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(1988) 03 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 6437 of 1982

Doddanagouda — APPELLANT

Vs

Rythara Seva Sahakara Sangha Niyamitha — RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:
Karnataka Cooperative Societies Rules, 1960 — Rule 14A

Citation : (1988) ILR (Kar) 2528

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : A.V. Albai, for the Appellant; S.B. Adi, for C.N. Gokavi, for R-1 and B.J. Somayaji, HCGP for R-2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—In this Writ Petition, the petitioner has sought for a Writ of Certiorari to quash the award of respondent-3 vide Annexure-B dated 9-1-1978 passed in Dispute No. 856/76-77 and also the Judgment dated 4-9-1980 passed by the Karnataka Appellate Tribunal in Appeal No. 860/79.

2. The facts of the case, in brief, are as follows:

The petitioner was the President of Masudipura Service Co-operative Society Ltd. u/s 14A of the Karnataka Co-operative Societies Act, 1959 (hereinafter called ''the Act'') the aforesaid Society was amalgamated with Jayamuddallikarjuna Service Co-operative Society and the 1st respondent Society thus came into existence. According to the petitioner, he did not borrow any loan either from Masudipura Service Co-operative Society Ltd., or from the 1st respondent Society except a small sum of Rs. 1,000/-.

3. It is further stated by the petitioner that one Veerappa who is working as Administrative Clerk of the B.D.C.C. Bank, Hospet, was close to the petitioner and the petitioner had reposed confidence and faith in him. The petitioner is not a knowledgeable person and that the said Veerappa, acting in the capacity of

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Administrative Clerk, took the signature of the petitioner on the pretext that it is required for official correspondence. The petitioner did not realise that his signature was taken as a surety to any of the debtors. According to the petitioner, the signature was mis-used. When a claim was made against the petitioner in a sum of Rs. 23,700/- together with interest, a dispute was raised u/s 70 of the Act. Thereafter, the Arbitrator issued a notice vide Annexure-A fixing the date of enquiry on 9-1-1978. According to the petitioner, the Arbitrator did not hold any enquiry and did not give any opportunity of hearing to the petitioner, but merely acted on the version of the respondent''s representative and passed the impugned award dated 9-1-1978 on the ground that the petitioner had admitted before the B.D.C.C. Bank on 19-5-1977 his liability.

4. Aggrieved by the award, the petitioner preferred an appeal to the Karnataka Appellate Tribunal on several grounds which disposed of the appeal on 4-9-1980 with an endorsement to the petitioner dated 22-1-1982 vide Annexures ''C'' & ''D''.

5. In this Writ Petition, the short point which arises for consideration is whether the Karnataka Appellate Tribunal was wrong in dismissing the appeal of the petitioner on the ground of limitation without going into the merits of the appeal.

6. According to the petitioner, the appeal was filed on 27-2-1979 before the Karnataka Appellate Tribunal. The award was passed on 9-1-1978. It is stated that the petitioner was present when the award was passed and, therefore, he had knowledge of the award and hence the appeal was barred by limitation.

7. The contention of the petitioner is that even assuming that he was present on the date of passing of the award, he had no knowledge of the contents of the entire award and, therefore, it cannot be said that limitation actually commenced on the date of the award itself. The petitioner has also relied upon Rule 31(7) of the Karnataka Co-operative Societies Rules, 1960 (hereinafter called ''the Rules'') which provides for issue of a notice to the petitioner of the date of filing of the award by the Arbitrator with the Registrar of Co-operative Societies, According to the petitioner, no intimation was received by him regarding the fact of filing of the award and, as such, he had no knowledge of the contents of the award. What the petitioner means is that it is only after he is informed of the filing of the award that he could apply for a certified copy of the same and it is only after obtaining the certified copy that he could be deemed to have knowledge of the contents of the award and, till such time, the limitation does not begin to run. It is submitted by the petitioner that taking these aspects into consideration the appeal before the Karnataka Appellate Tribunal was within time and that the Tribunal was not justified in dismissing the appeal on the ground of limitation.

8. Rule 31(7) of the Rules roads as follows :

"When an award has been made, the person who made it should cause it to be filed in the office of the Registrar together with any depositions and documents which have been taken and proved before him and notice of the filing shall be

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given to the parties."

9. It is mandatory, according to the above rule, that the communication of the filing of the award should be made to the petitioner. It is also not a disputed fact that unless the award is filed by the Arbitrator, the petitioner is not entitled to obtain a certified copy of the award. There is no provision in the Act and the Rules compelling the authority to furnish a copy of the award to the petitioner once the award is made, in the absence of an application from the petitioner. Unless the petitioner is able to have an access to the detailed reasoning and facts stated in the award leading to the award, it will not be possible for the petitioner to make up his mind for filing an appeal before the Appellate Authority. Mere knowledge of the result of the case before the Arbitrator is not sufficient for the purpose of preferring an appeal and further no certified copy can be granted to the petitioner before the award is filed by the Arbitrator with the Registrar of Co-operative Societies. It cannot be held that since the petitioner was present on the date of the award before the Arbitrator that he had constructive knowledge of the contents of the award because there is no material available on record to show either in the order of the Appellate Tribunal or from the argument of the Counsel for the respondents that the entire award was read-out and that, therefore, the petitioner should be deemed to have knowledge of the contents.

In this Writ Petition also no statement of objections have been filed making such an averment against the petitioner. It is not the case of the respondents that the petitioner had knowledge of the contents of the award. In these circumstances, it cannot be said that the limitation commenced from the date of the award itself. In my opinion, the award is incomplete until the same is filed by the Arbitrator with the Registrar. These aspects have not been considered by the Appellate Tribunal. As already stated, there is no material on record to show that a notice of filing of the award was served on the petitioner and, therefore, the presumption is that the petitioner was not aware of the filing and, in such a situation, he himself approached the authority and, after enquiry, applied for a copy of the award. I, therefore, hold that the appeal is not barred by limitation. I am also supported in taking this view by a Judgment of this Court in W.P.No. 20299 of 1980 dated 16-3-1982 wherein it was held as follows in similar circumstances :

"Sub-rule (7)(a) of Rule 31 of the Karnataka Cooperative Societies Rules lays down that when an award has been made, the person who made it should cause it to be filed in the office of the Registrar, together with any depositions and documents which have been taken and proved before him and notice of filing shall be given to the parties. The learned Counsel for the 1st respondent society has not brought to the notice of the Court any notice of the publication of the award and also service of notice of filing the same before the Registrar on the petitioner. The scope of this Rule is to give notice to the parties about the passing of the award. That would give sufficient warning to the parties aggrieved to challenge the award before the competent authorities. Though Sub-rule (7)(a)

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of Rule 31 has no reference to the period of limitation prescribed u/s 105, if other circumstances exist the Appellate Authority should consider the circumstances stated by the Girimallana Gowda v. The R.S.S.S. Ltd. party for the delay in filing the appeal. The cause for delay has already been referred to above. Further having regard to the status of the petitioner as an agriculturist besides being an illiterate and also a huge amount of more than Rs. 80,000/- which the award makes him liable to pay, the Appellate Tribunal ought not to have dismissed the appeal on the ground of delay as that would cause great injustice to the petitioner if really he is not liable to pay. There is no material produced before Court to come to the conclusion that the petitioner was made aware of the award on 8-2-1978. It is not known whether the award was pronounced in the open Court or it was written or dictated by the Arbitrator in the absence of the parties. Therefore the view taken by the Appellate Tribunal that there is no ground to condone the delay cannot be accepted. In view of what is going to be discussed hereafter the delay in filing the appeal before the Appellate Tribunal deserves to be condoned in the interest of justice and also to prevent miscarriage of justice. Therefore the delay is condoned."

I am in respectful agreement with the principle laid-down in the above case and the same principle is to a considerable extent attracted to the facts of this case.

10. In the result, I allow the Writ Petition, quash the impugned order of the Karnataka Appellate Tribunal and remit the case back to the Appellate Tribunal for disposal on merits after affording a reasonable opportunity of hearing to all the parties concerned within 60 days from the date of receipt of this order. All the questions are left open for disposal on merits.

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