
(2014) 10 KL CK 0183

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 8963 of 2004

Gopinathan Nair M.

APPELLANT

Vs

Kerala Co-Operative Tribuna

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 84

Citation : (2014) 4 KHC 389 : (2014) 4 KLJ 384 : (2014) 4 KLT 647

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : A. Antony and Leelamma Antony, Advocate for the Appellant; P.G. Parameswara Panicker, Senior Advocate and P. Gopal, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—Petitioner is a retired Secretary of the respondent Bank, against whom, arbitration proceedings were initiated, which ended in Ext. P1 award. Petitioner, in the present writ petition, is aggrieved by the order, passed on the preliminary objection raised, in the revision filed by the petitioner. Admittedly, there is no time limit prescribed under Section 84 of the Kerala Co-operative Societies Act, 1969 for filing a revision. It is, hence, the contention of the petitioner that, Ext. P3 order passed, dismissing the revision on the question of delay, is improper. This Court in Thajuddin Shameer Vs. Secretary Coastal Urban Co-op. Bank Ltd., has held that, time limit for filing a revision before the Co-operative Tribunal under Section 84 is 90 days, even though there is no time limit for filing a revision petition before the Co-operative Tribunal. If such a revision is filed beyond 90 days, which is considered normally as the reasonable prescription, then the petitioner should explain the reasons for the delay. Under such circumstances, the petitioner seeks for re-consideration of the revision. The petitioner seeks an opportunity to explain the reason for delay, since Thajuddin Shameer (supra) was subsequent to the rejection of the revision in 2002.

2. Even as per the specific admission of the petitioner in Ext. P2, the petitioner

received copy of the Award on 06/04/1999, which the Arbitrator had forwarded under Rule 67(8) of the Kerala Cooperative Societies Rules, 1969. It is submitted by the learned counsel for the respondent Bank that, in fact, notice was attempted to be served on the petitioner in the arbitration case, which could not be effectively served and hence, notice was taken by paper publication. It is only in such circumstance that, the Arbitrator proceeded ex parte and passed the Award. Petitioner, though received copy of the Award on 06/04/1999, filed Ext. P2 only on 14/08/2000, i.e., after the expiry of more than one year and four months. It is also pertinent to note that, Ext. P2 does not disclose any reason or explanation for the inordinate delay caused. In such circumstances, it may not be proper for this Court to interfere with the order passed in the preliminary objection raised by the respondent Bank, produced at Ext. P3.

3. Further, the Tribunal has relied on two decisions of this Court in *Narayanan v. Rent Controller* 1988 KHC 377 : 1988 (2) KLT 74 and *Thottoli Moideen Koya and Others Vs. Kariatt Kunhammed Haji and Others*, , wherein it was held that, despite there being no time limit prescribed in an enactment, normally, the reasonable prescription would be a time limit of 90 days. Though the petitioner's counsel would contend that, the said declaration has been made under the Kerala Buildings (Lease and Rent Control) Act, 1965, this Court is of the opinion that, the principles would squarely apply in this case also. It is also significant that *Thajuddin Shameer* (supra) followed the afore-cited decisions and applied it to the revision under Section 84 of the Kerala Co-operative Societies Act, 1969.

4. In *Narayanan's* case (supra), the Court considered the question of limitation, when approaching the District Court under Section 20 of the Rent Control Act. There was no period specified for invoking such revisional power of the District Court, under Section 20. A learned Single Judge of this Court found that the provision enabling the District Court at any time to call for and examine the records of the Appellate Authority is in relation to any order passed or proceedings initiated. But, that does not lead to a presumption that, the District Court can exercise its jurisdiction at any future time without any limitation whatsoever. The exercise of revisional power being discretionary, the same was found to be a privilege conferred on the petitioner and not a right. The exercise of power as such would be an exercise of discretion, which could be refused when there is an inordinate delay. The applicant was held to be expected to be diligent in invoking the revisional power.

5. Section 20 provided for the revision to the District Court where the Appellate Authority under Section 18 was a Subordinate Judge and otherwise to the High Court. On the Government conferring the Appellate Authority on the District Judge, by a notification, again the very same question arose as to the limitation for approaching the High Court under the revisional power conferred by the Statute. The Registry had noticed a defect, insofar as the Rules of the High Court by Rule 44 provided for the prescription of filing of a revision petition within 90 days of the order complained of. The Full Bench, considering the above issue in

Moideen Koya's case (supra) approved the afore-cited decision of the learned Single Judge which was affirmed by a Division Bench in V.P. Thomas Vs. K. Mukunda Menon . But, however, the practice of not numbering a writ petition till an application to excuse the delay was disposed of, was found to be opposed to the true legal position. It was also opined that an affidavit explaining the delay in filing the revision petition would suffice and the averments in the affidavit can be taken into consideration to render a finding on the justifiability of the reasons projected for the delay. The Full Bench also hence approved the dictum that, a revision should be filed within a reasonable time. Section 84 of the Co-operative Societies Act is in pari materia with Section 20 of the Rent Control Act. The decisions afore-cited, hence, would apply on all fours to the present writ petition. Even in the writ petition, the petitioner does not make any averments in explanation of the delay in approaching the Tribunal. The petitioner's contention that the delay could not be explained since Thajudeen Shameer (supra) was subsequent cannot be countenanced, since the learned Single Judge in that decision re-affirmed the settled position; but in the context of a different enactment. It is also of considerable negative impact that, the above writ petition has also been filed, again with an inordinate delay of more than two years. The preliminary order in the arbitration case was passed on 01/02/2002 and the writ petition was filed on 15/03/2004. There is no explanation to that delay in the writ petition filed or the accompanying affidavit.

For all the above reasons, this Court is of the opinion that, the petitioner cannot be granted any further opportunity. Writ petition is, hence, dismissed. No costs.