

(2007) 02 KL CK 0050

High Court Of Kerala

Case No: W.A. No. 1237 of 2005

Syndicate Bank

APPELLANT

Vs

S.S. Sheriff and Others

RESPONDENT

Date of Decision: Feb. 9, 2007

Acts Referred:

- State Financial Corporations Act, 1951 - Section 29, 31

Citation: AIR 2007 Ker 189

Hon'ble Judges: V.K. Bali, C.J; M. Ramachandran, J

Bench: Division Bench

Advocate: R.S. Kalkura, for the Appellant; K.C. Charles, (for No. 1) and M.R. Sabu, Sr. Govt. Pleader (for Nos. 2 to 4), for the Respondent

Final Decision: Dismissed

Judgement

M. Ramachandran, J.

A public sector bank has come up in appeal feeling aggrieved about the judgment dated 7-1-2005 rendered in O.P. No. 5184 of 2001. The bank was the 4th respondent therein, and had advanced a loan to the petitioner in the Original Petition (1st respondent herein), When the repayment was not forthcoming, they had filed a suit and obtained a decree on 20-5-1989. E.P. No. 95 of 1991 thereafter had been filed and it is pending before the Sub-Court, Kottarakkara. Revenue recovery proceedings were initiated against the petitioner thereafter. A copy of the notice issued in the year 2001 shows the amount of arrears as Rs. 3,44,021/-, which is produced as Ext. P2.

2. Such proceedings had been subjected to challenge by the petitioner, contending that after obtaining a decree it was impermissible to proceed with fresh steps of revenue recovery. It was also urged that the bank loan was time barred to be recovered under the Revenue Recovery Act and therefore the proceedings were to be interdicted.

3. Adverting to the judgment in *State Bank of India v. Kuttappan* 1998 (2) KLT 130, the learned single Judge held that recovery of amounts under the Revenue Recovery Act would be permissible as the words "on account of loan advanced" would take in the amount due under the decree obtained on the basis of that loan. Therefore, there was no question of limitation. However, the learned Judge relying on the judgment in [Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another](#), held that since a decree had been obtained, it would have been incompetent for the Bank to proceed simultaneously with Revenue Recovery proceedings. It was suggested that it would be open to the Bank either to withdraw the Execution Petition under the Revenue Recovery Act or to give up the revenue recovery proceedings until the execution proceedings are terminated. This, the appellant submits, laid the Bank in deep trouble, and an interpretation of the provisions do not justify the dictum.

4. Mr. R.S. Kalkura, appearing on behalf of the appellant-Bank submits that in Kuttappan's case (cited supra), the same issue had come up for consideration and the learned Judge at that time had also noticed the presence of the Supreme Court judgment in *Andhra Pradesh State Financial Corporation's* case, but was of the view that since the point is covered by a Full Bench decision of this Court in *Kerala Fisheries Corporation v. P.S. John* 1996 (1) KLT 814, the objection made on such lines would not have been sustainable. According to him, the learned Judge erred in sidelining the decision of the Kerala High Court and had sought to rely on a Supreme Court judgment, which dealt with an altogether different legal proposition.

5. Mr. Kalkura submits that the Supreme Court was examining an issue concerning the State Financial Corporations Act, and specifically advertence was made to Sections 29 and 31 of the said Act. Analysing Section 29 of the Act, the Supreme Court had held that it spoke about the Corporation's right to take over the management or possession of a defaulting industrial concern. Section 31 of the Act authorised Corporations to apply to the District Judge for sale of the property pledged or mortgaged with them and for applying for interim injunctions restraining the industrial concern from transferring or removing its machinery. The Court was also examining the scope and impact of the expression "without prejudice", as appeared in Section 31 of the Act, and had indicated that the reach and scope of the two remedies were essentially different. Counsel submits that it is not the case here, as the defaulter was a decree debtor. The decree required to be executed in a time frame given. No funds were forthcoming and for efficacious recoveries there could not have been any bar for resorting to the remedies provided under the Revenue Recovery Act. He had highlighted the observations made in Kuttappan's case that the Revenue Recovery Act enables recovery of amounts in public interest. The intention obviously was to quicken the process of recovery, so that amounts will be available to the Bank for grant of fresh loans to the needy. Therefore, it was not possible to hold that the two remedies were mutually exclusive. There was no detriment, he submits, or scope for objection as available to

a judgment-debtor to contend that the financing institution should adopt soft methods, and there is bar against them in proceeding against him in the most efficient manner. It is contended that after recovery by one method, automatically the other steps will be withdrawn, as the situation may demand.

6. We find considerable merit in the arguments as above. Of course, learned Counsel appearing for the respondents submits that there is clear detriment and the two methods of recovery simultaneously engineered are mutually exclusive. However, we fail to find any substance in the submissions. This cannot be considered as a contingency found by the Supreme Court while examining the scope and impact of Sections 29 and 31 of the State Financial Corporations Act.

7. Mr. Kalkura also referred to a recent judgment of the Supreme Court rendered on 29-11-2006 [Transcore Vs. Union of India \(UOI\) and Another](#), and connected cases), The issue had been examined in detail and it had been observed that the position was not to be understood that while electing procedure prescribed by Section 31 of the Act, the rights u/s 29 of the Act stand extinguished. More importantly, it had also been specifically observed that when proceedings were independently taken as permissible under two separate enactments (DRT Act and NPA Act), the shackles referred to in [Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another](#), may not have relevance. This, according to us, is a complete answer of the issue agitated. The proceedings for execution of a decree, and the proceedings initiated under the Revenue Recovery Act are independent of each other in scope and purport, and con-textually issue of prejudice is irrelevant, as the obvious attempt is to keep off the evil days to the maximum extent. Therefore, discretion of the Court cannot be exercised in favour of the petitioner in the writ petition, and we should not be oblivious of the plight, of a decree holder/financier.

8. Consequently, the judgment of the learned single Judge is set aside. The Original Petition will stand dismissed. No order as to costs.