IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 7618 of 2009 (V)

PETITIONER(S):
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1. V.GOVINDAN NAIR, VAYALERI HOUSE,
   ULLIYERI.PO, KOZHIKODE DISTRICT.

2. PUTHUKKUDI SHEELA, PALLIYIL HOUSE,
   ORAVIL.PO, NADAVANNUR, KOZHIKODE DISTRICT.

BY ADVS.SRI.P.K.SURESH KUMAR
SMT.P.JAYALAKSHMI

RESPONDENT(S):
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1. THE GENERAL MANAGER, KOZHIKODE DISTRICT
   CO-OPERATIVE BANK LTD, KOZHIKODE.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, KOZHIKODE.

3. KERALA CO-OPERATIVE TRIBUNAL,
   THIRUVANANTHAPURAM.

R1 BY ADV. SRI.R. SUDHISH, SC.
R2 & 3 BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 7618 of 2009 (V)

APPENDIX

PETITIONERS' EXHIBITS

P1: **COPY OF AWARD DATED 30/10/2002 IN ARC NO.130/97 PASSED BY THE R2**

P2: **COPY OF APPEAL NO.129/2002 DATED 27/12/2002 FILED BY THE PETITIONERS BEFORE THE R3**

P3: **COPY OF JUDGMENT DATED 30/8/2003 IN AP.1292002 PASSED BY THE R3**

P4: **COPY OF REVIEW PETITION NO.9/2004 DATED 18/2/2004 FILED BY THE PETITIONERS BEFORE THE R3**

P5: **COPY OF ORDER DATED 31/3/2008 IN REVIEW PETITION NO.9/2004 PASSED BY THE R3**

P6: **COPY OF NOTICE DATED 20/2/2009 ISSUED BY KOZHIKODE DISTRICT CO-OPERATIVE BANK LIMITED**

P7: **COPY OF WRITTEN STATEMENT DATED 26/11/2001 IN ARC NO.130/1997 FILED BY THE PETITIONERS BEFORE THE ARBITRATOR**

RESPONDENTS' EXHIBITS

R1(A): **COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEED SIGNED BY THE 1ST PETITIONER**

R1(B): **COPY OF THE MEMORANDUM F DEPOSIT OF TITLE DEED SIGNED BY THE 2ND PETITIONER**

R1(C): **COPY OF THE CIRCULAR NO.C.B(1)725/2006 DATED 30/11/2006 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES THIRUVANANTHAPURAM.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

C.K.ABDUL REHIM, J.

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W.P.(C). No.7618 OF 2009

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Dated this the 11th day of February, 2015

JUDGMENT

The petitioners are challenging Ext.P1 Award passed by the 2nd respondent in an arbitration case filed by the 1st respondent, which was confirmed in Ext.P3 judgment of the 3rd respondent Tribunal and further in Ext.P5 order passed by the said Tribunal dismissing a review petition filed by the petitioners. The arbitration case was filed before the 2nd respondent by the 1st respondent seeking realisation of an amount of Rs.4,53,255/- along with interest due from 1.2.1997 onwards, on the principal amount of Rs.3,00,000/- at the rate of 24%. The amount was sought to be realised based on an allegation that the petitioners, after availing cash/credit facility from the 1st respondent's Bank, had defaulted payment. Before the 2nd respondent the petitioners have mainly disputed the demand for interest and also disputed the mortgage of the immovable property as security. The contentions were negatived and Ext.P1 Award was passed permitting realisation of the amount as mentioned above. In the appeal filed before the 3rd respondent Tribunal, contention was raised that the principal amount is not Rs.3,00,000/- but only Rs.2,75,000/- and that the agreed rate of interest was only 18%. But the Tribunal found that the principal amount Awarded under the mortgaged document was Rs.3,00,000/- and the transaction being commercial in nature, the petitioners are liable to pay penal interest. However, the rate of interest was re-fixed as 18% per annum and the Award was modified to that extent. The petitioners again filed a review petition before the 3rd respondent Tribunal contending that the 1st respondent was not competent to create an equitable mortgage by taking custody of the title deed. It was further contended that the claim in question is barred by limitation since the suit was filed after three years of execution of the promissory note. But finding that those contentions were not raised in the appeal, the 3rd respondent found that there exists no error apparent on the face of the record which warranting interference in a review petition.

2. Learned counsel for the petitioner contended that, the arbitration petition itself was not maintainable because it was filed by the 1st respondent not in his capacity as representing the Bank. According to Section 69 of the Co-operative Societies' Act only a dispute between a society and a creditor is maintainable before the Arbitrator. Drawing attention to cause title of Ext.P1 Award, it is pointed out that the petition was filed by the 'General Manager, District Co-operative Bank, Kozhikode'. But nothing is mentioned to the effect that the General Manager had filed the petition for and on behalf of the Bank in question, is the contention. It is argued that mearly because the bye-law of the Bank authorises the General Manager to sue on behalf of the Bank, it cannot be contended that the General Manager can institute the suit in his personal capacity.

3. It is to be noticed that the petitioner had never taken any contention either before the Arbitrator or before the Tribunal with respect to locus standi of the 1st respondent. From the petition it is evident that the arbitration case was filed for realisation of the amounts alleged to have been defaulted by the petitioners in the cash/credit facility availed from the Bank. Therefore it cannot be contended that the arbitration case was filed by the 1st respondent in his personal capacity for realisation of any amount personally due to him from the petitioners. It is conceded by learned counsel that strict rules regarding pleadings and practice as provided in the Code of Civil Procedure or the Civil Rules of Practice is not applicable with respect to proceedings under Section 69 of the Act. Hence the alleged technicality, in styling the petitioner in the cause title portion, cannot be countenanced for nullifying the Award.

4. Another contention raised is that the loan in question was availed from the Quilandy Branch of the

District Co-operative Bank. Hence the society coming within the purview of Section 69 is not the District Co-operative Bank, but its only the Quilandy Branch. The objection filed by the petitioners before the 1st respondent is produced as Ex.P7. It is evident that the petitioners have conceded the availing of loan to the tune of Rs.2,75,000/- from the District Co-operative Bank. It is further evident from Ext.P1 that the 1st petitioner was examined as a witness before the Arbitrator. No contention was seen raised at any point of time refuting that the loan in question was not availed from the District Co-operative Bank. The 2nd respondent had arrived at a conclusion that, there is evidence to the effect that the 2nd respondent, who is the guarantor, had created an equitable mortgage by signing necessary documents at the Head Office of the District Co-Operative Bank. Even in the appeal or in the review petition the petitioners have not raised any contention as above. Hence, this court is constrained to observe that such a contention is taken for the first time in this writ petition, in a totally frivolous manner.

5. Lastly, the petitioner had raised the question of limitation. It is pointed out that the review petition was not entertained only on the basis that such a contention was not raised before the Arbitrator and in the appeal. Learned counsel contended that this court exercising power under Article 226 of the Constitution of India is competent to look into such a contention, being one coming within the purview of legality and maintainability of the claim. It is trait law that, proceedings under Section 69 of the Co-operative Societies Act is not a suit to which provisions of the limitation Act is applicable. Learned Counsel appearing for the 1st respondent had placed reliance in this regard on the decisions of this court in Thilakan v Mankai Coir Vyavasaya Co-operative Society Ltd. [1978 KLT 256] and in Kavi Rajan v Co-operative Tribunal [1989 (2) KLT 895].

6. When the statute provides effective remedy for resolution of dispute and when a further remedy of appeal is provided from the Award of the Arbitrator, judicial review

with respect to the decisions of such authorities are limited purely on legal aspects and sustainability of orders passed by the said authority on such legal aspects. The petitioners are raising so many contentions which are not at all agitated before the statutory authorities and which according to this court are totally frivolous and not sustainable. It is evident that the petitioners were successful in preventing the respondent Bank from realising the amounts, which were availed as cash/credit facility, in the year 1994, for a period of more than 20 years. The attitude of the petitioners seems to be highly frivolous and contumacious, which can only be termed as methods to avoid payment of amounts legally due to the Bank by any means of crook.

7. Under such circumstances the writ petition is absolutely without any merits and the same is hereby dismissed.

Sd/-
C.K.ABDUL REHIM, JUDGE

SKV