(2023) 09 KL CK 0088

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 31803, 34008 Of 2019

V.K.Raghavan Nair APPELLANT

Vs

Secretary, Thenmala Service Co Operative Bank Ltd RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:
Kerala Co-operative Societies Act, 1969 — Section 36A, 68, 69, 70

Citation : (2023) 09 KL CK 0088

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : C.Dinesh, M.Sasindran

Final Decision : Disposed Of

Judgement

T.R. Ravi, J

1. Since the issues involved in these two writ petitions are the same, the writ petitions are heard and disposed of together. The facts are stated with reference to W.P.(C)No.31803 of 2019.

2. The petitioner, his wife, his son-in-law, and his grandson availed a loan of Rs.36,50,000/- in 2010-2011 from the 2nd respondent bank, while the petitioner's daughter was the Secretary of the Bank. The loan was secured by mortgaging the petitioner's property in Re- Sy.Nos.146/15 and 146/16 of Kottakkal Village. The 3rd respondent conducted an inspection in 2013 and found irregularities in the loanissued and in other bank accounts. As directed, the petitioner repaid an amount of Rs.46,60,979/- towards the loan along with interest and other charges, by January 2014. The petitioner approached the bank to get back the title deed of the mortgaged property. Since the bank refused to give the documents, W.P.(C) No.40343 of 2018 was filed. This Court disposed of the writ petition as per Ext.P1 judgment dated 14.03.2019, directing the 3rd respondent to decide on the representation after giving an opportunity to be heard. The 3rd respondent was also directed to either direct the Bank to release

the title deeds or, if his decision is against such release, to record specifically the reasons as to why the documents cannot be directed to be returned. The 3rd respondent issued Ext.P2 order dated 22.06.2019 after hearing both parties and directed the 2nd respondent to release the title deed. When the documents were not returned, the petitioner sent Ext.P3 representation dated 13.07.2019 to the 2nd respondent, forwarding a copy to the 1st and 3rd respondents. This was followed by Ext.P4 representation dated 6.8.2019. The petitioner has filed this writ petition complaining that the title deed has been withheld for the past 6 years, and the 3rd respondent is also not addressing the issue.

3. The 2nd respondent has filed a counter affidavit stating that the petitioner is a loanee and surety to various loans taken from the 2nd respondent bank. It is contended that the dispute between the bank and its members must be resolved by recourse to Sections 69 and 70 of the Kerala Co-operative Societies Act,1969 (KCS Act for short). It is stated that the loan was availed while the petitioner’s daughter Smt.Ratnakumari was the Secretary of the bank, who had, during her tenure, committed various misappropriations and irregularities, including the sanctioning of various loans to the petitioner and her relatives. It is further stated that disciplinary proceedings were initiated, which resulted in the dismissal of Smt.Ratnakumari from the service. It is submitted that the property having an extent of 7.3 cents in R.S.No.146/15, 16 in Kottakkal Village in Malappuram has been mortgaged as security as per Ext.R2(a) 'Gahan' registered as No.G.77/2011 dated 28.02.2011 and the Bank has charge over the property. It is submitted that only after all the loans secured by the property are paid up is the bank liable to return the title deed. It is stated that considering the actual interest payable on the loan account, the amount already remitted by the petitioner was kept in a suspense account, and since the entire amount has not been paid, the loan is not yet closed. It is further submitted that Ext.P2 order issued by the 3rd respondent is not legally sustainable for two reasons. The first reason stated is that the 3rd respondent could not have directed the 2nd respondent to accept the money remitted by the petitioner and close the loan account, when the amount remitted is not the entire dues. The second reason is that the property is mortgaged as security for other loans as well. The Bank has challenged Ext.P2 order in W.P.(C)No.34008 of 2009 which is being disposed of along with this writ petition.

4. The petitioner has filed a reply affidavit. The petitioner disputes the statement in the counter affidavit that 8 loans were sanctioned on the security of Ext.P1 'Gahan'. It is stated that in the counter filed by the 2nd respondent on 28.02.2021, details of 7 loans alone are stated. Extracting the details of the loans known to him in the reply affidavit, he submits that the rest of the details contained in the counter affidavit are not true. It is submitted that the contention raised in the counter affidavit regarding the interest rate is not true as can be seen from Ext.R3(n) Circular produced by the petitioner in his counter affidavit in W.P.(C) No.34008/2019, which shows that interest rate for loan transaction during the period is 13%. It is contended that the Bank has raised totally

different contentions in the counter affidavit in W.P.(C) No.34008/2019 and the earlier W.P.(C).No.40343 of 2018 and that a false affidavit has been filed to wreak vengeance on the petitioner’s daughter who was the former Secretary. The pleadings of the parties in W.P.(c)No.34008 of 2019 are similar and are not being repeated.

5. The Joint Registrar who is the 2nd respondent in W.P. (C)No.34008 of 2019 has filed a counter affidavit. It is stated that on an inspection conducted in 2003 at the society, while the 4th respondent was its Secretary, some irregularities in the issuance of loans and misutilisation of bank funds were noted. It is stated that the former Secretary and the Managing Committee of the two consecutive terms were charged under Section 68 of the KCS Act, that surcharge procedures are underway, and that disciplinary action was initiated against the 4th respondent, resulting in her dismissal.

6. According to the 2nd respondent, Section 36A of the Act says about the creation of 'Gahan' and is silent as to whether loans disbursed to other persons shall be charged against the 'Gahan' already created with the Society. It is stated that the non-payment of other loans was not a bar to release the document mortgaged. It is further submitted that Ext.P5 order was issued complying with Ext.P4 judgment after hearing the parties and being convinced that the Society is unnecessarily withholding the title deed even after the amount due to the Society is remitted. It is stated that Ext.P1 was created in the 3rd respondent’s name, and no other parties were included in its execution. It is stated that the age of the 3rd respondent was also considered while passing the order and that the respondent had not considered other loans pending in the name of relatives of the 3rd respondent.

7. The Bank has filed a reply to the counter affidavit filed by the 2nd respondent reiterating that the Society has charge over the property until the dues are remitted.

8. Heard Sri M.Sasindran, counsel for the petitioner in W.P. (C)No.34008 of 2019, Sri C.Dinesh, counsel for the petitioner in W.P. (C)No.31803 of 2019 and Smt.Mable C.Kurian, learned Senior Government Pleader.

9. The question is whether the 2nd respondent Bank can be directed to return the title deed of the properties belonging to the petitioner. The petitioner had approached this Court earlier in W.P. (C)No.40343 of 2018, which was disposed of as per Ext.P1 judgment directing the Joint Registrar to take up the representation submitted by the petitioner and decide on it after hearing the parties and to pass an order either directing the release of the title documents to the petitioner or if the decision is to the contrary, to record specifically therein as to why it cannot be done. Pursuant to Ext.P1, the Joint Registrar issued Ext.P2 order directing the Bank to accept the amount paid by the petitioner, close the loan account, and return the title deeds. It is stated in the order that the petitioner had paid the amounts required for closing the loan account on

29.01.2014. It is also stated that the petitioner was not party to the irregularities committed by his daughter and hence his document cannot be retained by the Bank. According to the petitioner, despite directions issued by the Joint Registrar, the Bank is not returning the document. According to the Bank, Ext.P2 order is not legally sustainable. The order has been challenged in W.P(C)No.34008 of 2019. The submission of the Bank is that the loans have been availed of as borrower as well as surety, and the same property is mortgaged as security for several loans. It is hence submitted that unless and until all the loan accounts are cleared, the Bank is not bound to return the document. It is also submitted that there is a dispute regarding interest that is payable, and such a dispute can be decided only in a proceeding under Section 69 of the Kerala Co-operative Societies Act and not in a writ petition.

10. Having gone through the documents produced and the pleadings in the case and having heard the counsel on either side, it is evident that there is a serious dispute regarding the amounts that are due from the petitioner and also on the question whether there are other loans pending to be repaid in which the property of the petitioner has been mortgaged. Even though there is a vague sentence in the counter affidavit filed by the 2nd respondent in W.P.(C)No.34008 of 2019 that the petitioner is not a party to the other transactions and that the other loanees have not joined in the 'Gahan' executed, the Joint Registrar has also stated that he has not considered the other loan accounts. It can be seen from the documents produced along with W.P.(C)No.34008 of 2019 that the applications submitted by the other loanees refer to 'Gahan' No.77/2011 executed by the petitioner.

11. I do not think that such disputed facts can be gone into and decided in a writ petition. Ext.P2 order in W.P.(C)No.31803 of 2019 which is produced as Ext.P5 in W.P.(C)No.34008 of 2019 cannot be sustained, since the Joint Registrar has directed the Bank to return the documents even without considering whether there are other loans which have been granted on the security of the same 'Gahan' or without considering whether there are other loans in which the petitioner is a loanee/surety.

12. In the above circumstances, W.P.(C)No.34008 of 2019 is allowed. Ext.P5 produced herein, which is Ext.P2 in W.P.(C)No.31803 of 2019, is quashed.

13. The petitioner in W.P.(C)No.31803 of 2019 may avail of the statutory remedy under Section 69 of the Kerala Co-operative Societies Act for the determination of the questions narrated above. It is open to the petitioner in W.P.(C)No.31803 of 2019 to pay off the amounts that are due according to the bank under protest and obtain return of the document, pending consideration of any dispute that he may raise under Section 69 of the Act regarding the actual amount that would be due. If it is found at a later point in time that the amount paid by the petitioner for the release of the document is more than what is actually due, the same shall be returned to the petitioner with interest at the same rate that the Bank was charging on the loan account. The writ petition is disposed of as above.