment of the

learned single Judge has been reversed by the Division Bench of this Court, the relevant portion of which reads as here-under :--

Therefore, these are all matters governed by contracts, and having recourse to these clauses by way of enforcement of contractual obligation the Bank seizes the vehicle. It is difficult to accept that a dispute ought to have been raised u/s 70 in relation to default. On the contrary, it is the first respondent who should establish that she had fulfilled her contractual obligation."

Therefore, in view of the well settled law laid by the Division Bench of this Court, the said ground urged by the petitioner is not sustainable and it is liable to be set aside. Further he submitted, that the writ petition filed by the petitioner is not maintainable in view of the law laid down by the Division Bench of this Court.

5. I have heard the learned counsel appearing for the petitioner and the first respondent-Bank and perused the entire material available on record. Having heard the learned counsel appearing for the first respondent-Bank, and the grounds urged by the petitioner; as stated supra, I do not find any error of law as such committed by the first respondent-Bank. The only ground urged by the petitioner in the instant writ petitions is that the seizure of vehicles by the first respondent-Bank is illegal and instead of sorting out the dispute as provided u/s 70(2) of the Act, has resorted to seizure of the vehicles in question and the same is contrary to the law laid by the single Judge of this Court in the case of Tumkur Town Veerashaiva Co-operative Bank Ltd. Vs. H.C. Shyamala, . It is not in dispute that the petitioner has executed an agreement with the Bank agreeing for the terms and conditions mentioned therein. When the petitioner has entered into an agreement with the Bank, agreeing for the terms and conditions thereto and when the petitioner has failed to make payment of instalments, as per the clauses in the agreement, the Bank authorities are entitled to seize the vehicle, Once the said terms and conditions have been agreed to and executed, it is not open for him to contend before this Court that seizure is contrary to the well settled law laid down by this Court and that too, placing reliance on the judgment of the learned single Judge which has been subsequently reversed by the Division Bench of this Court. Therefore, the petitioner has neither approached this Court with clean hands nor stated the true facts before the Court. In my considered view, the writ petition filed by the petitioner is a misconceived one, having regard to the well settled law laid down by the Division Bench of this Court.

6. Having regard to the facts and circumstances, as stated above, and taking into consideration the grounds urged by the petitioner and the submission of the learned counsel appearing for the Bank, I do not find any good ground to entertain the writ petitions and consider the prayer sought for by the petitioner in the instant writ petitions. Therefore, interference in the action taken by the first respondent-Bank is uncalled for.

7. For the reasons stated above, the writ petitions filed by the petitioner are

liable to be dismissed. Accordingly, they are dismissed.