M/s. Machaan Industries and Others Vs Authorised Officer and Others

Court: High Court Of Kerala

Date of Decision: Feb. 18, 2013

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: AIR 2013 Ker 97

Hon'ble Judges: Manjula Chellur, C.J; K. Vinod Chandran, J

Bench: Division Bench

Advocate: Harish Gopinath and Gens George Elavinamannil, for the Appellant; P.B. Suresh Kumar and Leo George, for the Respondent

Final Decision: Dismissed

Judgement

K. Vinod Chandran, J.
The appellant was before the learned single Judge, challenging the proceedings taken by the respondents under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (""SARFAESI Act"" for short) for recovery of

amounts advanced to the appellant industry. The appellant was a partnership firm, which availed of Rs. 1 Crore as Open Cash Credit loan and Rs.

1.24 Crores as Term Loan for setting up a Small Scale Industrial Unit (for short ""SSI Unit"") in the year 2009. It is averred that since there was

some delay in getting the statutory licences for the new unit, the commercial production too got delayed. It is the contention that though ultimately

commercial production was commenced in December 2010, in the very same month due to a natural calamity there was flooding of the appellant

unit, causing wide-spread damage to the raw materials and machineries. The insurance claims were settled for Rs. 17.48 lakhs and the same

appropriated towards the overdue amounts in the loan account. The appellant"s major grievance is with respect to the non-consideration of the

appellant"s industry for rehabilitation, as being affected by natural calamities, as per Exhibits P1 and P12 issued by the Reserve Bank of India. The

learned single Judge found that since the respondent-Bank denied the eligibility of the appellant to be considered under the Rehabilitation Scheme,

the extraordinary jurisdiction under Article 226 cannot be exercised.

2. We notice that Exhibits P1 and P12 are guidelines for relief measures by Banks in areas affected by natural calamities, issued by the Reserve

Bank of India. Guidelines, as is trite, does not confer any vested right and can only be broad norms under which the reliefs are considered with

reference to eligibility of a borrower as also viability of the unit. Exhibit P1 provides that primary consideration before the Banks in extending credit

for a SSI Unit should be the viability of the venture after the rehabilitation programme is implemented. Exhibit P12 is a Master Circular, again

issued by the Reserve Bank of India laying down prudential norms on income recognition, asset classification and provisioning pertaining to

advances. The said Circular, by paragraph 11.1.4 emphasizes that ""no account will be taken up for restructuring by the banks unless the financial

viability is established and there is a reasonable certainty of repayment from the borrower"". The photographs produced do reveal that there was a

flooding in the locality; which adversely affected the appellant''s unit. However, it is alleged that the Insurance Company assessed the damage

caused at more than Rs. 68 lakhs and the appellant was forced to settle it for a paltry sum of Rs. 17.48 lakhs. But for the mere assertion, there is

nothing on record to show that it was on pressurizing from the part of the Bank that resulted in such a paltry settlement being arrived at. Again it is

very evident that the unit, which was started as a partnership unit, from its very inception, was troubled by internecine disputes between the

partners. That also gave rise to litigations which, admittedly, had concluded in a settlement; the terms of which are yet to be satisfied by the

appellant herein. We also find from Annexure A1 letter produced in the appeal that the original holiday for interest granted was extended for a

further period of six months on the death of one of the partners. Apparently many discussions were held to regularize the loan account and at one

stage the appellant had even attempted to get the loan taken over by the Kerala Financial Corporation. None of these materialized and there was

absolutely no concrete proposal for remitting the overdue amounts and regularizing the account, again due to dispute between the partners. It was

in these circumstances that the Bank initiated proceedings under the SARFAESI Act for recovery of amounts due to it. Applying broad principles

as stated in Exhibits P1 and P12, we are not convinced that the question whether the appellant would fall within the parameters of being a

financially viable unit is a question which can be gone into under Article 226 of the Constitution of India. We are unable to find any good ground to

interfere with the steps taken by a public sector Bank to recover the amounts due to it and we are afraid that the learned single Judge was perfectly

right in refusing to exercise the extraordinary jurisdiction under Article 226 of the Constitution. In the above circumstances, the Writ Appeal is

dismissed, however, directing the parties to suffer their respective costs.