Tumkur Town Veerashiva Co-operative Bank Ltd. Vs H.C.Shyamala and others

None

Court: Bombay High Court

Date of Decision: July 3, 1989

Acts Referred:
Contract Act, 1872 â€" Section 176

Citation: (1991) 70 CompCas 850

Hon'ble Judges: M.P. Chandrakantaraj, J

Bench: Single Bench

Advocate: A.Y.N. Gupta, for the Appellant; M.S. Subbarayappa, for the Respondent

Judgement

M.P. Chandrakanthara J. Urs J.

1. The petitioner is the Tumkur Town Veerashiva Co-operative Bank Limited. As the name itself indicates, it is a co-operative institution duly

registered in accordance with the provisions of the Karnataka Co-operative Societies Act. It is aggrieved by the order of the Karnataka Appellate

Tribunal dated May 23, 1984, made in appeal No. 317 of 1983. It has challenged the legality and correctness of that order in this writ petition

under articles 226 and 227 of the Constitution.

2. The facts leading to the writ petition may be stated briefly and they are as follows :

One H. C. Shyamala, respondent No. 1 in this proceeding, borrowed a sum of Rs. 1,45,000 from the petitioner/co-operative bank to enable her

to purchase a motor vehicle as evidence by annexure "A", "B" and "C" under an agreement of hypothecation between the said first respondent,

Shyamala, and the petitioner bank. The stage-carriage vehicle bearing No. MYT 5292 (annexure B) was hypothecated to the bank as security for

the repayment of the loan along with an on-demand pronote for a like sum, i.e., Rs. 1,45,000. It appears, thereafter, there was default in the matter

of repayment of the loan by installments. The petitioner/bank issued several notice informing of the consequence of the default. The first respondent

did not pay any heed to them as a result of which the petitioner/bank seized the vehicle and sold it in public auction after giving public notice of sale

to the first respondent as well as the general public. Soon thereafter, the first respondent who was a member of the petitioner/co-operative bank

raised a dispute u/s 70 of the Karnataka co-operative societies Act, 1959, complaining of the illegality in the conduct of the bank in regard to

realisation of the amounts due. The matter was referred for adjudication of the dispute to the Assistant Registrar of Co- operative Societies,

Tumkur, who, by his order dated April 18, 1983 in Dispute No. 37 of 82-83 upheld the contention of the bank in terms of section 176 of the

Contract Act read with clause 5 and clause 10 of the agreement of hypothecation as at annexure ''A'' to the petition that the bank had a right to

seize the vehicle sell same and realise its loan and, therefore, it had done nothing wrong. Aggrieved by that order of the second respondent, the

Assistant Registrar of Co-operative Societies, the first respondent, preferred an appeal before the Karnataka Appellate Tribunal which upheld her

contention that, without first raising a dispute in regard to the default in repayment of the loan resulting in a claim by the bank against its member,

the bank could not have seized the vehicle and sold it and, therefore, the Tribunal reversed and set aside the order of the Assistant Registrar and

remanded the matter for disposal of the dispute itself afresh in the light of the observations made by it in the dispute itself afresh in the light of the

observations made by it in the course of its judgment. Therefore, the present writ petition.

3. In this court also, the contention of the petitioner is not different from what it was before the arbitrator as well as the Revenue Appellate Tribunal

and that contention is founded on section 176 of the Contract Act read with clauses 5 and 10 of the hypothecation agreement as at annexure ''A''

to the writ petition. The contention in summary is thus : That the first respondent voluntarily gave possession of the vehicle in favour of the bank in

terms of clause 5 of the hypothecation agreement and, thereafter, it was returned to the first respondent to hold the same and operate the vehicle as

a stage carriage as an agent of the bank and, therefore, on default of the repayment of installments as scheduled, the bank had the right to recover

possession which, by seizing the vehicle as a pledged article and further it had the right to dispose of the same to realise the money that it had

advanced as a loan to the first respondent. The question, therefore, is :

(i) Whether when there is a breach of agreement, any one of the parties to the agreement may take the law into his/her/its own hands and find a

remedy itself without recourse to any procedure provided in any law ?

(ii) Whether, in a given instance like the present one, a member of a co-operative institution may be subject to enforcement of recovery from the

first respondent of the loan advanced notwithstanding the fact that payment of dues to the co-operative society/ bank is a matter, recovery of

which is provided for u/s 70 of the Co-operative Societies Act, by way of dispute in the specified manner, thereby excluding any other method

available to a co-operative institution?

4. So far as the first question is concerned, there may not be any difficulty in answering the same in favour of the petitioner. No party to a contract

may take the law into his own or her own or its own hands to enforce obedience of the terms of the contract. This principle is clearly settled by the

decision of the supreme Court in the case State of Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli, . The facts of the said case were as

follows:

The rice mill had undertaken to supply certain of rice to the Government at an agreed price and in that behalf entered into a contract. The

agreement provided for recovery of damages caused to the Government if there was any breach of the terms of the agreement as if the damages

were arrears of land revenue. Accordingly, as the rice mill in question did not supply the quantity of rice within the time stipulated, the State

Government assessed the damages itself and initiated recovery proceedings under the provisions of the Revenue Recovery Act. That recovery was

challenged ultimately ending before the Full Bench of this High Court which held that a party of the contract cannot unilaterally quantity the

damages and recover the same when such damage was disputed by the other party to the contract. In the appeal before the Supreme Court in so

far as that aspect was concerned, the view of the Full Bench of this court came to be affirmed.

5. Therefore, as earlier noticed, in clause 5 of the agreement, there was only a constructive delivery of possession of the vehicle to the coo-

operative bank. The vehicle, however, in fact, was retained by the pledgor, i.e., the first respondent. The argument, therefore, for the petitioner is

that, in terms of the contract, possession being deemed to have been with the bank, it had the right to seize and sell the same. That argument is an

argument in self-contradiction. If it was deemed to be in its possession, then there would be no reason for seizing it from the first respondent and

thereafter bringing it to sale. Therefore, by its own conduct, it has established that only constructive possession passed and actual possession

continued to be with the first respondent. In that position, seizure was definitely illegal and this court should not countenance such seizure as a valid

seizure without having recourse to appropriate remedies provided in law in that behalf. The law is well-settled that the pledgee may sell what is in

his possession to realise the loan advanced against the pledge which presupposes exclusive possession of the pledged article with the pledgee. If

the pledgee does not have physical control of the pledged article, he cannot claim to sell it after obtaining possession from the pledgor who has

retained actual possession of the thing pledged. This law is founded on the well-recognised principle that the pledgee cannot ask for both the

repayment of the loan as well as possession of the article pledged. He is only entitled to one of the two and not both.

6. This apart, as formulated in the second question, it is not in dispute that the first respondent is a member of the petitioner-co-operative bank

Section 70 of the Co-operative Societies Act really provides in sub-section (2)(a) that a claim by the society for any debt or claim of demand to it

from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not, shall form

the subject-matter of a dispute. Therefore, the attempt made by learned counsel to distinguish the decision of the Supreme Court in State of

Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli, has no meaning for he quantum of damages was disputed. That would not, in my

opinion, make any difference having regard to the specific provision made in law that a member may be proceeded against by the bank only in the

manner provided in the Act which governs the relationship between the member and the bank which is a co- operative institution registered under

the Act.

7. Therefore, the Tribunal has correctly come to the conclusion, though not for the same reason, that the very seizure and the sale should have been

the subject-matter of dispute and the bank could not have been permitted to treat the hypothecation agreement as at annexure-A to be an award in

its favour merely because there was breach in the repayment of the installments. Like all agreements which result in breach of its terms the amount

due in terms of money from one party to the other whether it be amount due in terms of money from one party to the other whether it be by way of

damages or otherwise must be enforced by procedure known to law, and not by the party itself, which has been the case in the case of the

petitioner.

8. Therefore, the order of the Tribunal does not call for interference. Both the questions formulated above are answered in favour of the first

respondent.

9. The petition is dismissed with costs. Advocate"s fee Rs.250.