

(1993) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3474 of 1990

A. Ramachandra Naidu

APPELLANT

Vs

The Chittoor Dist. Central Co-operative Stores Ltd. and
others

RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : AIR 1994 AP 70 : (1993) 3 ALT 276 : (1995) 84 CompCas 656

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Sri A. Rangacharyulu, for the Appellant;

Judgement

1. Aggrieved by the order of the Principal District Munsif, Chittoor in I.A. No. 467 of 1990 in LA. No. 1537 of 1989 in O.S. No. 569 of 1986, this Civil Revision Petition is filed by the petitioner-plaintiff.

2. The short question that falls for consideration in this C.R.P., is the proper interpretation of the provisions of Section 121 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, "the Act").

3. The petitioner-plaintiff filed I.A. No. 467 of 1990 seeking permission to implead the Liquidator as one of the respondents-defendants in I.A. No. 137 of 1989 as well as in the suit O.S. No. 569 of 1986, filed by the petitioner. The petitioner filed the suit O.S. 569 of 1986 for permanent injunction regarding the vacant site let out to the petitioner by the respondent-society. It is stated that the suit was dismissed for default. Therefore, the petitioner was constrained to file I.A. No. 1537 of 1989 under Order IX, Rule 9 of CPC seeking restoration of the suit. While so, during the pendency of the suit, the respondent-society went into liquidation and was taken up by a liquidator and, therefore, it became necessary on the part of the petitioner-plaintiff to implead the liquidator as one of the respondent-defendants in the suit. Under the above circumstances the said I.A. 467 of 1990 was (sic) lower Court dismissed the said allowing the

decision in K. Satyanaraya V. Motu Indus tries, 1961 (1) An \\VR m (sic). The above decision referred by the Court below is as under :--

"Failure to obtain sanction of the registrar for the institution of the suit, as required by Section 48 of the Act, is fatal to its maintainability as according to that section the suit shall not lie or be proceeded with except by leave of the Registrar. As the requirement is in the nature of a condition precedent, the subsequent leave of the Registrar would not cure the defect." According to the above decision, the requirement u/s 48 of the old Act is that the sanction of the Registrar has to be obtained before litigating against the society and therefore, the lower Court basing on the same principle dismissed the application.

4. Sri Rangacharyulu, learned counsel for the petitioner, has placed before me the subsequent decision of the Supreme Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , which was followed by the learned single Judge of this Court in West Godavari District Marketing Society v. K. R. Chandra Chowdary, 1981 (1) AWR 5. In order to distinguish the intricacies, it is necessary to extract Section 121 of the Act, which reads thus:

"Bar of Jurisdiction of Court:

(1) No order passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer or person authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court.

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society except by leave of the Registrar and subject to such terms and conditions as he may impose:

Provided that where the order of winding up is cancelled, the provisions of this subsection shall cease to apply in relation to the society and any member thereof, but shall continue to apply to the person who acted as liquidator."

5. According to the provisions of the above section, where a society is being wound up, no suit or legal proceedings could be initiated unless and until the prior permission of the Registrar is obtained when the issue touching the business of the society or touching the affairs of the society is involved. According to this provision, there are two aspects i.e., proceedings relating to the business of the society and matter touching the affairs of the society. If any of the above aspects is involved, no proceedings could be initiated unless and until permission is obtained from the Registrar of the societies. Construing similar provision and the words used in the provision as to business of the society and as to touching the affairs of the society the Supreme Court in D.M. Co-op. Bank v. Dalichand (supra) held thus at page 1325 :--

"The principal questions which arise on the interpretation of Section 91 are two :

(1) What is the meaning of the expression "touching the business of the society" and (2) what is the meaning of the expression "a person claiming through a member" which occurs in Section 91(1)(b)?

The answer depends on the words used in the Act. Although number of cases have been cited to us on similar expressions contained in various other Acts, both Indian and English, in the first instance, it is advisable to restrict the enquiry to the terms of the enactment itself, because the legislatures have been changing the words and expanding the scope of references to arbitrators or to the Registrars step by step. The sentence, namely, "notwithstanding anything contained in any other law for the time being in force" clearly ousts the jurisdiction of Civil Courts if the dispute falls squarely within the ambit of Section 91(1). Five kinds of disputes are mentioned in sub-section (1); first, disputes touching the constitution of a society; secondly, disputes touching election of the officebearers of a society; thirdly disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of officebearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws."

6. It is further observed by the Supreme Court as follows:--

"The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it maybe that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a cooperative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant and a member of the bank in a building which has subsequently been acquired by the bank cannot be said to be a dispute touching the business of the Bank."

7. As observed by the Supreme Court, the activity of the respondent-society is a cooperative store dealing in sale of goods. The relief sought for by the petitioner is not to dispossess him from the vacant site, which is leased out to him. Therefore, leasing out of the premises to the petitioner cannot form part of the main business activity of the society and, therefore, as observed by the Supreme Court the permission of the Registrar is not necessary in the present context.

8. Following the decision of the Supreme Court in D. M. Co-op. Bank v. Dalichand (supra), this Court in West Godavari District Marketing Society v. K. R. Chandra Chowdary (supra) observed as under :--

"The Supreme Court finally held that the Registrar was not empowered to alter "service conditions" and adjudicate disputes in arbitrations u/s 61 of the Act. Therer fore, the words were read down to exclude service conditions and in this view of meaning and interpretation of the above words, the case in Co-operative Marketing Society v. Venkatanarasirinha Rao, 1969(1) AWR 409 is no more good law. The words "touching the Constitution, management of the business of a society" therefore do not touch the relief pertaining to service conditions under the Act. In that view this plea of the society that the instant suit without notice u/ s 120 of the Act cannot be countenanced."

9. As observed by this Court basing on the decision of the Supreme Court, I am of the view that the question raised in this Civil Revision Petition is squarely covered by the decision of the Supreme Court as well as the decision of this Court. Therefore, I hold that the permission of the Registrar u/s 121(2) of the Act is not necessary when the relief sought for by the petitioner is not falling under any of the activities of the respondent-society, namely, business of the society and the matter touching the affairs of the society. Therefore, in my view, the lower Court has not properly construed the provisions of Section 121 of the Act. Accordingly, the impugned order is set aside and the Civil Revision Petition is allowed. No order as to costs.

10. Revision allowed.