IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: March 20, 2023
Judgment delivered on: March 28, 2023

\+ W.P.(C) 1588/2022

JAIN CO-OPERATIVE BANK LTD. .....Petitioner

Through: Mr. Abhinav Sharma, Mr. Ravi Singh Chhikara and Ms. Shreesh Pathak, Advocates.

versus

PUNEET JAIN & OTHERS …... Respondents

Through: Ms. Hrishika Jain, Adv. for Mr. Shadan Farasat, ASC for R2 & R3.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT

ANOOP KUMAR MENDIRATTA, J.

1. Writ petition has been preferred by the petitioner assailing the impugned order dated October 01, 2021 passed by the Financial Commissioner, Delhi whereby the Revision Petition filed on behalf of the petitioner bank under Section 116 of the Delhi Cooperative Societies Act, 2003 (herein referred to as "the Act") challenging an order dated July 02, 2021 passed under Section 105 of the Act in Execution Case No.158/2019-20, was held to be non-maintainable on the ground that there is a provision of appeal provided under Section 112 (1)(k) of the Act.

2. The factual matrix falls in a narrow encompass.

i. Respondent No. 1, an employee of the petitioner co-operative bank, filed a claim petition under Section 70 of the Act, on which the matter was referred for arbitration under Section 71 of the Act.

ii. The learned arbitrator in arbitration case No. 1673/AR/ARB/15-16 passed an award dated April 14, 2016 and the relevant portion of the award is as follows:

> *"...*
> *61. In view of the aforesaid discussions, I hereby set aside the letter dated 29.06.2015 issued by Sh. Kailash Chand Sharma, Officiating CEO of the respondent bank through which the claimant was reverted from the Recovery Officer to Clerk-cum-Cashier being illegal, arbitrary and against the principles of natural justice and the claimant is entitled to get all his service benefits since 27.08.2014 till date as Recovery Officer.*
> *62. The salary of the claimant as Recovery Officer is again fixed from 27.08.2014 on the basis of his increased salary which should have been after adding 5 increments and directed to pay the arrear w.e.f. 27.08.2014.*
> *63. The parties are left to bear their own costs.*
> *Given under my hand and seal on this 14th day of April 2016"*

iii. The petitioner bank challenged the award in Appeal, but could not succeed. Respondent No. 1 thereafter filed proceedings for execution of the award, vide execution case No. 158/19-20.

iv. In execution proceedings, vide order dated July 02, 2021 passed under Section 105 of the Act, Assistant Collector / Respondent No. 3, directed the petitioner to pay the interest on arrears up to the actual date of payment and not till the date of award i.e. April 14, 2016.

v. The aforesaid order dated July 02, 2021 passed by Assistant Collector was challenged by the petitioner bank by way of Revision

Petition under Section 116 of the Act before the Financial Commissioner / Respondent No. 2. Vide impugned order dated October 01, 2021 Financial Commissioner held that the Revision Petition is not maintainable, since a provision for appeal has been provided under Section 112(1)(k) of the Act. Revision Petition was accordingly dismissed with liberty to the petitioner to approach the appropriate forum.

The impugned order passed by Financial Commissioner is challenged by way of present Writ Petition.

3. Learned counsel for the petitioner submits that the Financial Commissioner erred in holding that provision of appeal has been provided under Section 112(1)(k) of the Act against the order dated July 02, 2021 passed by Assistant Collector under Section 105 of the Act. It was urged that no such provision for appeal is provided under Section 112 of the Act and the only remedy available to the petitioner was to approach the Financial Commissioner by way of 'Revision Petition' under Section 116 of the Act. Further, the proceedings could not have been preferred in appeal before the Tribunal under Section 114 of the Act. Reliance was further placed upon '***L.K. Bahl vs. Lt. Governor of Delhi and Ors.***', 45 (1991) DLT 573.

4. On the other hand the impugned order passed by the Financial Commissioner is supported by learned counsel for respondent No. 1.

5. We have given considered thought to the contentions raised. It is a well-settled principle that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be made to that particular statutory remedy. The authorities empowered under the Act are accordingly expected to take note of the legislative intent manifested in the provisions of the Act and exercise jurisdiction consistent with the provisions of the enactment.

The right of appeal is not a natural or inherent right and cannot be assumed to exist unless the same is expressly provided for by the statute and needs to be legitimately traced to the statutory provisions.

It may also be noticed that the right to file a Revision Petition, like an 'Appeal' is also a right conferred by the statute and in the absence of a provision in this regard, there is on inherent right to file a Revision Petition. It needs to be kept in perspective that a Revision Petition has a narrow scope than an Appeal. The appellate jurisdiction ordinarily involves a re-hearing on law as well as fact, while the revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without being invoked by a party. The purpose of conferring revisional jurisdiction is generally for keeping the Tribunals or sub-ordinate competent authorities within the bounds of their authority and ensure that they act according to established procedure of law and well-defined principles of justice. As such, the revisional jurisdiction cannot be equated with that of a full-fledged appeal and is not considered as a continuation of suit or original proceedings.

6. Also, in the aforesaid context, it may be noticed that the 'execution proceedings' are independent proceedings for execution of decree or award and cannot be regarded as continuation of the suit in the sense in which the proceedings in appeal are treated. During the course of execution proceedings the merits of the claim or dispute cannot be considered and the execution is initiated by the decree-holder to enforce the award or the decree passed in favour of the decree-holder.

7. Section 105 of the Act deals with execution of orders etc. and provides that every decision, award or order duly passed by the Registrar or the Arbitrator or the Tribunal or the Government under Sections 31, 32, 33, 66, 71, 104, 110, 112, 114, 115 and 116 or any other provisions of this Act shall, if not carried out, be executed according to law for the time being in force relating to the recovery of land revenue where the decision, award or order provides for the recovery of money. In any other case the decision, award or order shall be executed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf, in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

8. Appeals, Revision and Review have been further provided for under Sections 112 to 116 of the Act. Sub-section 1 of Section 112 of the Act provides that subject to Section 113 of the Act, an appeal shall lie against the orders as specified under Clauses '(a)' to '(q)'. Section 112(1)(k) of the Act provides for an appeal against any decision or award made under Section 71 of the Act which relates to the reference of disputes to arbitration. It may also be noticed that Section 113 of the Act provides for cases in which Appeal or Revision shall not lie. Further, Section 114 of the Act provides for constitution of Delhi Co-operative Tribunal and sub-Section 6 of Section 114 provides that the Tribunal may call for and examine the record of **any proceedings in which an appeal lies to it**, for the purpose of satisfying as to the legality or proprietary of any decision or order passed and if, in any case, it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

9. The Revisional Jurisdiction has been conferred on the Government under Section 116 of the Act and provides that the Government may of its own motion or on application made to it call for and examine the record of the Registrar, in respect of **any proceeding not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 114 of the Act** to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision passed or order made therein and if, in any case, it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

10. The cardinal rule of construction of statutes is to read the statutes literally, i.e. by giving to the words their ordinary, natural and grammatical meaning. A bare reading of Sections 112, 113 and 114 of the Act reflects that the remedy of 'Appeal' has been provided to by the statute only in respect of Clauses '(a)' to '(q)' of sub-Section 1 of Section 112. The appeal against Clauses '(d)', '(f)', '(g)', '(h)', '(i)', '(j)' & '(k)' of sub-Section 1 of Section 112 lies to the Tribunal, whereas, if the decision or order falls under Clause '(e)' the appeal lies to the Government.

The Delhi Co-operative Tribunal under Section 114 of the Act is competent to call for and examine the record only **of the proceedings in**

respect of which an appeal lies to it under Section 112 of the Act. In the absence of any appeal being provided with respect to orders passed in execution under Section 105 of the Act, it is difficult to countenance that the Appeal is maintainable before the Tribunal. Even a bare reading of Section 116 of the Act providing for 'Revision' reflects that the 'Revision' is maintainable in respect of '**any proceeding not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 114 of the Act**'.

11. In view of aforesaid legal position, it is obvious that the orders passed in 'execution proceedings' purportedly under Section 105 of the Act are only amenable to the Revisional Jurisdiction and appeal cannot be preferred under Section 112 read with Section 114 of the Act, as the same has not been provided for in the statute.

The same is also in accordance with the legislative policy, since the execution proceedings are separate and independent proceedings for the execution of the award / decree and the merit of the claim or dispute cannot be considered during the execution proceedings. Also, the challenge to the decision or award under Section 71 of the Act has already been provided for under Section 112(1)(k) and no further Appeal with reference to orders passed under Section 105 of the Act has been rightly envisaged, since the executing authority is bound by the terms of the decree.

12. It may also be observed that a party cannot be left remediless in respect of the orders passed in execution proceedings unless specifically barred by the statute. In view of above, the petitioner correctly approached the Financial Commissioner by way of Revision Petition for challenging the impugned order passed by the Assistant Collector.

For the foregoing reasons, the impugned order dated October 01, 2021 passed by the Financial Commissioner is set aside. The Revision Petition filed by the petitioner accordingly stands revived, which shall be considered and disposed of by the Financial Commissioner in accordance with law. In the facts and circumstances, no order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MARCH 28, 2023/*sd/R*