
(1981) 06 KAR CK 0026
In the Karnataka High Court
Case No : WP 6929 & 6930/77

Deva Rao

APPELLANT

Vs

Vyavasaya Seva Sahakari Sangh Pattan and Others

RESPONDENT

Date of Decision : 02-06-1981

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 105
Karnataka Co-operative Societies Rules, 1960 — Rule 31

Citation : (1981) 2 KarLJ 303

Hon'ble Judges : K. Bhimiah, J

Judgement

1. Issue Rule in W.P. Nos. 4303 to 4305 of 1979. The learned counsel for the parties consented for the disposal of all these three writ petitions along with WP Nos. 6929 and 6930 of 1977.

2. In these writ petitions the petitioners have challenged the common order passed by the Karnataka Appellate Tribunal, Bangalore, (to be hereinafter called the "Appellate Tribunal") dismissing their appeals filed against the award passed by the 3rd respondent in Disputes Nos. 5526 and 5554/1975-76 and Disputes Nos. 5536, 5522 and 5547/76-77.

3. As these five writ-petitions give rise to common questions of law, they are heard together and disposed of by a common order. The facts of the case are that, these petitioners were members of the 1st respondent society situate at Pattam village in Gulbarga Taluk. They borrowed various amounts from the 1st respondent society in the year 1972-73. They became defaulters in not paying the instalments due to the society. The 1st respondent society raised disputes in respect of the default of each petitioner. The 3rd respondent was appointed arbitrator to decide the dispute. The 3rd respondent placed them ex parte and passed the awards as per Ex. B and F and B, D and F. They filed appeals under S. 105 of the Karnataka Co-operative Societies Act, 1959 (to be called the "Act") before the appellate Tribunal challenging the award, on various grounds. The Appellate Tribunal dismissed their appeals on the ground that the appeals were

barred by time and that there was proper service of notice upon the petitioners and that the awards were based upon evidence, The petitioners have challenged the orders passed by the Appellate Tribunal in appeals and also the awards passed by the Arbitrator against the petitioners.

4. Mr. Apparao, learned counsel for the petitioners, firstly, contended that the service of notice by the Arbitrator is not in compliance with the provisions of Rule 32(4) and (5) of the Karnataka co-operative societies rules, 1960 (to be called the "Rules"). Secondly, he contended that the awards have not been based upon any evidence recorded by the Arbitrator while fixing the liability with regard to the amounts due from the petitioners. Lastly, he contended that the appellate Tribunal, misconceived the case as put forth before the appellate Tribunal and further he urged that the view taken by the Appellate Tribunal with regard to the delay is not legally valid. He, further urged that the appellate Tribunal, which was required to go into the facts has denied the opportunity to the petitioners to demonstrate that notices had not been served properly and in accordance with law.

5. The learned counsel for the respondent society is not in a position to counter these contentions. He submitted that notices were served upon the petitioners in the presence of the Administrator and that therefore there is sufficient compliance of the relevant rules.

6. Before considering the validity of there contentions a reference to the relevant rules is necessary. Rule 32 of the rules, deals with mode of service of summons. Reference to sub-rules (1) (2) and (3) of rule 32 of the Rules are unnecessary. Sub-rules (4) of Rule 32 is relevant for our purpose. It says:

"(4) Where the serving officer delivers or tenders copy of the summons to the person summoned personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delievered or tendered, to an acknowledgement of service endorsed on the original summons."

Sub-rule (5) of rule 32 says:

"(5) The serving officer shall in all cases in which the summons has been served under sub-rule (4) endorsed or annexed, or cause to be endorsed or annexed, on or to the original summons return stating the time when and the manner in which summons was served and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons."

7. The other rule which is relevant for our purpose is rule 31 of the Rules. It deals with procedure of reference and arbitration. Sub-rule (4) (a) of rule 31 of the rules says:

"The Registrar, the Arbitrator, or other persons deciding the dispute shall after service of summons on the parties concerned, in a manner prescribed by these rules, record a brief note of the evidence of the parties and witnesses who attend

and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, shall give a decision or award, as the case may be, in accordance with justice, equity and good conscience."

What is significant in the mode of service of summons as can be seen from Rule 32 of the rules is that the serving officer after the service of summons was required to endorse or annex to the original summons return stating the time when and the manner in which summons were served and the name and address of the person, if any identifying the person served and witnessing the delivery or tender of the summons.

8. It is not and cannot be disputed that there is no such endorsement of the serving officer on any one of the notices served upon the petitioners. The court had the advantage of looking into these notices when the record is produced by the learned Government Pleader. Therefore, there is clear non-compliance with the provisions of sub-rule (5) of rule 32 of the rules. There is no explanation forthcoming on behalf of the Arbitrator about, the proper service of summons on the petitioners. On the other hand in the affidavit filed by the sale officer, it is asserted thus:

"As the summons (notices) sent by the Hon"ble Arbitrator to the above petitioners amongst others could not be served, I personally went to the village Pattan and delivered the summons along with the plaint copy and other annexures to the above petitioners. Both the petitioners have signed on the reverse of the summons (notices) in my presence on 6-3-67 and I have attested the same."

Whereas the version of the President of the 1st respondent society in his affidavit is different. He had stated thus:

"Since he also did not receive summons of dispute sent by the Hon"ble Arbitrator through his clerk and the same was personally served upon the 2nd petitioner by the Administrator of service co-operative society Pattan."

They have given two contradicting versions. The sale Officer says that he himself went and served summons upon the petitioners. Whereas the President says that the Administrator went and served the summons. There are thus discrepant versions given by the sale officer and the President. But neither of these persons have asserted that there is the requisite endorsement in terms of the provisions of sub-rule (5) of Rule 32. Thus, there is no compliance with the requirement of the provisions of sub-rules (4) & (5) of Rule 32 of the rules. Hence the entire proceeding is vitiated.

9. Now turning to the awards, it must be said that there is non-compliance with the provisions of sub-rule 4(a) of rule 31 of the rules. The Arbitrator after placing these petitioners ex-parte has not recorded any brief note of the evidence of the parties and witnesses and he has also not considered the documents in detail produced by the 1st respondent. He has merely stated in the course of all these

orders that "from the perusal of the records sent by the A.R.C. S. Gulbarga and the defendant being absent I pass the award as follows." Further, he has stated that the plaintiff is entitled to recover the amounts due from the petitioners with interest at 15 per cent. There is absolutely no reference to the evidence upon which the award is based. This is another serious infirmity in the impugned awards. The appellate Tribunal while dealing with such a case seems to have lost sight of the serious infirmities pointed out above. The appellate tribunal has failed to examine the question whether the service of summons has been effected in accordance with law. Further the Appellate Tribunal has not referred to the evidence on which the awards were based. If the appellate Tribunal had perused the impugned awards it would have reached the conclusion that there was non-compliance with Rule 31(4)(a) of the Rules. Therefore, the impugned order passed by the appellate Tribunal is vitiated.

10. There are two more points which have affected the impugned order. The petitioners filed applications for condonation of delay on the ground that they had no knowledge of the proceedings or the award passed. While dealing with this question, the appellate tribunal proceeded on the assumption that prima facie the appellants have been served with notices issued by the Arbitrator and, therefore, they had knowledge of the dates of hearing. This observation is fallacious. It is the result of the appellate tribunal not applying its mind to the relevant provisions of the law. If there was application of mind the appellate Tribunal would not have reached this conclusion. As already pointed out the service of summons upon the petitioners is not in compliance with the relevant rules and, therefore, the knowledge of the date of hearing cannot be attributed to the petitioners. The erroneous assumption upon which the appellate Tribunal has declined to condone the delay is another infirmity in the impugned order.

11. The principle of law relating to the computation of limitation is enunciated by the Division Bench of this court in *R. Venkataramaiah v. T. Narayana Sastry*, (1969) 2 Kar.L.J. 204. It has held:

"Where the date of pronouncement of the order was not notified to the appellant and he had no opportunity to be present at the time when the order was pronounced, the period of limitation allowed under Sec. 28(1) of the Act has to be reckoned from the date on which the appellant obtained a certified copy of the order and not from the date on which the endorsement intimating that the order had been pronounced was served on him."

As already pointed out the petitioners were not duly served and they cannot be imputed with the knowledge of the date of hearing. Therefore, as laid down by this court, the limitation has to be reckoned from the date on which the petitioners obtained the certified copy of the order. The petitioners applied for grant of certified copies after they came to know of the awards passed against them. They filed appeals before the appellate Tribunal dispensing with the production of the certified copies of the award. It is submitted that it was thereafter at the time of disposal of the appeals by the appellate tribunal that the

certified copies of the awards were taken by the petitioners and produced before the appellate tribunal. In these circumstances the appellate tribunal is not justified in rejecting their appeals on the ground that they are barred by time.

12. The appellate tribunal has observed in the course of its order that the petitioners have taken recourse to a costly remedy like the appeals rather than approaching the competent authority for setting aside the ex parte awards passed in these cases. This observation is not warranted when the provisions of S. 105 of the Act, provided for an appeal against the decision or award passed by the Arbitrator.

13. Having regard to the several infirmities pointed out above the impugned order passed by the appellate Tribunal as well as the awards passed by the 3rd respondent against these petitioners, they cannot be sustained in law and they are liable to be quashed. Therefore, the judgment in appeals passed by the appellate tribunal and the awards passed by the Arbitrator against these petitioners are hereby quashed. The 2nd respondent Registrar is at liberty to initiate the proceedings afresh against the petitioners if they are still defaulters after service of notice in accordance with law and dispose of the matter.

14. All the writ petitions are allowed. Rule made absolute. No costs.

15. It is submitted by the learned counsel for the petitioner that these five petitioners have deposited Rs. 2000 each in the year 1977 and the amount was credited to the P.D. Account in the State Bank of Hyderabad, Gulbarga and that amount has not been given credit by the 1st respondent nor any interest is paid upon that. The 1st respondent society is directed to adjust that amount towards the debt due from these petitioners and take into consideration the loss of interest on Rs. 2000 from 1977 while determining the outstanding balance against the petitioners.