

(2015) 06 KAR CK 0056

In the Karnataka High Court

Case No : C.C.C. No. 430/2015 and C.C.C. No. 428/2015 (Civil)

Chandrashekhar and Others

APPELLANT

Vs

Sunjay Mohan Rao

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 101, 103, 105, 106, 107

Citation : (2015) 4 AKR 311 : (2015) ILR (Kar) 4409 : (2016) 1 KCCR 565

Hon'ble Judges : N. Kumar and B. Sreenivas Gowda, JJ.

Bench : Division Bench

Advocate : Brijesh Patil, Advocate, for the Appellant; B.B. Bajentri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—These contempt petitions are filed complaining of the disobedience of the order dated 30.06.2014 passed by the Karnataka Appellate Tribunal, Bangalore, Belgaum Camp Case passed in Appeal Nos. 347/2013 and 366/2013 and to initiate contempt proceedings against the respondent-accused and punish them in accordance with law.

2. The Karnataka Appellate Tribunal has passed the order in its Appellate Jurisdiction under Section 105 of the Karnataka Co-operative Societies Act, 1959. The said provision reads as under:

Appeals to the tribunal: Any person aggrieved by,—

(a) any decision of the Registrar made under clause (a) of sub-section (1) of section 71; or

(b) any decision of the person invested by the State Government with powers in that behalf under clause (b) of sub-section (1) of section 71; or

(c) any award of an Arbitrator under clause (c) of sub-section (1) of section 71; or

(d) any determination of a Liquidator under clause (f) of sub-section (2) of Section 74; or

(e) any order made under Section 103 with a view to preventing any delay or obstruction in the execution of any order, decision or award that may be made under Sections 69 and 71]; may within sixty days from the date of the decision, award or order, as the case may be, appeal to the Tribunal

(f) any order passed under section 69; may, within sixty days from the date of the decision, award or order, as the case may be, appeal to the Tribunal

(2) No appeal against an order, decision or award for payment of money shall be considered by the Appellate Authority under sub-section (1) unless it is accompanied by satisfactory proof for having deposited with the concerned society twenty five percent of the amount due in terms of the order, decision or award. After the disposal of the appeal, the amount so deposited shall be adjusted towards the amount payable by the appellant and in case no amount is required to be paid by the Appellant, the amount so deposited shall be refunded to him by the Society.

3. Section 101 of the Act provides for execution of orders. It reads as under:

Execution off orders, etc.: (1) Every order made by the Registrar under sub-section (1) of Section 69 or under Section 99, every decision or award made under Section 71, every order made by the liquidator under Section 74 and every order made by the Tribunal under Section 105 and 107, and every order made under Section 106 or 108 shall subject to any other provision of this Act be binding on the person or co-operative society against whom the order, decision or award has been obtained or passed and shall, if not carried out,--

(a) on a certificate signed by the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that an application for the recovery in such manner of any sum shall be made,-

(i) to the Deputy Commissioner and shall be accompanied by a certificate signed by the Registrar or by any person authorised by him in this behalf.

(ii) Within twelve years from the date fixed, in the order, decision or award, and if no such date is fixed, from the date of the order, decision or award, as the case may be; or

(c) be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf, by the attachment and sale or sale without attachment of any property of the person or a co-operative society

against whom the order, decision or award has been obtained or passed.

(2) (a) Notwithstanding anything contained in this Act every question relating to the execution, discharge or satisfaction of an order, decision or award referred to in sub-section (1) or relating to the confirmation or setting aside of a sale held in an execution of such order, decision or award in pursuance of clause (c) of sub-section (1), or relating to any claim or objection to an attachment of any property made under section 103 or in execution in pursuance of the said clause (c), shall be determined, by an order of the Registrar or any other person subordinate to him, empowered by the Registrar under the said clause (c) (hereinafter in this section referred to as "authorised person") before whom such question arises.

(b) (i) Where any claim is preferred against, or any objection is made to, the attachment of any property made under section 103 or in execution in pursuance of clause (c) of sub-section (1), on the ground that the said property is not liable to such attachment, the Registrar or the authorised person shall proceed to investigate the claim or objection:

Provided that where the Registrar or the authorised person considers that the claim or objection was designedly or unnecessarily delayed, he shall make an order refusing such investigation;

(ii) Where, upon the said investigation, the Registrar or the authorised person is satisfied that for the reason stated in the claim or objection, such property was not, at the date of the attachment, in the possession of the person or co-operative society against whom the order, decision or award has been obtained or passed (hereinafter in this section referred to as the "judgment-debtor") or of some person in trust for the judgment-debtor or in the occupancy of a tenant or other person paying rent to the judgment-debtor or that, being in the possession of the judgment-debtor at the said date, it was so in his possession, not in his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Registrar or the authorised person shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment.

(iii) Where the Registrar or the authorised person is satisfied that the property was, on the said date, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the occupancy of a tenant or other person paying rent to him, the Registrar or the authorised person shall disallow the claim;

(iv) Where a claim or an objection is preferred, the party against whom an order is made may within a period of one year from the date of such order, institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, the order of the Registrar or the authorised person shall be conclusive.

4. From the conjoint reading of the aforesaid two provisions, it is clear that every order made by the Tribunal under Sections 105 & 107, 106 or 108, is binding on the person of the Society against whom the order, decision or award has been obtained or passed and if not obeyed, the same shall be executed in the same manner as a decree of such Court i.e., it shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court. The only condition to be satisfied is after the order, if it is not obeyed, a decree-holder has to approach the Registrar for issue of a Certificate or any person authorised by him to issue such certificate and once that certificate is produced showing non-compliance of the order passed, then, the Civil Court shall execute the said order, subject to the decree of that Court. However, if the said order is for recovery of money or payment of money, then such orders shall also be executed under the provisions of the Land Revenue Act as if it is arrears of Land Revenue. Therefore, the statute provides for execution of these orders. When once a party is conferred a statutory remedy for enforcement of the orders passed by the authorities constituted under the Karnataka Co-operative Societies Act and also the Tribunal, which is exercising the appeal or original jurisdiction against the order passed by the authorities under the Act, it would be inappropriate for this Court to entertain this contempt petition under the provisions of Contempt of Courts Act, 1974. Therefore, this contempt petition is rejected reserving liberty to the plaintiff to approach the appropriate forum as aforesaid.

Registry is directed to return the certified copy of the order, which is filed by the plaintiff to enable him to approach the appropriate forum.