

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.2283 of 1994

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ORDER:

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The petitioner assails the order/notice issued by the first respondent herein under Section 8 of The Andhra Pradesh Revenue Recovery Act, 1864 ('the Act' for brevity) as illegal, arbitrary and without jurisdiction. The petitioner seeks a declaration to that effect. The petitioner availed overdraft facility from Syndicate Bank, T.Sundupalli Branch, the second respondent herein. He was asked to deposit an amount of Rs.10,000/- (Rupees ten thousand only) in his account No.2148 in the said bank. Alleging that he failed to pay the loan amount due to the second respondent, the first respondent served the impugned attachment order on the petitioner. Though the Writ Petition admitted on 16.02.1994 and Rule Nisi duly was served, either the first respondent or the second respondent did not choose to file counter- affidavit nor did they produce the relevant records.

Learned counsel for the petitioner, Ms. Radhika, representing Sri O.Manohar Reddy placing reliance on the decision of the Supreme Court in ***State of Kerala v. V.R.Kalliyankutty*** and a decision of this Court in ***N.A.Radha Vs. State of Andhra Pradesh***, raised a legal question, whether the provisions of the Act can be invoked when there is a dispute regarding the "amount due".

A reading of the impugned attachment order would show that the petitioner herein allegedly committed default in payment of loan "amount due" to the second respondent, bank and therefore, the attachment order is passed in ***State of Kerala*** (supra), the Supreme Court considered the question whether time barred claim also come within "amount due" under Section 71 of Kerala Revenue Recovery act (1968), the Apex Court ruled as under:

Do these words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor which are legally recoverable? An amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. In Black's Law dictionary, 6<sup>th</sup> Edn. At page 499 the following comment appears against the word "due". The word "due" always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at

sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word “due” is restricted to the first of these meanings, the second being expressed by the term “overdue and the third by the word “payable”. There is no reference in these definitions to a time-barred debt. In every case the exact meaning of the word “due” will depend upon the context in which that word appears.

In ***N.A.Radha v. State of Andhra Pradesh*** (supra) this Court considered the question whether a financial institution like A.P. State Financial Corporation, can resort to the provisions of the Act by virtue of the notification under section 52 A of the Act in respect of the claims of the financial institution barred by limitation. While answering the question in the negative and held thus:

The question of the validity of Section 52 A of the Act, urged in the writ petition was not pressed at the hearing of the writ petition in view of the decision of the Division Bench of this Court in *Grandhi Kamaraj and others Vs. Government of A.P.* upholding the vires of the provision.

The only question that survives and has been urged at the hearing of this writ petition is that the demand by the Corporation of the amounts due from the petitioners is barred by limitation and as such unenforceable per se or under the provisions of the Act.

In view of the decision of the Supreme Court in *State of Kerala vs. Kalliyankutty* proceedings under the Act cannot lie for recovery of amounts that are barred by limitation. The question that arises is whether the claim of the respondent-Corporation is barred by limitation and whether this question would be adjudicated in these proceedings.

Learned Assistant Government Pleader for Revenue does not disputed the legal position.

Therefore, the Writ Petition is disposed of directing the respondent Nos.1 and 2 to look into the matter after giving notice to the petitioner, determine the amount if any due, which is not barred by limitation and take necessary action. In case, the amount claimed by the second respondent is barred by limitation, it shall not be open to the respondents to proceed under the provisions of the Act.

Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

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(V.V.S.RAO.,J)

31<sup>st</sup> March 2004

RRB