

State Bank of Travancore, Trivandrum, Kerala

Vs

E. J. Joseph and Another

Civil Appeal No. 2(N) of 1980

(B. P. Jeevan Reddy, G. N. Ray JJ)

02.12.1992

JUDGMENT

B. P. JEEVAN REDDY, J. -

1. This appeal raises the question whether the debt due to the appellant-bank from the respondents is saved from extinction by virtue of any of the exceptions contained in clause (4) (definition of "debt") in Section 2 of the Kerala Agriculturists' Debt Relief Act, 1970. The question arises in execution proceedings.

2. The respondents had obtained a loan from Travancore Forward Bank Limited. The latter was a 'Banking Company' within the meaning of the Banking Regulation Act, 1949. The said Bank was amalgamated with the appellant-bank on and with effect from May 15, 1961 in pursuance of a scheme of amalgamation prepared by the Reserve Bank of India under the provisions of the Banking Regulation Act. As a result of the amalgamation, the assets and liabilities of the Travancore Forward Bank including the amounts borrowed from and remaining due to the said Bank on the date of amalgamation vested in the appellant. To recover the said debt, the appellant filed O.S. No. 151 of 1962 in the court of Subordinate Judge, Kottayam. It was decreed. The appellant took out execution wherein the respondents filed I.A. No. 2469 of 1970 under Section 8 of the Kerala Agriculturists Debt Relief Act, 1970 (hereinafter referred to as 'Act') claiming that since they are agriculturists, the debt due from them to the appellants stands extinguished by virtue of the provisions of the Act. The appellant, on the other hand, submitted that the debt due to it is not "debt" within the meaning of the Act inasmuch as it is saved by the exception contained in sub-clause (a)(ii) of clause (4) in Section 2. We may pause here and set out the definition of 'debt' contained in clause (4) in Section 2, insofar as it is relevant for the purpose of this case :

"debt' means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, but does not include -

(a) any sum payable to -

(i) the Government of Kerala or the Government of India or the Government of any other State or Union territory or any local authority; or

(ii) the Reserve Bank of India or the state Bank of India or any subsidiary bank within the meaning of clause (k) of Section 2 of the State Bank of India (Subsidiary

Banks) Act, 1959 or the Travancore Credit Bank (in liquidation) constituted under the Travancore Credit Bank Act, IV of 1113 :

Provided that the right of the bank to recover the sum did not arise by reason of -

(A) any assignment made or

(B) any transfer effected by operation of law, subsequent to the 1st day of July 1957;
or

(iii) a corporation owned or controlled by the Government of Kerala; or the Government of any other state or the Government of India or a Government company as defined in the Companies Act, 1956; or...

(1) any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company;

Provided that in the case of any debt exceeding three thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company, any agriculturist debtor shall be entitled to repay such debt in eight equal half-yearly instalments as provided in sub-section (3) of Section 4, but the provisions of Section 5 shall not apply to such debt, or...."

3. The appellant's case was that since it is a subsidiary bank of the State Bank of India, the debt due to it is saved by sub-clause (a)(ii). This plea of the appellant, however, failed in view of the proviso appended to the said sub-clause. According to this proviso, the said exception does not apply to any debt which is transferred in favour of the appellant by operation of law subsequent to July 1, 1957. As noticed herebefore, the debt was originally due to the Travancore Forward Bank which debt devolved upon the appellant by operation of law i.e., by virtue of amalgamation effected under the provisions of the Banking Regulation Act. This was the ultimate decision of the High Court of Kerala to which the said dispute was carried. The High Court, however, remitted the matter for fresh disposal. On this occasion, the appellant raised an alternate contention viz., that the debt due to it is saved by virtue of the exception contained in clause (1) of the said definition. The appellant's submission was that the debt due to it exceeded Rs. 3,000 was borrowed under a single transaction and was due before the commencement of the Act. The question then arose as to what is the meaning of the words "due before the commencement of this Act to any banking company". The executing court did not permit the appellant to raise this alternate contention, against which the appellant approached the High Court of Kerala. The appeal preferred by the appellant was dismissed by a Division Bench following the decision of the Full Bench of the said court in *Mohd. Khan v. State Bank of Travancore* (1978 Ker LT 262 (FB) : AIR 1978 Ker 201) which held that the appellant-bank is not entitled to claim the benefit of exception contained in clause (1) since it is not a banking company. It was, however, brought to the notice of the Division Bench that against the aforesaid Full Bench decision, the appellant has preferred an appeal to this Court and that it was pending in this Court. It is on that ground that the Division Bench granted a certificate under Article 133 of the Constitution. The said appeal (against the Full Bench decision) has since been disposed of by this Court which decision is reported in *State Bank of Travancore v. Mohd. Khan* ((1981) 4 SCC 82). It is held by this Court that for attracting the exception contained in sub-clause (1) of clause (4), the debt must not only be due to a banking company before the commencement of the Act but also on the date of the commencement of the Act. Inasmuch as the appellant-bank is not a

banking company, it is held, it cannot invoke the said exception notwithstanding the fact that the Travancore Forward Bank, the original creditor, was a banking company within the meaning of the Banking Regulation Act. The said decision should indeed foreclose this appeal. But at this stage, the learned counsel for the appellant sought to raise an alternate contention viz., that the appellate-bank being a corporation owned or controlled by the Government of India, the debt due to it is saved by virtue of sub-clause (a)(iii) contained in the said definition. We are, however, not inclined to allow the appellant-bank to raise this alternate contention at this late stage more particularly in view of the fact that the certificate was granted only on the question of applicability of the exception contained in clause (1). It is true that even where a certificate has been granted with respect to one question this Court may permit the appellant to raise a pure question of law, not covered by the certificate, but in the facts and circumstances of this case, we do not think it proper to allow the appellant to raise this new contention for the first time at this stage. In the first instance, the bank claimed the benefit of the exception contained in clause (a)(ii). When it failed in that defence it claimed to be covered by the exception contained in clause (1). Now that it has failed there too, it is seeking to invoke yet another exception. It may also be noticed that for the exception contained in clause (a)(iii) to be attracted, the appellant-bank must be a corporation owned or controlled by the Government of the State or the Government of India. This aspect was never put in issue between the parties at any stage of proceedings. We are not inclined to allow this question to be raised on the basis of the facts and averments made in the special leave petition filed in this Court.

4. For the above reasons, the appeal fails and is dismissed. There shall be no order as to costs.

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