

Laxminarain Vs. State and ors.

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Court : Rajasthan

Decided On : Aug-23-1982

Reported in : 1982WLN(UC)305

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 1912 of 1976

Appellant : Laxminarain

Respondent : State and ors.

Advocate for Pet/Ap. : Shri. Shrimali

Disposition : Petition dismissed

Judgement :

G.M. Lodha, J.

1. There exists a primary Co-operative Credit Society in the name and style if 'Gandhi Bahudhandhi Sahakari Samitee Badnor' in district Bhilwara. The Society has been registered under the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as .the Act of 1965,). The main object of the society is to lend money to its members.

2. In this Society, a Committee was constituted in the year 1957. Shri Mangilal Purohit was elected Chairman, Shri Chaturbhuj Treasurer and the petitioner was known as 'Karya Karini Samitee.'

3. In the year 1957, the Bank granted loans to the Society in three lots i.e. Rs. 6,500/-, Rs. 7500/- and Rs. 6.800/- respectively, the Karya Karini Samitee distributed this amount as loans to its members. A bond was executed by every member for re payment of the loan.

4. On 1.6.75, an agreement was executed by the petitioner in favour of the Bank with the stipulation that the society owes an amount of Rs. 14321/79/- as principal and Rs. 18004/43 as interest to the Bank and the petitioner would, therefore, recover this amount from the members of the society and if the amount is not recovered the petitioner would personally deposit a sum of Rs. 25000/- in the Bank. It was also stipulated that if up to 31st December, 1975, the petitioner submits a list of the members who are defaulters then that amount would be reduced.

5. In 1975, the Bank gave a notice under Section 117 of the Act (vide Exhibit 4) in the form of letter, directing the petitioner to deposit Rs. 7000/-. A reply was given and another notice was then received by the petitioner on July 22, 1975, for submitting the list of defaulters.

6. The Assistant Registrar then issued an attachment order of ancestral joint family properties of the petitioner purporting to act under Section 120 of the Act. The petitioners case is that he submitted a list of defaulters on 18.10.1975 and disputed the demand.

7. Before this Court Mr. Shrimali has argued that once the demand was deputed, it was necessary to adjudicate it under Section 77 of the Act, according to proviso (i) of Section 117 of the Act. Further no order was passed by the competent authority under Section 117. Then they are required to file an application before the Registrar, as per Rule 92 Sub-clause (1) of clause C of the Act.

8. The petitioner filed a revision before the Registrar, challenging the demand notices and attachment, and obtained ex parte stay order on 2.1.1976 but in spite of that, the property has been auctioned. Thereafter, a writ petition was filed earlier on 24.3.1976 and show-cause notice was issued before the admission but in the meanwhile, the sale was done and possession was given to one Ugrasingh.

9. That the petitioner then filed second writ petition after withdrawing the earlier writ petition on 29.10.1976.

10. Shri Shrimali, learned Counsel for the petitioner, emphasised only one point before me that the sale of property under Section 117 can be made only of the property which is subject to a charge under Sub-section (1) of Section 38. Section 38 reads as under:

First charge of co-operative society on certain assets:

(1) Notwithstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue.

(a) any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements, or machinery, raw material for manufacture and any finished products manufactured from such raw materials, belonging to such member, past member or forming part of the assets of the deceased member, as the case may be; and

(b) any out standing demands or dues payable to a co-operative society formed with the object of providing its members, with dwelling houses by any member or past member in respect to rent, share, loans or purchase money or any other rights or amount payable to such society shall be a first charge upon his interest in the immovable property of the society.

(2) No person shall transfer any property which is subject to a charge under Sub-section (1) except with the previous permission in writing of the co-operative

society which holds the charge.

(3) Not with standing anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of Sub-section (2) shall be void.

(4) The charge created under Sub-section (1) shall be available as against any claim of the Government arising from a loan granted under the Rajasthan Agricultural Loans Act, 1956 (Rajasthan Act I of 1957 after the grant of the loan by the society.

11. It was argued that only agricultural produce, cattle, fodder for cattle, agricultural or industrial implements, or machinery, raw material for m manufacture and any finished products manufactured from such raw materials belonging to such member can be treated as property undercharge and house cannot be sold.

12. Respondents have contested this petition and they made the contention that the sale has taken place in pursuance of the agreement by which the petitioner took liability upon himself and he cannot be allowed to resile liability now.

13. Respondents further submitted that remedy of appeal and revision was available and the petitioner cannot be allowed to agitate these questions in writ jurisdiction directly.

14. Mr. Mridul further submitted that in any case even if there is some irregularity in the proceedings and the sale have taken place, possession has been given to the purchaser and the petitioner has got no bona-fide reasons to oppose the recovery, and therefore he cannot be allowed to object the sale which has become complete.

15. I have considered the submissive (sic) learned Counsel for the parties. Undoubtedly, the petitioner has (sic) into an agreement voluntarily and took up himself the liability to pay the amount of the bank. The respondents have denied that he submitted a list of the defaulters and, therefore, I cannot hold that the list was submitted by him.

16. It was therefore, his duty to pay the amount to the Bank. If he would not have under taken the payment of the amount himself then the Bank would have made recovery from some other persons. By voluntarily agreeing to pay the amount, he prohibited the Bank from making recoveries. In view of this conduct, he cannot now be allowed to take a somer-sault and challenge the recoveries made from him. In my considered opinion the petitioner has no valid defence against the recovery which has been made and his challenge and denial to pay the amount is not honest.

17. It has been held by this Court In the case of Gian Singh v. Collector, Bhilwara ILR 1977 Raj. 644 that even though recovery proceedings may not be strictly according to law, but a petitioner whose denial to the demand, is not honest and who has no valid plausible defence cannot be given relief under Article 226 of the Constitution.

18. This Court observed as under:

Where the denial of liability by the petitioner appears to be dishonest, the High Court may refuse to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution in his favour.

19. In the instant case, undoubtedly, the petitioner executed an agreement to pay the amount. Except raising legal technical pleas regarding the sale of the property and making distinction between movable and immovable, Shri Shrimali has not been able to point out that he has got any bonafide or valid defence against the demand.

20. I am therefore convinced that the denial to pay the amount and challenge to recovery with the prayer that all sales which have taken place and possession which have been given to third parties, should now be quashed and the property be re-delivered to him; is neither honest nor bonafide and is not based on any plausible or argueable defence. In other words the petitioner's denial is dishonest.

21. It is to be noted that the amount which was given by the Bank and which was taken by the petitioner in the Society acd was alleged to be distributed to the

members, was the amount of the Bank. The Co-operative Societies cannot be permitted to keep the amount by wrongly appropriating it in a manner which the Co-operative Society is used as a shield for not paying the amount back to the Bank. Such practices have resulted in serious misuse and abuse of the Co-operative Sector. The case becomes still more serious when the petitioner after voluntarily executing the agreement, wants to resile and avoid liability from it, on the basis of legal technicalities.

22. The extra-ordinary equitable jurisdiction of Article 226 cannot be permitted to be invoked by persons of such dishonest conduct.

23. The result is that in view of the above, I refuse to enter into details of the controversy raised by Mr Shrimali and hold that dishonest conduct of the petitioner dis-entitles him to any relief under Article 226 of the Constitution.

24. The result is the writ petition fails and is hereby dismissed without any order as to (sic).