
(2009) 01 KAR CK 0058
In the Karnataka High Court
Case No : Writ Appeal No. 1953 of 2008

Bazm-E-Niswan Charitable Trust and Another	APPELLANT
Vs	
Amanath Co-operative Bank Limited and Others	RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70 (1), 70 (2) (e), 70 (3)

Citation : (2009) 4 KarLJ 633 : (2010) 1 KCCR 491

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Kamal and Bhanu, for the Appellant; Niloufer Akbar, A.G.A. for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The unsuccessful petitioners in W.P. No. 6768 of 2008, being aggrieved by the order passed by the learned Single Judge dated 18-11-2008 whereunder the learned Single Judge disposed of the writ petition confirming the order passed by the 2nd respondent, have preferred the present appeal.

2. Brief facts of the case leading to this writ appeal are:

That petitioner 1 represented by its President purchased the property belonging to the respondent 1-Bank through its officers viz., respondents 14 and 15 during the period when the husband of the petitioner 2 namely respondent 3 was the President of 1st respondent-Bank through registered sale deed on 24-12-2004; the 1st respondent-Bank had raised a dispute before the 2nd respondent in dispute No. 627 of 2007 in which, the appellants herein have been arrayed as respondents 15 and 16; that in the said dispute, the appellants herein have filed interlocutory application u/s 70(3) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act" for short) contending that the 1st appellant-Trust has purchased the property in question for valuable consideration

through registered sale deed dated 24-12-2004; that the relief sought in the said dispute does not fall within the ambit of Section 70 of the Act; that as the relief sought in the said dispute pertains to the right, title, interest and possession of the respondent 15 (appellant herein), the same is purely of civil in nature and therefore, only a Civil Court has the jurisdiction to deal with such matter.

3. The 1st respondent-Bank filed statement of objections to the said application filed by the appellants contending that the property in question belong to the 1st respondent-Bank and during the tenure of Presidentship of respondent 3 who is none other than the husband of appellant 2 herein, the property in question was fraudulently purchased by the appellants herein in collusion with the other respondents and officers of the 1st respondent-Bank for a meager amount.

4. The 2nd respondent herein on appreciation of the material on record, by the impugned order dated 3-4-2008 dismissed the application filed by the appellants herein holding that the appellants herein are proper and necessary parties to the proceedings to arrive at just and reasonable conclusion in the said dispute. Challenging the said order dated 3-4-2008, the appellants herein have preferred Writ Petition No. 6768 of 2008 before this Court and the learned Single Judge, by the impugned order dated 18-11-2008 disposed of the writ petition holding that the transaction having taken place between former President of the 1st respondent-Bank while in office on behalf of the society and the 2nd appellant herein is his wife, though she is not a member of the society, it cannot be totally ruled out that the transaction does not touch upon the conduct and business of the society in the sense the President of the society transacting and having a transaction with his wife in respect of the property of the society, it is not a fit case to stall the proceedings pending before the 2nd respondent-authority. However, the learned Single Judge reserved liberty to the appellants herein to pursue the remedies available under the Act. Being aggrieved by the said order, the present writ appeal is filed by the appellants.

5. Learned Counsel appearing for the appellants vehemently contended that as none of the appellants are members of Bank, the dispute against non-members of the bank cannot be maintained; that merely because the appellant 2 is the wife of the 3rd respondent who was a former President of the 2nd respondent-Bank, the transaction entered between the appellants and the 1st respondent-Bank cannot be made subject-matter of dispute under Sub-section (1) of Section 70; that the property in question has not been purchased by the 2nd appellant in her individual capacity but the same was purchased by a Public Trust in which the 2nd appellant is the President and the appellant 2 has no personal interest over the property in question; that as the dispute was raised against a non-member of the society and as the same is not touching upon the business or activities of the society, the interim order dated 3-4-2008 passed by the 2nd respondent rejecting the application filed by the appellants u/s 70(3) of the Act is liable to be set aside by allowing the writ petition.

6. On the other hand, learned Counsel for the contesting respondent, by

reiterating the grounds urged before the learned Single Judge argued in support of the order passed by the learned Single Judge.

7. We have given our anxious consideration for the submission made by the respective Counsel and perused the material on record. Having regard to the submission made by the learned Counsel on both sides, the question that arises for our consideration is whether the impugned transaction touches upon the conduct of the business of the society?

8. To decide the above question, it is just and necessary to refer to the provisions of Sub-section (1) of Section 70 and 70(2)(e) of the Act which reads as under:

70. Disputes which may be referred to Registrar for decision.-(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises.:

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, or a credit agency,

such dispute shall be referred to the Registrar for decision and no civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(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.:

(e) a claim by a co-operative society for any deficiency caused in the assets of a co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not.

9. On a careful consideration of the entire facts and circumstances of the case, it is clear that the property of the first respondent-Bank was purchased by the first appellant-trust represented by the second appellant who is none else than the wife of erstwhile President of the first respondent-Bank. The said transaction squarely attracts Section 70(2)(e) of the Act, which has caused deficiency in the assets of the first respondent-Bank.

Under these circumstances, we do not find any illegality or error in the impugned order and there is no good grounds to interfere with such well-reasoned order and consequently, the writ appeal is liable to be dismissed. Accordingly, the writ appeal is dismissed.