

* HON'BLE SRI JUSTICE CHALLA KODANDA RAM

—
+ WRIT PETITION Nos. 16778; 16980; 16940; 16463; 16244 OF 2011

% 3rd December, 2015

W.P.No.16778 of 2011

Sree Mahayogi Lakshamma Bank Ltd.,
rep. by Gattu Murali Kumar, S/o Late
G.A.Setti, Aged: 49 Years, Chief
Executive Officer, Adoni, Kurnool District.

... Petitioner...

AND

\$ The Deputy Registrar / Divisional
Cooperative Officer, Sriramnagar Colony,
near Arts and Science College, Adoni,
Kurnool District and 3 others.

... Respondents...

! Counsel for the Petitioner

: Dr.P.b. Vijaya Kumar

^ Counsel for the 1st and 2nd respondents: Learned Government
Pleader for
Cooperation.

^ Counsel for the 3rd and 4th respondents: Sri V. Hari Haran and
Ramakrishna

< Gist:

> Head Note:

? Cases referred:
2015 (4) ALD 270 (DB)

HON'BLE SRI JUSTICE CHALLA KODANDA RAM
W.P. Nos.16778; 16980; 16940; 16463; 16244 OF 2011

COMMON ORDER:

Since the parties and the issues involved in all these writ petitions are one and the same, they are being disposed of by this Common Order.

In all these writ petitions the petitioner is a Bank, which is operating under A.P. Mutually Aided Cooperative Society Act, 1995 (in short "the APMACS Act") and the respondents 3 and 4 are the borrowers, who had suffered an order with respect to their borrowings.

The brief facts as set out in the affidavit are the petitioner-Bank approached the A.P. Cooperative Tribunal, Warangal Camp Court at Hyderabad (in short "the Tribunal") by filing O.P.Nos.957; 959; 960; 961 of 2001 and 26 of 2002 for recovery of amounts lent to 3rd and 4th respondents and they resulted in Compromise Award dated 19.07.2006; and when the decree is made over by the Tribunal to the Divisional Cooperative Officer, Adoni, Kurnool District for execution, basing on the same, the Sale Officer / Assistant Registrar (Credit), Adoni, Kurnool District issued notices of attachment dated 12.03.2010 under Section 70 of A.P. Co-operative Societies Act, 1964 (in short "the APCS Act") in E.P.Nos.7, 8, 9 and 10 and 6 of 2009 respectively, which are the subject matters of CTA Nos.19, 18, 16, 15 and 17 of 2010 respectively before the Tribunal. The Tribunal allowed the appeals by an order dated 28.01.2011 and set aside the notice of attachment dated 12.03.2010 on the ground that it was issued by the Sales Officer/Assistant Registrar, but not by the District Cooperative Officer, to whom the powers of the Registrar under the APMACS Act have been delegated and to whom the matter

was referred to by the Tribunal. The Tribunal also at penultimate para of its order directed the 3rd respondent therein to proceed against the immovable properties mortgaged by the appellant therein as per the provisions and procedures laid down in the concerned Acts and Rules. Further, the petitioner had filed the present W.P.Nos.16980, 16244, 16263, 16778 and 16940 of 2011 against the orders dated 28.01.2011 in C.T.A.Nos.19, 18, 16, 15 and 17 of 2010 respectively, contending inter-alia the following grounds:

- 1) The appeal under Section 76 of the APCS Act is not available against the execution process initiated by the Tribunal under APMACS Act for execution of its decrees passed in its original jurisdiction under Section 37 of APMACS Act, as such the order is a nullity, being without jurisdiction.
- 2) The delegation of powers under Section 4 (6) of APMACS Act authorising the District Cooperative Officer is nothing to do with the power under Section 36 of APMACS Act r/w 70 (2)(c) of APCS Act, since the Tribunal may authorise any person to execute the decree.
- 3) The ultimate direction of the Tribunal is only the immovable properties mortgaged by the appellant should only be proceeded as per the provisions and procedures laid down in the concerned Acts and Rules, is illegal and beyond the terms of the Compromise Decree. The Court cannot travel beyond the Decree and that too when they are not mortgage decrees but personal decrees based on compromise.

Though counter affidavit has been filed on behalf of the

respondents 1 and 2, no counter affidavits were filed on behalf of the respondents 3 and 4.

Heard Dr. P.B. Vijaykumar, learned counsel appearing on behalf of the petitioners and Sri V. Hari Haran and Ramakrishna, learned counsel appearing on behalf of respondents 3 and 4 and the learned Government Pleader for the respondents 1 and 2.

The principal contention of the writ petitioner is that under the APMACS Act in terms of Section 37 the Registrar of Cooperative Tribunal is deemed to be Registrar and there is no appellate power vested with the Registrar unlike in the cases falling under the APMACS Act. In terms of 37 of the APMACS Act any dispute between the members with respect to the constitution, management or business of a cooperative society, and matters connected therewith was or incidental thereto shall be referred to the Cooperative Tribunal for decision. The specific provision bars jurisdiction of the Registrar to entertain any application. In the present case the 2nd respondent Sales Officer / Assistant Registrar while issuing proceedings dated 12.03.2010 is only implementing orders of the Registrar i.e., Divisional Cooperative Officer, who has been delegated the powers of the Registrar. In that view of the matter, the order of the 2nd respondent-Assistant Registrar / Sales Officer passed on 12.03.2010 is deemed to be an order made by the Registrar i.e., the Divisional Cooperative Officer, who has been entrusted the function of implementation of the judgment and decree of the Tribunal.

In this case the original OPs filed by the petitioner-Bank came to be decreed by the Tribunal on 19.07.2006, no appeal as such is provided under the APMACS Act unlike in the case of an order passed by the Registrar, which is appellable before the A.P.

Co-operative Tribunal under the APMACS Act. The only course which is open for the aggrieved party to challenge an order passed by the Tribunal, in exercise of its power under Section 37 of APMACS Act, is to challenge by way of a writ petition, is now not disputed by the learned counsel for the respondent. In that view of the matter, so far as jurisdiction of the Tribunal functioning under the APMACS Act, is no more *res integra* in view of the Judgment of this Court in **Prudential Cooperative Bank Ltd., Secunderabad Vs. A.P. Cooperative Tribunal, Hyderabad and Others**^[1], wherein this Court had categorically ruled that there is no appeal provided against the orders of the Tribunal passed under Section 36 of the APMACS Act, and recourse to Section 76 of the APCS Act is impermissible against the orders of the Registrar, particularly in executing judgments and decrees of the Cooperative Societies registered under the APMACS Act. Therefore, the first ground which has been raised in this writ petition is required to be answered in favour of the writ petitioner.

So far as the second ground is concerned we may notice sub section 6 of the Section 4 of the APMACS Act, which reads as under:-

“There shall be appointed a Registrar of Mutually Aided Co-operative Societies for the State and as many other Officers as the Government may think fit for the purposes of this Act.”

Further Section 36 of the APMACS Act empowers the Registrar to execute decisions, decrees and orders of the Tribunal. The provisions contained in Chapter X of the APCS Act *mutatis mutandis* apply to the Cooperative Societies registered under this APMACS Act. When we refer to the Chapter X starting from Sections 70, 70A, 71, 72, 73 and 74 of APCS Act, the power

is conferred on the Registrar or any person authorised by him as a competent authority to carryout the execution of decrees / orders passed by the Tribunal under the APMACS Act. When these provisions are made applicable in relation to the orders passed under the APMACS Act, the Tribunal which has passed original order under Section 36 of the APMACS Act could get its orders executed by itself or by authorising a competent authority. In the present case as per G.O.Ms.No.118 Ag & Coop (Coop.IV), dated 02.04.1996 and in exercise of the powers under Section 4(6) of the APMACS Act, the District Cooperative Officers working in the Districts are designated as Registrars of the A.P. Mutually Aided Cooperative Societies to exercise powers under all sections except Sections 28, 29 and 40. The Tribunal had held that the District Cooperative Officer, Kurnool authorised the Divisional Cooperative Officer/Deputy Registrar of Cooperative Societies, Adoni, to execute the E.P., who was not vested with the power to execute the decree, had issued Dstraint Notice authorising the Assistant Registrar (Credit), Office of the Divisional Cooperative Officer, Adoni, Kurnool District, who is lower authority, and such delegation is impermissible as the District Cooperative Officer, Kurnool himself has been delegated the power of delegation. To come to this conclusion the Tribunal had taken cue from Section 4 (6) of the APMACS Act. It is the specific contention of the learned counsel for the petitioner Dr. P.B. Vijay Kumar that in peculiar facts of this case is concerned the conclusion arrived at by the Tribunal that the Divisional Cooperative Officer delegating the function of the execution of decree to the Assistant Registrar of Cooperative Societies was impermissible and the conclusion arrived at by the Tribunal cannot be found fault. However, he further submits that the Tribunal has erred in coming to the conclusion that the District Cooperative Officer, Kurnool was

delegated with the power by the Tribunal as Registrar to execute the decree. In that process, the Tribunal had erred in appreciating the scope of Section 70(ii)(c) of the APCS Act, wherein the Tribunal is entitled to get the decree executed either by the Registrar or by any other person authorised by the Registrar. In the present case, there is no delegation by the Tribunal in favour of the District Cooperative Officer for execution of a decree, but the District Cooperative Officer came to be authorised by the Tribunal to execute the decree. However, in a given case the Tribunal as a Registrar may entrust the execution independently to any other officer. Any other interpretation, as otherwise, would lead to an anomalous situation of restricting the scope and power of the Tribunal. This argument of the learned counsel commends acceptance from a combined reading of Sections 36 and 37 of the APMACS Act read with Section 70 of the APCS Act. Therefore, so far as the matters connecting to the execution under Section 70 of the APCS Act, wherever the word 'Registrar' occurs 'Cooperative Tribunal' has to be read into. If once we substitute the word 'Registrar' any Registrar in Section 70(2) and in Section 70(2)(a) of the APCS Act, the Registrar thereby meaning the Cooperative Tribunal or any person authorised by him. Thereby any person authorised by the Tribunal would be entitled to execute the order or decision of the Tribunal.

The last ground on which the impugned order of the Tribunal is challenged that the Tribunal has erred in assuming that the decree passed by the Tribunal in main O.P. is a mortgage decree and the said finding is contrary to the facts on record. The order in OP reads as under:

"COMPROMISE AWARD

Both parties and their advocates present. Compromise
Memo filed by both parties jointly. The Terms and conditions of

the Compromise Memo are read over and explained in Telugu and admitted by both parties as true and correct. Compromise Award is passed with the following terms, as contained in the Compromise Memo.

- i) The Respondents shall pay Rs.4,69,967-80 ps., with interest at 12% pa., from the date of Award till realisation.
- ii) The Petitioner Bank is at liberty to realise the awarded (decretal) amount by approaching the Principal District Judge, Kurnool, Hon'ble High Court of Andhra Pradesh or any other forum.
- iii) The Compromise Memo shall form part and parcel of this Award.
- iv) There is no order as to costs."

A bare perusal of the above would leave no manner of doubt it was not a mortgage decree but an Award passed recording a compromise arrived at between the parties, wherein petitioner-Bank and the respondents 1 and 2 therein have been fastened with the liability jointly and severally. In that view of the matter, there being error on the part of the Tribunal so far as such finding recorded by the Tribunal cannot be sustained.

Having said that the next question which would arise for consideration in these Writ Petitions is that whether the order passed by the Tribunal in the facts of the present case is liable to be set aside on the ground that the Tribunal had exercised appellate jurisdiction which it does not have, particularly, in the light of the Division Bench Judgment of this Court reported in **Prudential Co-operative Bank Ltd., Case** (1 supra). In the facts of the present case, there is one possibility, considering the fact the Tribunal is vested with the original jurisdiction, to consider the objections of the nature which the petitioner has raised viz., that the judgment and decree suffers from certain irregularities and further that there are personal properties of the respondent No.3 which are not mortgaged, cannot be proceeded with. The objection raised by the 3rd respondent before the Registrar under

Rule 52 of the Cooperative Society Rules, 1964 (in short “the Rules”), the Registrar is required to be consider the objections before proceeding with the execution. In the facts of the present case, the original authority which has passed the order being the Tribunal also donned the garb of the Registrar on account of Section 36 of the APMACS Act. In that view of the matter, the Tribunal could be said to have exercised jurisdiction vested in it under Rule 52 of the Rules. Though the application filed by the petitioner was termed as an appeal before the Tribunal on the orders of the Registrar or the person claiming authority under the Registrar, in that view of the matter, in the peculiar facts of the present case, the challenge to the order of the Tribunal on the ground that the Tribunal could not have passed mortgage decree, is liable to be rejected. It is well settled that if an authority is otherwise vested with the power a mere wrong reference of a provision does not by itself invalidate the order and it cannot be said that such authority lacks the jurisdiction. In the present case by virtue of Section 36 of the APMACS Act, the Tribunal being the Registrar and under Rule 52 of the Rules, it is the Registrar who is empowered to consider the objections, it can be said that the Tribunal had exercised the power under Rule 52 of the Rules. Therefore, particularly the decree which is sought to be executed not being a mortgage decree dropping of the proceedings restraining the appellant to proceed against the 3rd respondent cannot be sustained.

In the result, the writ petitions are allowed subject to the observations made therein with respect to the jurisdiction of the Tribunal. Accordingly, the order of the Tribunal is set aside subject to the condition that the District Cooperative Officer alone shall be entitled to proceed with the execution proceedings and not

his delegate-Sales Officer.

There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending shall also stand closed.

CHALLA KODANDA RAM, J

Dated: 03.12.2015

Note: LR copy to be marked.

B/o

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[\[1\]](#) 2015 (4) ALD 270 (DB)