
(1989) 06 KAR CK 0043
In the Karnataka High Court
Case No : W.P. No. 16057/84

B. Gopal

APPELLANT

Vs

Kolar Urban Co-op. Bank Ltd., and Others

RESPONDENT

Date of Decision : 28-06-1989

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 69

Citation : (1989) 2 KarLJ 285

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

M.P. Chandrakantharaj Urs, J.-Petitioner, a former employee of the respondent-Kolar Urban Co-operative Bank Limited suffered surcharge proceedings under Section 69 of the Karnataka Cooperative Societies Act, 1959 (in short "the Act") as a result of which the Deputy Registrar of Co-operative Societies Kolar has determined that a sum of Rs. 5518-34 is recoverable from him with interest at 12% from 1-7-1981 both personally and through the sale of moveable and immovable properties belonging to him. It is useful to state at this stage that order was made in proceedings under Section 69 of the Act, after the petitioner was placed ex-parte. Petitioner filed an appeal against the said order dated 18-9-1981 before the Appellate Tribunal in Appeal No. 282 of 1982. The Appellate Tribunal formulated two questions in the appeal to dispose of the same. The first one was whether the appeal was within the time prescribed or was barred by time. The second was whether the order of the Deputy Registrar called for interference by the Appellate Tribunal. On the first question, it recorded a finding that after the petitioner was placed ex-parte on 11-9-1981, by the Deputy Registrar of Co-operative Societies in sur-charge proceedings, he was not notified of any further date and therefore, knowledge of the final order of the Deputy Registrar, claimed by the petitioner, would be the relevant date for purpose of computing the period of limitation. On the finding so recorded, they found that appeal was in time and delay was condoned. However, on merits they proceeded to dispose of the appeal by dismissing it holding that the person who remained absent and was placed ex-parte could not claim before the appellate

authority that the officer conducting sur-charge proceedings should not have accepted the audit report as conclusive evidence of his liability without the auditor being cross-examined. The tribunal held that if the auditor was not examined, only the appellant was to blame because he did not participate in the proceedings before the Deputy Registrar.

One cannot find fault with the conclusion reached by the Tribunal because that is the only procedure which is known to the Courts and other authorities including an Arbitrator in adversary system to resolve the claim made by one against the other. In such proceedings if he chooses to absent himself, one naturally reaches the conclusion that he will succeed only on the material placed before the Court or the Arbitrator or other authorities who are required to settle the claim or dispute and foist liability as in the instant case in proceedings under Section 69 of the Act. Therefore, the person who remained ex-parte cannot make a grievance of the auditor submitting the audit report, pointing out that he is not examined by the surcharge officer or that such report was accepted by the authority without subjecting the auditor to any examination by the auditor himself.

A Division Bench of this Court had occasion to examine the scope and effect of Rule 10 of Order 8 in the case of *Mallaya v Totayya* (ILR 1989. Kar. 807). The principles enunciated by the Supreme Court in the case of *Modula India v Kamakshya Singh Deo* (AIR 1989, S.C. 162) can well be applied to the facts of the present case, with this difference that there the right of cross-examination arose because the defendant who was placed ex-parte had failed to file written statement, was in a position to participate in further proceedings, while in this case, admittedly the petitioner did not participate in the proceedings after he was placed ex-parte. When this was pointed out by the Court to the learned counsel for the petitioner, he submitted that the Deputy Registrar who conducted surcharge proceedings had mechanically relied upon the bare oral evidence of the Secretary of the respondent-co-operative Bank, for the quantification of the amount determined to be payable by the petitioner to the bank. That submission is liable to be rejected having regard to the contents of the order.

Mr. Patil argued that there is a divergent finding by the Tribunal having regard to the contents of paras 7 and 11 of the judgment. The thrust of the argument is that Tribunal had recorded a finding that the petitioner had no notice after he was placed ex-parte and therefore, the period of limitation was computed from the date of his knowledge of the final order. In Paragraph 11 the Tribunal held that the petitioner was to blame as he did not participate in the proceedings. If he had no notice, he could not participate and therefore, the Tribunal had committed an error. It is too far-fetched an argument. The finding recorded earlier in para 7 was confined to place the date of knowledge of the final order under appeal not rentable to the fact of placing him ex-parte. He was placed ex-parte because having received the notice to appear, he failed to appear, but instead sent a telegram seeking adjournment. On the adjourned date, he did not

appear, is not in dispute. Therefore the argument liable to be rejected and it is so rejected.

It transpires that the same subject matter i.e., the liability of the petitioner to make good certain amounts of which he was accused of mis-appropriation or that by his negligence had caused loss to the society was dealt with in a dispute raised under Section 70 of the Act resulting in a decree which was sought to be executed. At that point of time, the appeal was filed by the petitioner against the award under Section 70. That appeal came to be allowed on the technical ground that the proper way of recovery on the facts of the case was by proceeding under Section 69 of the Act and not in proceedings under Section 70 of the Act. Therefore, the surcharge proceedings which is the subject matter of this writ petition were initiated. When the award was also placed before the Deputy Registrar conducting surcharge proceedings, by way of evidence. Then there was more than abundant reliable evidence as that award was after contest by the petitioner. In that view of the matter, even if an assumption is to be made that the impugned order of the Deputy Registrar is a mechanical reproduction of whatever the Secretary of the bank tendered as oral evidence, complete justice has been done to the respondent-society which has suffered the loss.

It may be observed subsequent to the decision of the Tribunal, recovery of money from ex-employee or employees is only possible under Section 69 of the Act and not under Section 70, is no longer a sound proposition of law as this Court in more than one case has taken the view that such money may be recovered both in proceedings under Section 69 as well as under Section 70 of the Act.

Therefore, for the reasons stated above, petitioner is not entitled to any relief. Petition is rejected.

Petition rejected.