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Court : Karnataka

Decided On : Jan-31-1990

Reported in : [1992]74CompCas172(Kar); 1990(3)KarLJ152

Judge : S. Rajendra Babu, J.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 70 and 70A

Appeal No. : Writ Petition No. 18304 of 1987

Appellant : Bheemappa and Another

Respondent : Primary Land Development Bank Ltd. and Others

Advocate for Def. : S.R. Hegde Hudlamane, Adv.

Advocate for Pet/Ap. : H.K. Basavaraj, Adv.

Judgement :

Rajendra Babu, J.

1. This petition is directed against the order made by the Karnataka Appellate Tribunal dismissing the appeal filed before it affirming the order of award made by the arbitrator under the Karnataka Co-operative Societies Act, 1959 (in short 'the

Act'), in a dispute arising under section 70 thereof.

2. The facts giving rise to this petition are as follows :

The petitioner's father borrowed a sum of Rs. 12,960 from the first respondent-society in the year 1974-75 with a condition to repay the same in instalments and the loan was secured by a mortgage under a deed; the term of the loan was that the same shall be repaid in fifteen annual instalments as stipulated in the bond. On the allegation that the petitioner's father did not pay the amount, steps were taken to recover the same by initiating proceedings under section 70 of the Act. An award thereto came to be made. The only ground pointed out by the petitioners in this writ petition is that the award is bad as barred by limitation as action is brought after a lapse of six years, after the cause of action arose, as provided under section 70A of the Act. Learned counsel for the petitioners submits that the term of repayment of loan was that, even if there is a single default, the entire amount due thereunder becomes due and payable by the parties and, therefore, the dispute should have been raised on or before March 31, 1983. In this case, it is contended that the suit had been filed in the year 1984 and that the same is clearly barred by limitation. Section 70A of the Act reads as follows :

'70A. Period of limitation. - No dispute under section 70 shall be entertained unless it is referred to the Registrar within six years from the date of cause of action :

Provided that a dispute relating to the election of a member, president, vice-president, managing director, honorary secretary or other officer of the committee shall be referred to the Registrar within thirty days from the date of declaration of the result of the election.

(2) Notwithstanding anything contained in sub-section (1), the Registrar may entertain a dispute referred after the period specified in sub-section (1) if he is satisfied that the person making the reference had sufficient cause for not making the reference within that period.'

3. Learned counsel for the first respondent, relying upon a decision of the Privy Council in *Lasa Din v. Mt. Gulab Kanwar* , contended that a proviso of this nature

for recovery of the entire amount with a single default clause is for the benefit of the mortgagee and the time limit within which the payment should be made in instalments, is 'exclusively for the benefit of the mortgagees' and that it purported to give them an option either to enforce their security at once, or if the security was ample, to stand by their investment for the full term of the mortgage.

4. However, learned counsel for the petitioner contended that the principles that are applicable in regard to the Limitation Act cannot be adapted to a case arising under the Karnataka Co-operative Societies Act. In view of the decision of this court in *Thimmappa v. Town Co-operative Society Ltd.*, Kunigal in W.P. No. 4738 of 1979 reported in *Mysore Law Journal (Short Notes of Recent Decision)* at item 338, it is contended that the Limitation Act is not applicable to the proceedings before the arbitrator.

5. The proposition set forth in the aforesaid unreported decision relied on by learned counsel for the petitioner is unexceptionable, but what is stated therein is that the Limitation Act as such is not applicable. It is not the contention of learned counsel for the first respondent that the Limitation Act is applicable to the facts of the present case, but the contention is in understanding as to when the cause of action arises, the principles that are applied in the context of the Limitation Act could be applied to the facts of the present case. In the aforesaid decision of the Privy Council, it has been categorically held that in case a default occurs in payment of an instalment, the benefit given to the mortgagee either to enforce the security at once, or if the security is ample, to stand by their investment for the full term of the mortgage. This position in law is reiterated in the decision in *Ramprasad Dagaduram v. Vijaykumar Motilal Hirakhanwala* : AIR 1967 SC278 , wherein it is stated that the deed gave the mortgagee an option to enforce the mortgage in the event of non-payment of any of the five instalments, or it was open to the mortgagee not to exercise this option. As the mortgagee did not exercise the option, the mortgage money fell due on the expiry of nine years, that is to say, when the time limit begins to run. In this case, the question that falls for consideration is as to when the limitation prescribed under section 70A of the Act commenced to run and that is clear in the light of the decision made in the Privy Council and the Supreme Court decision that it is open to the mortgagee to

exercise option to initiate proceedings under section 70A of the Act at once after the default in payment of instalment occurs or wait till the entire term was completed. So, it is not open to the petitioner to contend that the suit has become barred by time. In view of the aforesaid reasons, I reject the contentions raised on behalf of the petitioner and there is no substance in this petition.

6. Petition shall stand rejected.

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