

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.33133 of 2019

S.P.Ganesan

.. Petitioner

-vs-

The Authorised Officer,
REPCO Bank,
REPCO Tower,
No.33, North Usman Road,
T.Nagar, Chennai - 600 017.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records on the file of the respondent and quash the proceedings in reference SRF.901/2017/LAD dated 20.04.2017 issued under Section 13(2) and the possession notice issued under Section 13 (12) on 15.11.2019 in proceedings NIL and quash the same as illegal, incompetent, unconstitutional and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.Om Prakash
Senior Counsel
for Mr.A.Ilangovan

Mr.C.Mohan
for M/s.King and Partridge
for Reserve Bank of India

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ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The short question that falls for consideration in this matter is whether the REPCO Bank is authorised to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The writ petitioner has obtained credit facilities from the respondent REPCO Bank. Upon the perceived failure on the part of the writ petitioner to repay the dues within time, a notice has been issued under Section 13(2) of the Act of 2002 on April 20, 2017. A further notice has been issued under Section 13(12) of the Act of 2002 on November 15, 2019 for taking possession of the secured assets. Since a possession notice has been issued, it is evident that the respondent has purported to take steps under Section 13(4) of the Act of 2002. In an ordinary situation where the respondent may be regarded as a secured creditor within the meaning of that expression used in the Act of 2002, the writ petitioner in the present case would have had an opportunity to approach the appropriate Debts Recovery Tribunal under Section 17 of the Act of 2002.

3. The writ petitioner, however, contends that the respondent is not a bank at all and, thus, cannot be regarded as a secured creditor within the meaning of the relevant expression in the Act of 2002. The writ petitioner asserts that all steps taken by the respondent under the Act of 2002 are void and completely without jurisdiction.

4. For the purpose of obtaining the views of the Reserve Bank of India, a notice was issued to such central bank. According to the Reserve Bank, the respondent is not a bank within the meaning of the Banking Regulation Act, 1949. It is further submitted on behalf of the Reserve Bank that it has not issued any banking license to REPCO Bank.

5. Indeed, the writ petitioner has relied on an affidavit filed by the Reserve Bank in W.P.No.9623 of 2019 in this Court. At paragraph 12 of such affidavit, the Reserve Bank categorically indicated that "the Repatriates Cooperative Finance and Development Bank Limited (REPCO BANK), which was originally registered under the Madras Cooperative Societies Act, 1961 as a co-operative society, is deemed to be registered under the Multi-State Co-operative Societies Act, 2002 as a multi-state cooperative society, but has not been issued a banking licence by the RBI and does not come under the regulatory purview of Reserve Bank of India." Elsewhere in the relevant affidavit, the Reserve Bank stated that the respondent was under the administrative control of the Ministry of Home

Affairs, Government of India and was regulated by the Central Registrar of Co-operative Societies. The Reserve Bank also referred to an order of March 26, 2014 by which the Central Registrar instructed all multi-state co-operative societies to discontinue accepting deposits from nominal members "as this is construed as acceptance of deposits from public and carrying out banking activities."

6. Though limited participation of the Reserve Bank was invited by this Court, such central bank has indicated the position without expressing any opinion.

7. According to the respondent, it was conferred the status of a bank in or about 1969. The history of the respondent has been recounted in the counter-affidavit filed on its behalf. It has been asserted that the Repatriates Cooperative Finance and Development Bank was brought into existence to look into the rehabilitation of repatriates from the then Ceylon, Burma and Vietnam. According to the respondent, it was initially involved in the implementation of welfare schemes to help repatriates from the three countries, inter alia, to set up business. It is admitted that the respondent was registered under the Madras Cooperative Societies Act, 1961.

8. The counter-affidavit refers to the Sirima-Shastri Pact coming to an end in 1982, whereupon the Ministry of Home Affairs, through its Freedom Fighters Division, continued the further functioning of the respondent for the welfare of the repatriates from the three countries. According to the respondent, it "entered into the full-fledged financial activities in order to cater to the needs and the Rehabilitation of Repatriates ... ventured to accept deposits from its members and started lending loans to such members ... in terms of the provisions of Multi-State Co-operative Societies Act, 2002."

9. The respondent claims to earn profit out of its business activities and asserts that it has distributed dividends of at least 20% every year.

10. The shareholders of the respondent have been indicated at paragraph 14 of the counter-affidavit. The Government of India apparently holds 49.07% of the shareholding in the respondent. Repatriates constitute the second largest block of 44.70% and the State Governments of Tamil Nadu, Andhra Pradesh, Telangana, Kerala and Karnataka hold the balance. The Chairman of the respondent is of Principal Secretary rank in the State of Tamil Nadu and the Board of Directors comprises an Additional Secretary in the Union Ministry of Home Affairs, a Joint Secretary from the Rehabilitation Division of the same Ministry and representatives from States, among others.

11. Paragraph 14 of the counter-affidavit refers to the respondent having made "an application for a regular banking license ... and is under consideration by the Reserve Bank of India."

12. In essence, the respondent has tried to demonstrate that it is a responsible organisation manned by senior government personnel. Whether to attach a degree of intimidation or a further notch of seriousness, the Court's attention is drawn to pages 62 and 63 of the typed set filed by the respondent, which reveals that a meeting pertaining to the respondent was held by the Prime Minister's office, no less.

13. However exalted may have been the venue of any meeting pertaining to the respondent, the character of the organisation and the bounds of its authority must be found in legal provisions.

14. The respondent is not a secured creditor within the meaning of Section 2(zd) of the Act of 2002. The definition has five limbs, the first of them being a bank or financial institution; the second and fourth being debenture trustees; the third being an asset reconstruction company and the fifth being any other trustee holding securities on behalf of a bank or financial institution. The respondent cannot be covered by the last four limbs and does not proclaim to be answering to any of such descriptions. However, the respondent claims to be covered by sub-clause (i) of clause (zd) of the definition section:

"(zd) "secured creditor" means -
(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1)"

15. As is evident from the expression itself, a secured creditor must first be a creditor and must also have obtained securities from the debtor. Thus, a secured creditor within the meaning of aforesaid definition may be a bank or a financial institution or any consortium or group of banks or financial institutions to satisfy the first limb of the definition; and, such bank or banks or financial institution or institutions must also hold securities by way of financial assets as defined in clause (1) of Section 2(1) of the Act which is the definition provision.

16. A bank is defined in Section 2(1)(c) of the Act of 2002. The respondent cannot demonstrate that it is a banking company or a corresponding new bank or State Bank or a subsidiary bank or even a multi-state co-operative bank. There is no doubt that the respondent is a multi-state co-operative society, but a multi-state co-operative society need not be a multi-state co-operative bank.

17. The respondent is not a financial institution within the meaning of the expression in Section 2(1)(m) of the Act of 2002. The several limbs under clause (m) cover a public financial institution; specified institutions; the International Financial Corporation; a debenture trustee; an asset reconstruction company and other institutions as may be notified by the Central Government. There is no document or any shred of paper relied upon by the respondent to indicate that it falls within any of such limbs of clause (m) of the definition provision.

18. Most importantly, the trump card that the respondent uses to assert its character as a secured creditor within the meaning of the Act of 2002 is a notification published by the Central Government in 1972. An extract from the Gazette of India of February 19, 1972 has been relied upon. So that nothing is detracted from the submission of the respondent in such regard, the entirety of the relevant publication is reproduced:

"New Delhi, the 19th January, 1972

S.O. 626.- In exercise of the powers conferred by section 53, read with section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section (1) of section 7 of the said Act, in so far as they prohibit a co-operative society other than a co-operative bank from using the word "Bank" as part of its name, shall not apply to the Repatriates' Co-operative Finance and Development Bank Limited, Madras, which is not a co-operative bank but a society authorized to accept deposits of money only from its members and not from the public."

19. By such notification, all that the Central Government permitted the respondent to do was to use the word "bank" as a part of its name. However, the use of such word "bank" did not imply that the respondent could carry on banking activities. Section 7 of the Banking Regulation Act, 1949, inter alia, prohibits the use of the words "bank", "banker", "banking" or "banking company" by any person other than a banking company or

any person other than one carrying on the business of banking in India. The very fact that Section 7 came into play and the exemption was granted by the 1972 notification by the Central Government was recognition of the fact that the respondent herein did not carry on banking business but was permitted to incorporate the word "bank" as a part of its name, nonetheless.

20. It may also not be missed that the relevant notification prohibited the respondent society to accept deposits of money from the public.

21. Whatever the business of the respondent may have blossomed to, it cannot be regarded as a bank. No banking business is undertaken in this country without obtaining a license from the Reserve Bank. There is a reference in the counter-affidavit used by the respondent that it has applied for a banking license. Implicit in such reference is the admission that the license has not yet been granted.

22. The respondent has relied on a judgment reported at (2020) 9 SCC 215 (Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Limited) and has relied on several passages therefrom, including paragraph 103 and thereafter. However, it is evident that the finding rendered in the judgment pertained to co-operative banks being entitled to invoke the provisions of the Act of 2002 and not co-operative societies which are not entitled to carry on banking business as the present respondent. The dictum in the said judgment does not assist the respondent herein, which is admittedly a mere co-operative society not carrying on banking business and not a co-operative bank either.

23. Indeed, in Pandurang Ganpati Chaugule the second legal question that was raised was whether the expression, 'banking company', as defined under Section 5(c) of the Act of 1949 covered co-operative banks registered under the State co-operative laws or as multi-state co-operative societies. The issue was answered in paragraphs 103 to 122 of the judgment. It is evident from the concluding paragraphs of the discussion that only co-operative banks were found to be banks and covered under "Banking" in List-I, Entry 45 of the Seventh Schedule to the Constitution.

24. For the grounds indicated above, the respondent cannot be regarded as a bank or a secured creditor within the meaning of the relevant word and expression in the Act of 2002. As a consequence, the respondent cannot resort to any of the measures indicated in the said Act, whether under Section 13 thereof or otherwise.

25. That does not imply that the respondent has no recourse

to the writ petitioner or to pursue a defaulting debtor. If the respondent has obtained securities, as it appears to have, the respondent has to carry the claim to an appropriate forum, possibly to a civil Court, and invoke Order XXXIV of the Code of Civil Procedure, 1908 that has recently gone out of fashion after bank claims have been parked with a tribunal and taken beyond the pale of the sovereign court system.

26. W.P.No.33133 of 2019 is allowed by setting aside the notices issued by the respondent under the Act of 2002 and setting at naught all measures purported to be taken by the respondent under such statute, including, in particular, the impugned notices dated April 20, 2017 and November 15, 2019. There will be no order as to costs. Consequently, W.M.P.No.33562 of 2019 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bbr
To:

The Authorised Officer,
REPCO Bank,
REPCO Tower,
No.33, North Usman Road,
T.Nagar, Chennai - 600 017.

+1cc to Mr.V.Ragavachari , Advocate SR.No. 13441
+1cc to Mr.M/s.King and Partridge , Advocate SR.No. 13375
+1cc to Mr.A.Ilangaocan , Advocate SR.No. 13290

sr II
A.SK(11.03.2021)

W.P.No.33133 of 2019

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