

SUPREME COURT OF INDIA

Ludovico Sagrado Goveia

Vs.

Cirila Rosa Maria Pinto & Ors.

C.A.No.8756 of 2016

(Dipak Misra and R.F.Nariman,JJ.,)

06.09.2016

JUDGMENT

R.F.Nariman,J.,

1. The present appeal is filed by the successful purchaser at an auction held in execution of an order dated 5.10.2010 of the Assistant Registrar of Cooperative Societies passed under Section 76 of the Multi State Cooperative Societies Act, 1984 [hereinafter referred to as “the 1984 Act”]. The brief facts of the present appeal are as follows.

2. Respondent No. 3 in the High Court, as Proprietor of M/s Gable Builders, obtained a loan of Rs. 40 lacs from the Mapusa Branch of the Goa State Cooperative Bank Ltd. The said loan was sanctioned for the purpose of construction of a Bungalow. By a deed of mortgage executed on 2.12.1997, the said loan was secured by mortgaging the western part of the scheduled property admeasuring 8000 sq. mts. The principal borrower failed to repay the loan installments. That being so, recovery proceedings were initiated under Sections 74 and 76 of the said Act by the Bank against respondent No. 3 and two sureties of the said loan. The Assistant Registrar of Cooperative Societies, by an Award dated 5.10.2007, noticed that despite being duly served summons by Registered post A.D., all the three opponents remained absent. As a result, an ex-parte award was passed holding all the three opponents jointly and severally liable to pay the loan dues amounting to Rs 55,04,583/- . It may be mentioned that interest was payable at 21% compounded under the said deed of mortgage dated 2.12.1997.

3. A demand notice dated 12.6.2001 was then issued by the Bank under Rule 22 of the Multi State Co-operative Society Rules, 1985 against all the three said persons for a principal amount of Rs. 60,59,646/- together with further interest at 19% per annum from 1.4.2001 till the date of payment.

4. In spite of receiving the said notice, the defaulters failed to pay any amount towards bank dues, and the bank then referred the said award for execution to the Sale and Recovery

Officer, Regional Office at Verem, Goa. The said Recovery Officer issued a proclamation notice for sale by public auction of the mortgaged property by publishing a notice dated 2.1.2002 which was duly published in the Daily Herald on 5.1.2002. Nobody came forward in response to the said notice. Between January 2002 and February 2007 several proclamation notices were issued - six in all- to sell the said mortgaged property, but no bidders came forward to purchase the said property. The Bank then decided to sell the said mortgaged property by adopting the mode of selling property by sealed tender. Accordingly, the Sale and Recovery Officer issued a tender notice dated 18.3.2007 calling for sealed tenders. The said notice was published in a local newspaper "The Tarun Bhagat" also of the same date. As per the said tender notice, sealed quotations were invited from the public on or before 23.3.2007.

5. Two sealed tenders were received on 20.3.2007. A bid of Rs. 86,00,000/- received from the appellant in the present appeal was found to be the highest and accordingly, since the appellant paid the entire bid amount of Rs. 86,00,000/-, a Sale Certificate in favour of the appellant was issued on 23.4.2007.

6. Without availing of the procedure provided by Rule 37 (13) of the Multi State Co-operative Society Rules, 2002 by which the defaulter/ borrower could approach the authorities with an amount of 5% to be paid to the auction purchaser together with the full amount of the outstanding loan and expenses of attachment and sale to the decree holder, with interest thereon, within 30 days of confirmation of sale. If this were done, the said sale could have been set aside. Since the borrower did not repay at any stage the money borrowed by him, the borrower filed a Writ Petition being Writ Petition No. 325 of 2007 dated 21.6.2007 before the High Court of Bombay at Goa to quash both the award and the certificate of sale accorded in favour of the Appellant.

7. By the impugned judgment dated 23.12.2013, the High Court has held that the Multi State Co-operative Societies Act, 1984 was repealed by the Multi State Co-operative Societies Act, 2002, [hereinafter referred to as "the 2002 Act"] which Act came into force on 19.8.2002. According to the High Court, the new Act deems an award passed by the Assistant Registrar as an award in an arbitration case, which is executable only under the Arbitration and Conciliation Act, 1996 [hereinafter referred to as "the 1996 Act"], and this being the case, the auction proceedings were set aside by the High Court stating that the award dated 5.10.2002 would be liable to be executed only in the manner provided by the 1996 Act. It is the correctness of this judgment that has to be inquired into in the present appeal.

8. Learned counsel for the appellants has placed the relevant provisions of both the 1984 Act and 2002 Act, and has relied in particular on Section 126(6) of the 2002 Act to contend that all legal proceedings that had been initiated under the 1984 Act would continue under that Act. This being the case, it is clear that as execution proceedings were initiated prior to 19th August, 2002, which is the date of coming into force of the 2002 Act, the said proceedings would be saved despite repeal of the 1984 Act by the 2002 Act.

9. On the other hand, learned counsel appearing on behalf of the respondent, argued that, under the 2002 Act, the 1996 Act alone would get attracted, and that, therefore, the High Court judgment was correct. Learned counsel further argued that even if the impugned judgment were to be set aside, other points remained to be argued in the Writ Petition so that the matter could then be remanded back to the High Court for further consideration of these other points.

10. We have heard learned counsel for the parties. Before dealing with the contentions raised before us it will be important to set out some of the relevant statutory provisions.

“Multi-State Co-operative Societies Act, 1984 74. (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947) touching the constitution, management or business of a multi-State co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or a person claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present , or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society and the liquidator of another multi-State co-operative society. Such dispute shall be referred to the Central Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute : Provided that all disputes in which a national co-operative society is a party shall be referred to the Central Registrar or any officer empowered to exercise the powers of the Central Registrar.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely :-

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; (3) If any question arises whether a dispute referred to the Central Registrar is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the Central Registrar shall be final and shall not be called in question in any court.

76. Settlement of disputes.- (1) The Central Registrar may, on receipt of the reference of dispute under section 74,-

(a) elect to decide the dispute himself, or

(b) transfer it for disposal to any other person who has been invested by the Central Government with powers in that behalf.

(2) The Central Registrar may withdraw any reference transferred under clause (b) of sub-section (1) and decide it himself or refer the same for decision to any other person who has been invested by the Central Government with powers in that behalf.

(3) The Central Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

85. Execution of decision, etc. - Every decision or order made under section 30. Section 31, section 73, section 76, section 90, section 92 or section 93 shall, if not carried out.-

(a) on a certificate signed by the Central Registrar or any person authorized by him in writing in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as if it were a decree of such court ; or

(b) where the decision or order provides for the recovery of money, be executed according to the law for the time being in force for the recovery of arrears of land revenue :Provided that any application for the recovery in such manner of any sum shall be made –

(i) To the Collector and shall be accompanied by a certificate signed by the Central Registrar or by any person authorized by him in writing in this behalf ;

(ii) Within twelve years from the date fixed in the decision or order and if no such date is fixed, from the date of the decision or order, as the case may be; or

(c) be executed by the Central Registrar or any person authorized by him in writing in this behalf, by attachment sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made. Multi-State Co-operative Societies Act, 2002

84. Reference of disputes.- (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between the member, past member and persons claiming through a member, past member or deceased member and the mutli-State co-operative society, its board or any officer, agent or employee of the mutli-State co-operative society or liquidator, past or present, or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another mutli-State co-operative society and the liquidator of another multi-State co-operative society. Such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:-

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not ;

(c) Any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3) If a question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

94. Execution of decisions, etc.- Every decision or order made under section 39 or section 40 or section 83 or section 99 or section 101 shall, if not carried out,-

(a) on a certificate signed by the Central Registrar or any person authorized by him in writing in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as if it were a decree of such court and such decree shall be executed by the Central Registrar or any person authorized by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made; or

(b) where the decision or order provides for the recovery of money, by executed according to law for the time being in force for the recovery of arrears of land revenue: Provided that any application for the recovery of any sum shall be made in such manner-

(1) To the Collector and shall be accompanied by a certificate signed by the Central Registrar or by any person authorized by him in writing in this behalf;

(ii) Within twelve years from the date fixed in the decision or order and if no such date is fixed, from the date of decision or order, as the case may be; or

(c) be executed by the Central Registrar or any person authorized by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made.

126. Repeal and saving. (1) The Multi-State Co-operative Societies Act, 1984 (51 of 1984) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Multi-State Co-operative Societies Act, 1984 (51 of 1984) shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(3) Every multi-State co-operative society, existing immediately before the commencement of this Act which has been registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other Act relating to co-operative societies in force, in a y State or in pursuance of the provisions of the Multi-unit Co-operative Societies Act, 1942 (6 of 1942) or the Multi-State Co-operative Societies Act, 1984 (51 of 1984), shall be deemed to be registered under the corresponding provisions of this Act, and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, or the rules, continue to be in force until altered or rescinded.

(4) All appointments, rules and orders made, all notifications and notices issued and all suits and other proceedings instituted under any of the Acts referred to in subsection (1) shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling the registration of a multi-State co-operative society shall be deemed, unless the society has already been finally liquidated, to be an order made under section 86 for its being wound up.

(5) The provisions of this Act shall apply to-

(a) any application for registration of a multi-State co-operative society;

(b) any application for registration of amendment of bye-laws of a multi-State co-operative society, pending at the commencement of this Act and to the proceedings consequent thereon and to any registration granted in pursuance thereof.

(6) Save as otherwise provided in this Act, any legal proceeding pending in any court or before the Central Registrar or any other authority at the commencement of this Act shall be continued to be in that court or before the Central Registrar or that authority as if this Act had not been passed.”

11. The first thing that can be noticed is that an adjudication made under Section 74 and 76 of 1984 Act can be executed in the manner provided by Section 85 of the 1984 Act. Every

decision or order made under Section 76 can be executed in three ways. We are concerned with sub-clause (c), in particular, inasmuch, as on the facts of the present case, the execution application was made to attach and sell the property of the persons against whom the said order has been made.

12. The scheme of the 2002 Act which replaces the 1984 Act is a little different. Section 84 of the 2002 Act corresponds to Section 74 and 76 of the 1984 Act. With this difference - that disputes that have been referred to arbitration are now to be settled or decided by the Arbitrator to be appointed by the Central Registrar, and the provisions, therefore, of the 1996 Arbitration and Conciliation Act shall apply to such arbitration as if the proceedings for arbitration were referred for settlement or decision under the provisions of the said Act.

13. Thus it can be seen that Section 84 (4) and (5) of the new Act provide for a different scheme. Equally, Section 94 which provides for execution of certain decisions and orders made under the 2002 Act, mentions various Sections, but Section 84 is conspicuous by its absence. This is obviously for the reason that the entire proceedings have now to be conducted under the 1996 Act, including execution of the arbitration Award made under the said Act. The question before the High Court was whether proceedings initiated under the old Act could continue under the said Act.

14. For this, it is important to advert to Section 126(6), which has been completely missed by the High Court. By this Section, any legal proceeding pending before any authority at the commencement of the 2002 Act shall be continued to be before that authority as if the 2002 Act had not been passed.

15. The expression “legal proceeding” has been the subject matter of consideration in the Federal Court decision in *Governor-General in Council v. Shiromani Sugar Mills Ltd.*¹, for consideration. That Section reads as follows:

“When a winding-up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.”

16. The Federal Court held that the expression “other legal proceedings” in Section 171 of the Indian Companies Act, 1913 comprises any proceeding initiated by the revenue for recovery of tax dues under the Indian Income Tax Act. There is no warrant for a narrow construction of such expression as meaning ‘proceedings only in courts’. The Federal Court specifically held that initiating and putting into force the collection of arrears of income tax as arrears of land revenue by authorities under the Income Tax Act would be a “legal proceeding” .

17. In *Binod Mills Co. Ltd. Ujjain (M.P.) v. Suresh Chandra Mahaveer Prasad Mantri, Bombay*², this Court had to construe Section 5 of the M.P. Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978. Section 5 of the said Adhiniyam reads as follows:

“5. Suspension of suits or other legal proceedings against relief undertakings.—As from the date specified in the notification under sub-section (1) of Section 3, no suit or other legal proceeding shall be instituted or commenced or, if pending, shall be proceeded with against the industrial undertaking during the period in which it remains a relief undertaking any law, usage, custom, contract, instrument, decree, order, award, settlement or other provisions whatsoever notwithstanding.”

18. This Court referred in detail to the aforesaid Federal Court decision, and further went on to hold that Section 5 would include execution petitions that were filed to execute decrees under the Code of Civil Procedure.

19. It is thus clear that the proceeding in execution initiated under Section 85(c) of 1984 Act and pending before the authorities under the said Act prior to 19th August, 2002, would continue unhindered by the repeal of the 1984 Act by the 2002 Act. This being the case, it is clear that the judgment under appeal is incorrect, and would have to be set aside.

20. In the affidavit in reply filed by the bank to the Writ Petition, the bank states that it has recovered the entire loan due together with interest amounting to Rs.85,15,311.75 as against Rs.86 lakhs received in the auction proceedings, and admits that the balance amount of Rs. 74,688.25 over and above the loan dues are payable to the appellant. This being the case, and in order to do complete justice between the parties, it is ordered that the amount of Rs.74,688.25, together with interest at the rate of 19 per cent compounded per annum with effect from 1st April, 2007, be paid by the bank to the appellants within a period of four weeks from the date of pronouncement of this judgment.

21. Learned counsel for the respondent exhorted us to send the matter back for a decision on grounds (V) and (VI) of the Writ Petition which read as follows:

“(V) The Petitioner further submits that the said Sale Certificate issued by Respondent no.2 pursuant to the notice dated 17.3.2007 is also void being passed under the colour of powers, in as much as the Respondent no.2 could not give a go-bye to the mandate of Rule 36 of the Multi-State Co-operative Societies Rules and decided to hold the auction and/ or open the tenders in a period short of 15 days, in as much as the said Rule does not provide for relaxation. On the other hand, it mandates that the notice shall be of a period of 15 days.

(VI) The entire action of the Respondent No. 2 is malafide and meant to favour of the Respondent No.3 in as much as facts stated above make it clear that, that apart, the conduct of the Respondents in not providing the certified copies of the proceedings and keeping the Petitioner in the dark when she is the owner of the property and

surreptitiously seeking to hold the auction giving a go-bye to the statutory requirements makes it clear that the Respondent No. 2 acted malafide with respect and which act vitiates the entire proceedings.”

22. We find that after six failed attempts to sell the property we would not be inclined to accede to this request at this point in time. We find, on the facts of this case, that at no stage were the respondent - borrowers ready to pay back the entire money borrowed by them as far back as in 1997. We also find that a Writ Petition was filed in 2007 without attempting to set aside the certificate of sale granted under either Rule 37(13) or (14) of the ***Multi State Co-operative Society Rules, 2002***³ . It is of some significance that it is not the appellant’ s case

³ (13) (a) *Where immovable property has been sold by the Sale Officer, any person either owning such property or holding an interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the recovery officer –*

(i) for payment to the purchaser a sum equal to five per cent of the purchase money, and

(ii) for payment to the decree-holder, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was ordered together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the decree-holder.

(b) If such deposit and application are made within thirty days from the date of sale, the recovery officer shall pass an order setting aside the sale and shall repay to the purchaser, the purchase money so far as it has been deposited, together with five per cent deposited by the applicant: Provided that if more than one person have made deposit and application under this sub-rule, the application of the first depositor to the officer authorised to set aside the sale, shall be accepted.

(c) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

(14) (i) At any time within thirty days from the date of sale of immovable property, the decree-holder or any person entitled to share in a rate able distribution of the assets or whose interests are effected by the sale, may apply to the recovery officer to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it: Provided that no sale shall be set aside on the ground of irregularity or fraud unless the recovery officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application is allowed, the recovery officer, shall set aside the sale and may direct a fresh one.

(iii) On the expiration of thirty days from the date of sale if no application to have the sale set aside is made or if such application has been made and rejected, the recovery officer shall make an order confirming the sale: Provided that if he shall have reason to believe that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

(iv) Whenever the sale of any immovable property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(v) After the confirmation of any such sale, the recovery officer shall grant a certificate of sale bearing his seal and signature to the purchaser, and such certificate shall state the property sold and the name of the purchaser and it shall be conclusive evidence of the fact of the purchase in all courts and tribunals, where it may be necessary to prove it and no proof of the seal or signature of the recovery officer shall be necessary unless the authority before whom it is produced shall have reason to doubt its genuineness.

(vi) An order made under this sub-rule shall be final, and shall not be liable to be questioned in any suit or other legal proceedings.

that the property has been sold at an undervalue. Also, as has been pointed out above, the opportunity to have the sale certificate set aside under Rule 37(13) has not been availed. Ground V of the Writ Petition is in reality a ground relatable to Rule 37(14), as, according to the petitioner, there is a material irregularity in conducting the sale. For the petitioner to make out such a ground, he has first to apply to the recovery officer within 30 days from the date of sale. And further, the appellant has to make out a case that he has sustained substantial injury by reason of such irregularity. Ground V of the Writ Petition does not even refer to substantial injury for the reason that is not the appellant's case that the property has been sold at a gross undervalue. No relief can be given in the Writ Petition so as to circumvent the statutory provisions contained in Rule 37(13) and (14). Ground VI is totally vague and lacking in particulars. A charge of malafides has to be made out with great clarity and particularity. Also, the appellant cannot claim to be in the dark as every auction sale was publicly advertised in newspapers. We, therefore, do not accede to counsel's fervent plea to remit the rest of the Writ Petition to the High Court for hearing.

23. We therefore set aside the judgment under appeal as a whole. There will not be any order as to costs.

Judgment Referred.

¹*AIR 1946 FC 0016*

²*(1987) 3 SCC 0099*