

(2005) 01 KL CK 0015
In the High Court Of Kerala
Case No : R.C. Rev. No. 2 of 2005

All India Handloom Fabrics Marketing Co-operative Society
Ltd.

APPELLANT

Vs

Mathew

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Arbitration Act, 1940 — Section 20
Carriers Act, 1865 — Section 10, 9
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 80
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(1), 11(3), 11(8)
Motor Vehicles Act, 1988 — Section 10A
Multi-State Cooperative Societies Act, 2002 — Section 115
Transfer of Property Act, 1882 — Section 106

Citation : (2005) 1 ILR (Ker) 649 : (2005) 2 KLT 191

Hon'ble Judges : K.P. Balachandran, J; J.B. Koshy, J

Bench : Division Bench

Advocate : V.V. Asokan and S. Amina, for the Appellant; T.V. Ananthan and C.D. Jose, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—The issue for consideration in this case is whether notice u/s 115 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as "the Multi Societies Act") is necessary for filing an eviction petition under the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Rent Act") against a Multi-State Cooperative Society. First petitioner, All India Handloom Fabrics Marketing Co-operative Society Ltd. is having the showroom in a rented premises owned by the respondents. Respondents filed an application u/s 11(3) and 11(8) of the Rent Act before the Rent Control Court for evicting the first petitioner society. Petitioners raised a preliminary objection before the Rent Control Court that since they are a National Cooperative Society within the meaning of the "Multi-State Co-operative Society" as defined under the Multi Societies Act, it is obligatory that notice u/s 115 of the Multi Societies Act should

be issued before filing of the Rent Control Petition. Since no notice was issued, the Rent Control Petition itself is not maintainable. The maintainability question was decided against the petitioners and that view was upheld in appeal by the appellate authority. Hence this Revision Petition was filed. Status of the society as a Multi-State Co-operative Society is not seriously disputed.

2. Before going into the disputed question, we extract Section 115 of the Multi Societies Act:

"115. Notice necessary in suits.-- No suit shall be instituted against a Multi-State Cooperative Society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been delivered to the Central Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left."

3. It is the contention of the petitioners that what is filed before the Rent Control Court is a suit touching the business of the society and hence notice u/s 115 is mandatory before filing the Rent Control Petition. Clause 4 of the bye-laws of the first petitioner society describes the objects of the society. Even though main objects of the society are to support, protect, maintain, increase and promote the cause of Handloom Industry and the sale of handloom goods and organise and develop markets for handloom goods within the country, in Clause 4(g) the following object is also mentioned:

"4. Objects of "ALL INDIA SOCIETY" are: (g) To purchase or to take on hire or otherwise acquire land and/or building or premises and construct suitable buildings, apartments and provide furniture and other fittings within the Indian Union and/or abroad for the establishment of showrooms, emporia or other agencies, for publicity and/or for sale of handloom goods or for the purpose of achieving the objects for which the All India Society is established and also for essential service and wherever necessary or feasible for residential accommodation for persons related to or concerned with the All India Society."

Under Clause 4(q) another object is mentioned as follows:

"4. Objects of "ALL INDIA SOCIETY" are: (q) To do such other acts as may be conducive to the furtherance of the objects mentioned above."

It is argued that since one of the objects of the society is to acquire building on hire for establishment of showrooms, vacation from the showroom is touching the business of the society and hence notice is necessary before filing a petition for eviction before the Rent Control Court.

4. Counsel for the respondents would contend that Rent Control Legislation is a self-contained legislation. Section 11(1) of the Rent Act reads as follows:

"11. Eviction of tenants: (1) Notwithstanding anything to the contrary contained

in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act."

Section 11(2) (a) reads as follows:

"(2) (a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf."

Wherever notice is necessary, that is mentioned in the Rent Act itself and Section 115 of the Multi Societies Act is not applicable for filing an application under the provisions of the Rent Act. It is further argued that, what is filed is not a suit, but only a petition before the Rent Control Authority, a statutory tribunal created under the special statute. Suit has to be understood not as per the dictionary meaning, but as understood generally in the context of the matter. It was further contended that even if Section 115 of the Multi Societies Act is applicable in a Rent Control Petition, the subject-matter involved in this case is not touching the business of the society. Hence, requirement of notice u/s 115 is not applicable.

5. Learned Counsel for the petitioners relied on the decision of the Supreme Court in Patel Roadways Limited Vs. Birla Yamaha Limited, . In that case, a petition was filed under Consumer Protection Act for damages against a carrier under the Carriers Act. Section 9 of the Carriers Act reads as follows:

"9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods (including containers, pallets or similar articles of transport used to consolidate goods) entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents."

In Section 10 provision is made regarding prior notice. The contention taken was that the absolute liability mentioned in Section 9 is applicable only when a suit is filed and it is not applicable when an alternate remedy is taken under the Consumer Protection Act. After quoting from the Law Lexicon, the Supreme Court held as follows:

"From the above it is clear that the term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. The meaning of the term "suit" also depends on the context of its user which in turn, amongst other things, depends on the Act or the rule in which it is used. No. doubt the proceeding before a National Commission is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary proceeding it may refer the parties to a Civil Court. That does not mean that the proceeding before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act (Section 9) in a proceeding in which a claim is made against a common carrier as defined in the said Act. Accepting such a contention would defeat the object and purpose for which the Consumer Protection Act was enacted. A proceeding before the National

Commission, in our considered view, comes within the term "suit". Accordingly we reject the contention raised by Shri Ashok Desai in this regard."

(underlining by us for emphasis)

Thus, the Supreme Court held that a proceeding before the National Commission comes within the term "suit" considering the context, object and purpose for which Section 9 of the Carriers Act is enacted. Recent decision of the Apex Court in this regard is *Arvind Mills Ltd. Vs. Associated Roadways*, wherein the Apex Court held that merely because the procedure under the Consumer Protection Act is summary in nature, requirement to serve notice u/s 10 of the Carriers Act is not abrogated in view of the integral scheme of the Carriers Act by which common carrier is fastened with liability irrespective of proof of negligence. The Apex Court held in paragraph 8 as follows:

"8. The fact that the remedies under the Consumer Protection Act are in addition to and not in derogation of any other law does not mean that the rights under the Carriers Act can be exercised, except in accordance with the manner provided under the Act. Sections 9 and 10 form an integral scheme by which a common carrier is fastened with liability irrespective of proof of negligence. Merely because the procedure under the Consumer Protection Act is summary in nature does not in any way warrant the abrogation of the requirement to serve notice u/s 10 of the Carriers Act before fastening any liability under that Act on the carriers."

These two decisions show that absolute liability fastened under the Carriers Act or requirement u/s 10 cannot be taken away merely because a petition was filed before the National Commission instead of filing a regular suit. A suit is not barred under the Carriers Act unlike the Rent Act. The Consumer Protection Act gives only an additional remedy to a consumer. To get the benefit of absolute liability mentioned in the Carriers Act a consumer has to adopt the procedure under the Carriers Act. Here, in this case, applicants before the Rent Control Court are not claiming any benefit under the Multi Societies Act.

6. In this connection we refer to the decision in *P.A. Ahammed Ibrahim Vs. The Food Corporation of India*, . There, the question was whether the application filed u/s 20 of the Arbitration Act can be treated as a suit. The Supreme Court held as follows:

".....Section 20 nowhere provides that application filed for referring the dispute to the arbitrator is to be treated as a plaint as contemplated under C.P.C. Hence, it cannot be considered to be a plaint."

The Court further observed in paragraph 8 as follows:

"8. Further, before applying the provisions of Order VI, Rule 17, there must be institution of the suit. Any application filed under the provisions of different statutes cannot be treated as a suit or plaint unless otherwise provided in the said Act."

7. In *United India Insurance Co. Ltd. v. Premakumaran and Ors.* (1987 (2) KLT 817) a Division Bench of this Court was considering the question whether notice u/s 80 of the CPC is necessary before filing a petition u/s 110A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal and Mr. Balakrishnan, J. (as he then was) speaking for the Division Bench observed as follows:

"33. Another contention urged by the counsel for the Railway was that no notice was sent to the Railway claiming damages and notice u/s 80 C.P.C. should have been issued before initiating the proceedings before the Motor Accidents Claims Tribunal. Section 80 C.P.C. is applicable only in the case of a suit filed against the Railway before a Court. An application or a petition u/s 110A of the M.V. Act for compensation, is not in the nature of a regular suit and it is not filed before a Civil Court. Therefore, Section 80 C.P.C. has no application."

8. The word "suit" is a general term and it may comprise all proceedings or prosecution of a claim in a Court of law; but, it has to be understood in the context in which it is used. In legal parlance, it may usually refer to regular suit in a Civil Court as held by the Apex Court in *Thampanoor Ravi Vs. Charupara Ravi and Others*, . If an expression acquires a special connotation, it must be assumed that legislature has used it in its legal sense and not with reference to dictionary meaning unless context shows otherwise. The Apex Court was considering the meaning of the word "insolvent" in an election petition and considering the question whether a candidate is disqualified as an undischarged insolvent, the Apex Court held that unless he is declared so by an Insolvency Court, it cannot be stated that he is a discharged insolvent. The Supreme Court held as follows:

"22. In ascertaining the meaning of an expression used in a statute, certain norms are adopted. If the Legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the Legislature must be deemed to have used such expression in a particular sense as is understood when used in a similar context. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal sense and no other. In this context, we may refer to the weighty observation in the decision of this Court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* that a term of well recognised import in the general law should be accepted as confining the meaning in interpreting the Constitution. If the expression "undischarged insolvent" has acquired a special meaning under the law of insolvency, we must understand that is the meaning that is sought to be attributed to the expression used in Article 191(1)(c) of the Constitution."

We are of the opinion that the term "suit" mentioned in the Multi Societies Act cannot be equated with a petition for eviction filed under the Rent Act, especially when filing of suit is specifically prohibited u/s 11 (1) of the Rent Act.

9. For filing a petition for eviction under the Rent Act, notice u/s 115 of the Multi Societies Act is not necessary even if it is assumed that proceedings before the Rent Control Court is a suit as the Rent Act is a self-contained Act. In this connection, we refer to a Full Bench decision of this Court in *Lelitha v. Ayisumma* 1977 KLT 587 (FB) where it was held that notice u/s 106 of the Transfer of Property Act is not a necessary pre-requisite for eviction under the Rent Act. Rent Act is a self-contained Act and it was repeatedly held by the Supreme Court as well as this Court that Section 106 of the Transfer of Property Act, 1882 is not attracted when a petition is filed under the Kerala Buildings (Lease and Rent Control) Act, 1965. In *Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana*, the Supreme Court held that Rent Control legislation is a self-contained legislation and the rights and liabilities of the landlord and tenant are to be governed by the provisions under the Rent Control Act and not by the provisions under the Transfer of Property Act or any other law and provisions of Rent Control Act will override the provisions of the Transfer of Property Act as well as landlords and tenants of the buildings to which it applies as it is a special legislation.

In *Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers*, the Supreme Court observed as follows:

"Section 11 begins with the words "notwithstanding anything contained in any agreement or law to the contrary" and hence any attempt to import the provisions relating the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is a self-contained section and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted."

The matter was considered in detail by a seven member Bench of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, and after considering the entire case on the object, the Supreme Court held as follows:

"For the reasons stated above we hold that the High Court was right in its view that no notice to quit was necessary u/s 106 of the Transfer of Property Act in order to enable the landlady-respondent to get an order of eviction against the tenant-appellant."

The Supreme Court held that notice under the provisions of the Transfer of Property Act will be a surplusage as proceedings for eviction can be moved only on the basis of the Rent Act.

10. Learned counsel for the petitioners cited an unreported decision of a Division Bench of the Delhi High Court in *R.F.A. No. 570/1999 (All India Handloom Fabric Marketing Co-operative Society Ltd. v. Phelps & Co. Pvt. Ltd.)* pertaining to the first petitioner society itself. It is submitted that the matter is pending in the Supreme Court in appeal. But, in that case, proceedings arose in a regular suit before the Civil Court and therefore giving notice u/s 115 of the Multi Societies Act, if it is touching the business was mandatory. Delhi High Court did not

consider the question whether the Rent Act is a self-contained Act and therefore Section 115 is not applicable in a petition under the Rent Act for eviction. The Delhi High Court has considered the case of necessity of notice u/s 115 in a regular suit filed before a Civil Court and not before the Rent Control Court. Therefore, the facts of the Delhi High Court case are not applicable in this case.

11. Now, we will consider the question whether the subject-matter of the eviction petition is touching the business of the society. The Delhi High Court in R.F.A. No. 570 of 1999 (supra) also held that in view of Clause 4 (g) of bye-laws of the first petitioner society the matter regarding eviction of the petitioner from the rented premises is touching the business of the society. This question is to be considered only if Rent Act is not a self-contained Act. Clause 4(g) and Clause 4(q) of the bye-laws are only enabling provisions to carry out the business and are not the main objects of the society. The Apex Court in *Deccan Merchants Co-operative Bank Ltd. v. Dalichand Jugrai Jain and Ors.* AIR 1989 SC 1320 considered the scope of Section 91 of the Maharashtra Co-operative Societies Act wherein the words "touching the business of the society" was used. The Apex Court held that for coming within the scope of Section 91 Sub-section (1), the following ingredients should be satisfied:

"...first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers 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 office-bearers, 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 Rules and its bye-laws."

(underlining by us for emphasis)

Thereafter, it was held that if the business of the society itself is to construct houses and let them out to its members, letting out of buildings may be part of its business; but mere letting out a building incidently is not a matter touching the business of the society. So, as held by the Supreme Court the words "touching the business of the society" has to be understood in a narrower way. In this connection, we also refer to the Apex Court decision in *Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay*, where the Supreme Court held that where the objects of a society were to carry on the trade of buying, selling, hiring and letting land in accordance with the co-operative principles, the letting by a member of such society of the flat purchased from the society could not be said "to touch the business of the society". In the above decision the Supreme Court held as follows:

"No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-law could affect the defaulting member's right to membership. But we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with co-operative principles. The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the Society in the matter of its letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the landlord of the flat."

The same view was taken by a Division Bench on this Court in *K.C. Varkey v. The Director of Industries and Commerce, Trivandrum* (ILR 1978 Ker 143) and a Full Bench of this Court in *Meeran Unni v. Kottayam Dt. Co-op. Bank* (1985 KLT 384

Here, admittedly, business of the petitioner society is not letting out buildings for rent. It is true that to carry out the main objects of the society they can hire buildings on lease for establishing showrooms etc. and enabling clause was incorporated in the bye-laws. But, an eviction petition filed under the Rent Act is not touching the business of the society. Therefore we are of the opinion that it cannot be stated that when a petition for eviction is filed, it is a matter touching the business of the society especially when a narrower view is taken as held by the Supreme Court. However, in this case, that question may not be applicable as we have already held that the Rent Act is a self-contained code and hence even if relief claimed in a Rent Control Petition touches the business of the society, Section 115 of the Multi Societies Act will not be applicable.

The R.C.R. is dismissed.