
(1993) 08 KL CK 0047
In the High Court Of Kerala
Case No : W.A. No 1341 of 1992

Balarama Kurup

APPELLANT

Vs

Kerala Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8, Order 9 Rule 9, 69
Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 29(2), 3(2), 30, 32, 63

Citation : (1993) 08 KL CK 0047

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : Elizabeth Mathai Idiculla, for the Appellant; Cyriak Joseph, A.A.G.-I, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, J.—Writ Petitioner in O.P. 8099/1989 challenges the judgment rendered by the learned Single Judge on 7th August 1992 dismissing the Original Petition.

2. The short facts necessary for the disposal of this appeal are as follows.—Writ Petitioner was a paid Secretary of Nedumudy Village Service Co-operative Society Ltd. No. 2331. During the period between 28th September 1970 and 23rd January 1971 he is stated to have misappropriated an amount of Rs. 61,01585. The Vigilance Police registered a case against him and he was charge-sheeted in. C.C. 28/79 of the Court of the Special Judge, Thrissur for offences under the Prevention of Corruption Act and the Indian Penal Code. That Court convicted the writ Petitioner and sentenced him to undergo imprisonment for six months and to pay a fine of Rs. 1,000. While the criminal case was under investigation, Society filed an Arbitration Case against the writ Petitioner as A.R.C. 461/1972. Since the records maintained by the Society were with the Vigilance. Department, Arbitrator dismissed the case, reserving the right of the

Society to file fresh suit when records are available. Records relating to misappropriation were got back by the Society on 4th February 1986. Immediately thereafter they filed A.R.C. 1/1986 before the second Respondent, Assistant Registrar of Co-operative Societies (General), Kuttanad, Writ Petitioner questioned the maintainability of A.R.C. 1/1986, because of the dismissal of A.R.C. 461/72. Second Respondent found A.R.C. 1/1986 to be maintainable. Writ Petitioner challenged that decision of the second Respondent in appeal before the Kerala Co-operative Tribunal, the first Respondent. By Exhibit P-1 order dated 29th June 1989 first Respondent dismissed the appeal holding that A.R.C. 1/1986 is maintainable. That decision was challenged in the Original Petition. Learned Single Judge has dismissed the same.

3. Points raised by the learned Counsel are that second Respondent is not entitled to entertain A.R.C. 1/1986 in the absence of an order of reference by the Registrar of Cooperative Societies to try the same; and that A.R.C. 1/1986 is not maintainable in view of the dismissal of A.R.C. 461/1972.

4. Exhibit P-3 is the award passed by Sri K.S. Ravindran Nair, Assistant Registrar of Co-operative Societies (General), Kuttanad as Arbitrator in Arbitration Case 461/1972. It is stated therein that Sri Ravindran Nair was appointed as Arbitrator as per Order No. C. 9476/72-2 dated 12th September 1972 of the Deputy Registrar of Co-operative Societies (General), Alappuzha. On this basis it was argued that the Society filed the Arbitration Case before the Deputy Registrar of Co-operative Societies (General), Alappuzha, who was exercising the jurisdiction of Registrar of Co-operative Societies and he in turn authorised Sri Ravindran Nair to proceed with the case as provided by Section 70(1)(c) of the Co-operative Societies Act, hereinafter referred to as "the Act". As a result of this authorisation from the Deputy Registrar, the Assistant Registrar Sri Ravindran Nair got jurisdiction to try the case. When that proceedings ended by Exhibit P-3 award, the Society cannot file a fresh plaint before the Assistant Registrar of Co-operative Societies and that officer is not to entertain the same without an authorisation from Registrar of Co-operative Societies/Deputy Registrar of Co-operative Societies u/s 70 of the Act. Clause (1) of Section 70 states that the Registrar may, on receipt" of a reference of a dispute u/s 69, elect to decide the dispute himself; or transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or refer it for disposal to an Arbitrator appointed by him. Proviso to that clause states that a reference shall not be made by the Registrar to a person equal or superior to him in rank. State Government: in exercise of the powers u/s 3(2) of the Act conferred powers of "Registrar" on various officers in the department as per notification dated 13th May 1969. As per that notification, the Deputy Registrars are invested with the powers of Registrar under the Act except those falling under Sections 32, 71(1) and (3) and 87 of the Act. As far as powers under Sections 29(2), 30, 63 to 67, 69, 70, 75 and 76 of the Act are concerned, Assistant Registrars have been invested with the powers of Registrar as per the notification. Therefore Deputy Registrars and Assistant Registrars are competent to exercise the powers of

Registrar under Sections 69 and 70 of the Act. It appears that in 1972 the Society filed the plaint against the writ Petitioner before the. Deputy Registrar of Co-operative Societies (General), Alappuzha. That petition was referred to the Assistant Registrar of Co-operative Societies for disposal as an Arbitrator. This was done by virtue of the proviso to Section 70(1) of the Act. As a result of this reference; even though the Assistant Registrar was to dispose of the case as an. Arbitrator, did not cease to have the powers of Registrar under the notification issued by Government. The Assistant Registrar by himself is competent to entertain the second plaint because, in entertaining that plaint" he is exercising the jurisdiction of the Registrar. In this view of the matter, second Respondent was perfectly justified in entertaining the second plaint even without an order of reference by a superior officer, exercising the power of Registrar under the Act. In this view, we do not find any merit in the first objection raised by the learned Counsel for the Appellant.

5. Arbitration Case 461/1972 was being posted for trial before the Arbitrator. But, no progress could be made in the trial because the entire records of the Society was with the Vigilance Department in connection with the criminal case initiated against the writ Petitioner. Since there was no chance to get back the records immediately, the Arbitrator found it impossible to proceed with the case. Therefore the case was dismissed, observing:

In the circumstances the case is dismissed reserving the right to Plaintiff society to file fresh suit when records are available.

This disposal of the Arbitration Case can never be treated as a dismissal on merits. It can at best be considered as a dismissal for default. An Arbitrator under the Act has no power to dismiss an Arbitration Case for default similar to Order IX Rule 8 Code of Civil Procedure. Since Exhibit P-3 award can be treated only as a dismissal of the plaint on default, it must be treated as being without jurisdiction and nonest. By Exhibit P-3 award the Society's claim cannot in any manner be adversely affected. Exhibit P-3 award cannot, therefore, operate as *res judicata* in the present proceedings. Nor is there any rule like Order IX Rule 9 CPC barring Anr. suit u/s 69. The provision of the Code of Civil Procedure, which relates to restoration of a case dismissed for default, is not made applicable to the proceedings before the Arbitrator under the Act. Hence the Society could not ask for restoration of A.R.C. 461/1972. Under such circumstance, the only course that was open to the Society was to file a fresh Arbitration. Case against the writ Petitioner. Such a suit has now been filed before the second Respondent, who is himself "Registrar" under the Act. The second Respondent, rightly, entertained that plaint. This action of the second Respondent has been upheld by the Co-operative Tribunal as well. Therefore, we do not find any ground for this Court to interfere with the decisions of Respondents 1 and 2 in exercise of the powers under Article 226 of the Constitution, as held by Their Lordships of the Supreme Court in *A.M. Allison Vs. B.L. Sen*, .

Proceedings by way of certiorari under Article 226 are "not of course". The High

Court has the power to refuse the writ if it is satisfied that there was no failure of justice....

This principle was followed by us in Kerala Solvent Extractions Ltd. v. Unnikrishnan 1993 (2) KLT 208. On the facts and circumstances of this case, we are convinced that the decision arrived at by the second Respondent and the Co-operative Tribunal are just and proper. If any interference with their order is made, it will lead to failure of justice. If the Petitioner's claim is upheld, it will result in preventing the Co-operative Society from initiating action for realising the amount alleged to have been misappropriated by the writ Petitioner. This will not be in the interest of justice.

In view of what has been stated above, we do not find any MERIT in the writ appeal. IT is accordingly dismissed.