

SUPREME COURT OF INDIA

Shri Arun B. Khanjire

Vs.

The Ichalkaranji Urban Co-op. Bank Ltd.

S.L.P.(C) No. 18563 of 2005

(Altamas Kabir and Markandey Katju JJ.)

03.12.2008

JUDGMENT

Altamas Kabir, J.

1. In view of the limited point of law involved, the Special Leave Petition is taken up for final disposal at the admission stage itself.

2. The petitioner is alleged to have taken loans from the respondent-Bank under 17 loan transactions either in his capacity as the principal borrower or as the Director of the firm M/s Prakash Offset Printers. According to the respondent-Bank a sum of Rs.413.16 lakhs together with interest was due to it from the petitioner as on 31.12.03. The petitioner, along with the firm and its other Directors, disputed their liability to make the said payment and filed an application under Section 91 of the Maharashtra Co-operative Societies Act, 1960. Initially, the Co-operative Court granted an order of status-quo but vacated the same after hearing the Bank. The Co-operative Appellate Court affirmed the order of the Co-operative Court and refused to stay the recovery proceedings. Meanwhile, the respondent-Bank also initiated action for recovery under Section 101 of the aforesaid Act against the petitioner and his business concerns. Accepting the claim of the Bank, the Assistant Registrar of Co-operative Societies issued 12 Recovery Certificates on 12.3.2004. The petitioner and his other concerns filed three writ petitions before the High Court questioning the issuance of the Recovery Certificates. The High Court also declined to grant any relief and on 30.6.2004 the Bank issued demand notices to the appellant and his other concerns. A warrant of attachment was also issued.

3. On 15.7.2004, the petitioner herein filed a Misc. Complaint Application before the Divisional Joint Registrar seeking reliefs which were similar to the reliefs sought for in the writ petitions. After service of notice, the respondent-Bank entered appearance and an order or status quo was passed while fixing the matter for hearing on 22.12.2004. Although, an objection was taken on behalf of the respondent-Bank that the proceedings were not maintainable and had been commenced in violation of the provisions of Section 154 of the *Maharashtra Co-operative Societies Act, 1960*, the Divisional Joint Registrar set aside the

Recovery Certificates against which decision the respondent-Bank filed a Writ Petition in the High Court and prayed for setting aside the order of the Divisional Joint Registrar, which prayer was allowed.

4. This Special Leave Petition is directed against the said decision of the High Court granting the order of the Divisional Joint Registrar.

5. Appearing for the petitioner, Mr. Jaideep Gupta, learned Senior Advocate, submitted that the revisional powers under the aforesaid Act vested in the State Government or the Registrar, which could be exercised suo motu or on an application. He urged that since the revisional powers under Section 154 of the aforesaid Act had been invoked by the Divisional Joint Registrar of the Co-operative Societies suo motu, the order passed by him could not be said to have been passed contrary to the provisions of Sub-section (2A) of Section 154 of the aforesaid Act. Mr. Gupta urged that the High Court had erroneously come to the conclusion that the revision proceedings against the decision of the Registrar was hit by the provisions of Sub-section (2A) of Section 154 of the above Act, since the inquiry was commenced by the said authority on receipt of information and not on a formal application made to him.

6. Mr. Gupta then contended that the views expressed by the High Court in regard to the interpretation of Sub-section (2A) of Section 154 was erroneous and had been wrongly applied to the facts of the case by the High Court.

7. Opposing the petition, Mr. U. Lalit, learned Senior Counsel, urged at the very outset that since the application of the petitioner was unaccompanied by 50 per cent of the total sum of the recoverable dues, the revision was not maintainable in view of the provisions of Sub-section (2A) of Section 154 of the above-mentioned Act and the matter had been wrongly taken up for consideration by the Divisional Joint Registrar holding the same to be maintainable.

8. In this regard, Mr. Lalit referred to Section 154 of the above-mentioned Act which empowers the State Government and the Registrar, either suo-motu or on application, to call for and examine the records of an inquiry or proceedings of any matter other than those referred to in Sub-section (9) of Section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the regularity of such proceedings, and to annul or reverse such decision, if it becomes necessary to do so, after giving the person affected an opportunity of being heard.

9. Mr. Lalit laid special emphasis on Sub-section (2A) of Section 154, which reads as follows:

"154(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 unless the applicant deposits

with the concerned Society, fifty percent amount of the total amount of recoverable dues."

10. Sub-section (3) provides that no application for revision may be entertained, if made after two months of the date of communication of the decision or order. The revisional authority, however, has been given the power to entertain any such application made even after such period upon sufficient cause being shown for the delay.

11. Mr. Lalit submitted that while an application may be filed within the period prescribed, the revision could not be entertained (emphasis added) or taken up for consideration unless the condition of pre-deposit as indicated in sub-section (2) was fulfilled. Mr. Lalit submitted that since the condition precedent had not been satisfied, the Divisional Joint Registrar could not have entertained and decided the revision application, as had been correctly held by the High Court. It was also urged that the proceedings under Section 101 had been completed and Recovery Certificates were issued without any obstruction, and, in any event, the same question had been decided in other matters which have been rejected upto this Court. Mr. Lalit submitted that the entertainment of an application, if filed within the period prescribed, depended on the applicant fulfilling the pre-condition stipulated, but he could not be held responsible if such delay was caused not by him but by the concerned officer. Mr. Lalit urged that since the revisional application had not been taken up suo-motu, and, on the other hand, the pre-deposit of 50% had not been made, the High Court rightly dismissed the writ application and the same did not warrant any interference in this petition.

12. In support of his submission Mr. Lalit firstly referred to the decision of this Court in *The Commissioner of Income-Tax, Bombay vs. M/s Filmistan Limited*¹, which was a case where an appeal had been presented under the *Income Tax Act, 1922*, within the period of limitation. The tax was paid after the period of limitation prescribed for presenting the appeal had expired. In the said case it was held that the expression "no appeal shall lie" in the proviso to Section 30(2) of the said Act meant that the appeal could not be held to be properly filed until the tax was paid and not that the memorandum of appeal could not be presented. In other words, the appeal would be deemed to have been filed on the date on which the tax was paid and the question would then have to be decided whether there was sufficient case for condonation of delay.

13. Mr. Lalit submitted that in the case of *Lakshmi Rattan Engineering Works Ltd. vs. Assistant Commissioner Sales Tax, Kanpur*², this Court was called upon to consider the expression 'entertain' in the proviso to Section 9 of the *U.P. Sales Tax Act, 1948*, dealing with appeals and it was held by a three-Judge Bench that the expression 'entertain' meant the first occasion on which the Court took up the matter for consideration. But where an appeal was automatically admitted under the Rules the first occasion for the Court to take up the appeal would be when the appeal came up for hearing. It was also held that before the appeal could be taken up for hearing, it would have to be proved to the satisfaction of the officer concerned that the tax had been paid and in time.

14. Mr. Lalit submitted that a similar view had been expressed by this Court in *State of Haryana vs. Maruti Udyog Limited*³ where Section 39 of the *Haryana General Sales Tax Act, 1973*, was in question and where similar provisions were included and it was held that the word 'entertain' would mean when the case is taken up by the Court for the first time, or, in other words, when satisfactory proof had been made available that the tax in question had been deposited.

15. Various other decisions were also cited on the same lines which need not detain us.

16. Having carefully considered the submission made on behalf of the respective parties and having carefully considered the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960, and in particular Sub-section (2A) of Section 154, we are convinced that no interference is called for with the order of the High Court impugned in these proceedings. Admittedly, Section 154(1) of the above Act confers reversionary powers on the State Government and also the Registrar of Co-operative Societies under the Act. It also empowers the State Government or the Registrar to satisfy themselves as to the legality or the propriety of any such decision or order and to modify, annul or reverse the same after giving the person affected thereby an opportunity of being heard either suo motu or on an application. In the instant case, although learned counsel Mr. Jaydeep Gupta tried to impress upon us that the proceedings had been commenced suo-motu, we are unable to accept such submission since an application had been made by the petitioner to the officer concerned in which all the facts relating to the appeal had been set out. Although, the same was not in the form of a formal Memorandum of Appeal it served the purpose of the appeal without compliance with the provisions of Sub-section (2A) which required deposit of 50% of the recoverable dues. In fact, the petitioner resorted to an innovative procedure in order to avoid the pre-condition of payment of 50% of recoverable dues as stipulated under Sub-section (2A) of Section 154 of the above Act.

17. We agree with Mr. Lalit's submission that the matter was not taken up suo-motu by the Divisional Joint Registrar, but on the basis of the application which had been filed by the petitioner here, though not in the form of a Memorandum of Appeal, and that while an appeal may be filed within the period of limitation prescribed, it could not be entertained or taken up for hearing before the pre-condition indicated in Sub-section (2A) had been complied with, which view is supported by the decisions referred to hereinabove.

18. We, therefore, see no reason to entertain the Special Leave Petition which is accordingly dismissed.

19. There will be no order as to costs.

¹[1961] 3 SCR 893]

²[1968] 1 SCR 565]

³[2000] 7 SCC 348]