

(2004) 04 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 42497-501 of 2003

A. Madhava Acharya and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 118 (1) (c)

Citation : (2004) ILR (Kar) 2853 : (2004) 3 KCCR 226 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Jyoti M., for Tarakaram Associates, for the Appellant; M. Keshava Reddy, HCGP for R1, K. Chandranath Ariga, for R4-7, for the Respondent

Judgement

V. Gopala Gowda, J.—The petitioners are the Members of 2nd respondent society. They are seeking to quash the entire proceedings in the suit in O.S.No. 264/2003 on the file of Principal Civil Judge (Sr.Dn), Mangalore. The suit was filed to declare the election notice issued as null and void. The Trial Court granted interim order restraining conduct of election till the disposal of the suit. These Writ Petitions are filed seeking to quash the entire proceedings in the suit on the principal ground that there is express bar of suit u/s 118(1)(c) of the Karnataka Co-operative Societies Act as the basis for the suit falls within the definition of "dispute" u/s 70(2)(c) of the Act.

2. Learned Counsel for respondents 4 to 7 filed detailed counter statement questioning the locus stand of the petitioners and maintainability of Writ Petitions on the ground that application could have been filed for vacating the interim order. In this regard, the decisions reported in Punjab National Bank Vs. O.C. Krishnan and Others, , Parijatha and Another Vs. Kamalaksha Nayak and Others, have been relied upon. To contend that it is the exclusive jurisdiction of the Civil Court to try the suit, the decision reported in Ramesh Chand Ardawatiya Vs. Anil Panjwani, is pressed into service. In other words, the contention urged on behalf of the above respondents is that since alternative remedy is available for the

petitioners against the impugned order, this Writ Petitions shall not be entertained by this Court.

3. To answer the contentions urged on behalf of respondents 4 to 7, it is necessary to look into the reliefs sought for in the suit and they are:-

"1. For a declaration declare that, the processing of conducting election to the 1st defendant/society by issuing election notice dated 23-8-2003 by the 2nd defendant is illegal, opposed to law, without jurisdiction, null and void, voidab-into and as such, liable to be set aside.

2. Consequential permanent prohibitory injunction restraining the 2nd defendant its subordinates and anybody claiming through or under him from conducting election on 14-9-2003 to the 1st defendant society.

3. Cost of the suit and grant such other and further reliefs"

From a plain reading of the reliefs sought in the suit it is clear that it is election dispute which falls under the provision of Section 70(2)(c) of the Act which reads thus: -

"70. Disputes which may be referred to Registrar for decision:

1. xxxxx

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

a. xxxxxx

b. xxxxx

c. any dispute arising in connection with the election of a President, Vicepresident, Chairman, or Vice-chairman, Secretary, Treasurer or Member of Committee of the society."

4. Section 118(1)(C) of the Act bars the jurisdiction of Courts in respect of the disputes enumerated u/s 70 of the Act. In view of this express bar, the Trial Court should not have been entertained the suit. The Trial Court not only entertained the suit, but passed interim order of temporary injunction restraining the respondent No. 3, his servants or any other person claiming through his to the conduct of election until disposal of the suit, which interim order is illegal as the same is without jurisdiction and power, hence the same is wholly unjustifiable in law. The interim order of temporary injunction is passed by the learned Trial judge without application of mind to the provisions of the KCS Act and law laid down in this regard with regard to ouster of Civil Court's jurisdiction in respect of the election matter of a Co. operative Society by the Apex Court in the decisions reported in Munshi Ram and Others Vs. Municipal Committee, Chheharta, and Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, .

5. The next question that is raised by the respondents 4-7 is that petitioners have got an alternative remedy of filing application for vacating interim order of temporary injunction before the Trial Court is concerned, since the Trial Court has no jurisdiction with regard to the reliefs as sought for in the original suit and to try the suit itself and therefore, filing of application for vacating interim order by them before it do not arise at all. When the Civil Court has no jurisdiction in the matter in view of the express provisions of Section 118(c) and the law laid down by the Apex Court in the cases referred to supra, the petitioners are not prevented to approach this Court by filing these petitions. The plea or contention raised regarding maintainability of these Writ Petitions by the learned Counsel on behalf of the contesting respondents is wholly untenable and the decisions relied upon by Sri Chandranath Ariga, learned Counsel for respondents 4 to 7 are not applicable to the facts situation of this case, but on the other hand the decisions of the Apex Court referred to supra and in view of Section 118(1)(c) of the Act bars the Jurisdiction of the Civil Court to entertain the original suit filed by the above respondents.

6. So far as the locus standi of the petitioners is concerned, they are the members of the society. The Civil Court prevented the society from conducting elections at the instance of respondents 4-7, thereby the valuable statutory rights and interest of the members of the society are affected. In that view of the matter, since the petitioners have got interest in the matter, they have got every right to approach this Court for the relief as prayed in this petition.

7. For the reasons stated above, the Writ Petitions are allowed. The entire proceedings in O.S.No. 264/2003 on the file of Principal Civil Judge (Sr.Dn), Mangalore are quashed and the suit is dismissed as not maintainable in view of the provisions of Section 118(1)(c) of the Act. Further the respondents No. 2 and 3 are directed to proceed further to conduct elections to the Managing Committee from the stage at which it was stopped by interim order of the Civil Court as expeditiously as possible but not later than three weeks from the date of receipt of this order.

8. In spite of express bar of suit u/s 118 of the Act, Respondents 4 to 7 being members of the society have filed frivolous suit and obtained interim order of temporary injunction stalling the conduct of elections and preventing the Returning Officer to discharge his statutory duties. It is an admitted fact that in view of the misappropriation of funds in the society, fresh elections to the Managing Committee had been ordered by the Additional Registrar of Industries and Commerce of Co. operative Societies, Bangalore. By stalling the election process, respondents 4 to 7 paved way for continuing the old committee despite serious allegations of misappropriation of funds of the society against it and the Civil Court has no jurisdiction to entertain the original suit against the respondents 2 and 3. Hence, it is a fit case for this Court for imposing exemplary costs on them. Accordingly, Costs of Rs. 5,000/- is imposed upon respondents 4 to 7 payable by them equally to the petitioners.

9. In this case, despite application was filed as per Annexure-R2 pointing-out that suit is barred u/s 118 of the Act, the Civil Court not only entertained the suit but granted an interim order of temporary injunction until disposal of the suit thereby stalling the election process of the second respondent society. When such a provision was brought to the notice of the Court, Presiding Officer ought to have verified the same and dismissed the suit as not maintainable in law. But, on the other hand, the Presiding Officer does not care to look into what is stated in the application. This shows that the Officer does not want to apply his mind to what is brought to his notice. Even after pointing-out that suit was not maintainable under a specific provision of the statute, as the Presiding Officer has entertained the suit without examining the provisions of the Act and law laid down by the Apex Court in this regard and passed interim order in favour of the plaintiffs in the suit, which action of him is very casual and non-application of mind. The Officer being the Principal Civil Judge of Senior Division, must have the basic knowledge of bar or maintainability of suits while dealing with civil suits of this nature. The very fact that he proceeded with the suit despite pointing-out that suit is not maintainable is sufficient to hold that the Officer ignores statutory bar and entertains the suit for the reasons best known to him. This is a serious matter which requires the Registry to take up the matter in the Administrative side for needful action in this regard. The Grant of interim order in a non-maintainable suit and stalling the conduct of election to the second respondent society to elect its committee for better functioning is opposed to the provisions of the KCS Act particularly Section 39A of Chapter VA of the Act, thereby the interest of the society has adversely affected. 10. Registrar Judicial is directed to place the matter before the Hon"ble Chief Justice for taking necessary action against the Judicial Officer.