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Court : Kerala

Decided On : Feb-08-2016

Judge : Dama Seshadri Naidu

Appeal No. : WP(C). No. 3923 of 2016 (M)

Appellant : John Mathew

Respondent : The Panamaram Service Co-Operative Bank Ltd. and Others

Judgement :

1. The petitioner, a member of the first respondent society, filed his nomination to contest the election to be held on 13.02.2016 for the managing committee of the society. His nomination filed on 28.01.2016 was subjected to scrutiny on 29.01.2015 and rejected through Ext.P2. Aggrieved, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has submitted that the petitioner is not a defaulter even in terms of Rule 2 of the Kerala Co-operative Societies Rules('the Rules 1998(2) KLT 789). In support of his submissions, the learned counsel has placed reliance on Kumaran v. Returning Officer and also Salim v. Joint Registrar 1998 (2) KLT 665

3. The learned counsel has eventually submitted that the petitioner, though a guarantor, cleared the loan on 29.01.2016 i.e., on the date of scrutiny and thereby avoided any disqualification. In that context, Ext.P2 order passed on 29.01.2016 could not be sustained because by then the petitioner had cleared the loan.

4. Per contra, the learned Government Pleader, having drawn my attention to Rule 2 of the Rules, has contended that there is a clear, discernible distinction between the defaulter and the default per se. In elaboration, the learned Special Government Pleader has submitted that once, even in respect of a guarantor, the creditor society issues a notice demanding repayment and the person, the noticee, fails to comply with the direction, it is to be treated as default vis-a-vis the society, though in proper terms, the said person cannot be declared a defaulter, for which a decree is essential.

5. In elaboration, the learned Special Government Pleader has submitted that on 07.01.2015, the petitioner was put on notice concerning the default committed by the principal borrower. In view of the failure on the petitioner's part as a guarantor as well as the principal borrower, the society was constrained to initiate recovery proceedings by filing an arbitration case, which is said to be pending.

6. Placing reliance on *Moosa v. Joint Registrar* 1994(2) KLT 943 , the learned Special Government Pleader has contended that the disqualification has to be reckoned as on the date of filing of the nomination rather than any subsequent date, such as that of the scrutiny. According to him, once a candidate is found disqualified on the date of nomination, his subsequent efforts of, say, clearing the loan do not come to his rescue.

7. In reply, the learned counsel has submitted that the issue whether the petitioner was put on notice should be left open. According to him, it is a question of fact which is required to be established by the respondents that the petitioner was actually put on notice prior to the society filing ARC proceedings.

8. Heard the learned counsel for the petitioner and the learned Special Government Pleader, apart from perusing the record.

9. Indeed, there is a very discernible distinction between 'defaulter' and 'default' as can be seen from Rule 2 of the Rules.

10. Indisputably, a person must have been suffered a decree for recovery at the hands of a society, if he were to be declared a defaulter. Nevertheless, as far as the default is concerned, it is the failure on the part of any person to pay to the financing bank or to any other society a loan or any other amount due to it within the time fixed for repayment, save the pre-condition that he should have been put on notice.

11. In the present instance, it is the specific contention of the learned Special Government Pleader that on 07.01.2016, the petitioner was served with a notice and of course it was contested by the petitioner. Be that as it may, subsequently the society has followed up its action by filing recovery proceedings in terms of Section 69 of the Act before the Registrar of Co-operative Societies. It shall, therefore, be presumed until the contrary is proved, in my view, that in the face of ARC proceedings to which the petitioner is a party, there is a due notice to the petitioner.

12. Further, though this Court has consistently held in Kumaran and also Salim that a person cannot be treated either as a defaulter or in default to a society unless he has been put on notice and an opportunity was given to repay the debt, in the face of the fact that the society has already initiated recovery proceedings by filing ARC, this Court cannot but hold that the petitioner has been put on notice. Further, it is very evident that the petitioner cleared the loan posthaste on 29.01.2016 with a view to avoiding the disqualification. In my considered view, the petitioner ought to have been diligent at the earliest point in time, i.e., before the society initiated its recovery proceedings.

13. A learned Division Bench of this Court in Moosa has categorically held that if a candidate is disqualified as on the date of nomination, he cannot get rid of that disqualification by any act that is undertaken by him between the time of filing of the nomination and the time of scrutiny.

14. In the light of the authoritative pronouncement of the learned Division Bench, this Court has no other alternative than holding that the petitioner suffered the stigma of disqualification as on date of nomination and his subsequent conduct of clearing of the loan would not remove the stigma attached, namely the disqualification.

Accordingly, this writ petition stands dismissed. No order as to costs.

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