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(2004) 03 MAD CK 0044

In the Madras High Court

Case No : CRP.PD. No. 2601 of 2003, C.M.P. No. 19583 of 2003 and VCMP. No.4200 of 2004

H. Vijaya Samundeeswari APPELLANT

Vs

The Dindigul District Co-op.Milk Producers Union Limited RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2004) 4 LW 756

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : V. Lakshminarayanan, for the Appellant; K.R.A. Muthukrishnan, for the Respondent

Final Decision : Allowed

Judgement

K. Gnanaprakasam, J.—This revision is directed against the order dated 16.10.2003 passed by the District Munsif-cum-Judicial

Magistrate,Kodaikanal in I.A.No.86 of 2003 in O.S.No.37 of 2003.

2. The revision petitioner has filed a suit for permanent injunction restraining the respondent herein from interfering with the peaceful possession and

enjoyment of the suit property. The case of the revision petitioner is that he was inducted in possession of the suit property as a tenant by the

respondent herein and a lease agreement was entered into between the petitioner and the respondent on 23.4.2002 by which the petitioner has

paid a sum of Rs.1,20,000/- as yearly rent. The petitioner also claimed that he is a statutory tenant and since the tenancy is yearly tenancy, the

respondent cannot evict him except by due process of law. However, from the last week of February, 2003, the respondent started threatening the petitioner to evict him by force which necessitated him to file the suit.

3.The respondent filed a written statement stating that the petitioner is an associate member of the respondents Union which is a Cooperative

Society registered under the Tamil Nadu Cooperative Societies Act (hereinafter referred to as the Act) and the petitioner being a member, any

dispute between the member and the Society has got to be adjudicated under the machinery provided under the Act by virtue of Section 156 of

the Act. The jurisdiction of the Civil Court is ousted and the suit filed by the petitioner is not maintainable. The respondent also stated that the

petitioner is liable to pay a sum of Rs.8029/- as municipal tax and Rs.34,275/- as rent arrears and thereby he has been defaulted in payment of

rent and tax amount.

4.During the pendency of the suit, the respondent herein has filed an application under Order 14 Rule CPC stating that the civil Court has no

jurisdiction to try the suit, but to frame the issue with regard to the bar of jurisdiction and to decide the matter . That application was taken out for

enquiry and the Court below accepted the plea advanced by the respondent and allowed the petition holding that the Civil court has no jurisdiction

to try the suit. Aggrieved by the same, the petitioner has preferred the Civil Revision petition.

5.Heard the learned counsel for the petitioner as well as the respondent.

6.The respondent/defendant, in the affidavit filed in support of the petition has stated that the respondent is a Cooperative Society registered under

the Act and the petitioner has been admitted as an associate member (""B"" Class) of the Union in accordance with the provisions contained in Rule

No.32 of the Tamil Nadu Cooperative Societies Rules(hereinafter referred to as the Rules) . The Act is a special enactment and machineries have

been provided in the Act itself for settlement of disputes between the member and the society. Section 90 of the Act provides machinery for

adjudication of dispute between the member and the Society and Section 156 of the Act bars the jurisdiction of the civil Court. As the petitioner is

a member of the respondent society , the dispute between the petitioner and the respondent has got be resolved under the machinery provided u/s

90 of the Act and the suit filed by the petitioner herein before the civil court is not maintainable.

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7.The petitioner herein filed a detailed counter contending that the dispute between the petitioner and the respondent is not in respect of any

business that has been carried on by the respondent herein, and only in respect of the business that has been carried on by the respondent, any

dispute arose,that could be referred to the Registrar of Cooperative Societies and can be dealt with. The dispute between the petitioner and the

respondent is a property dispute with regard to the termination of lease granted to the petitioner by the respondent society and such a nature of

dispute cannot be referred to the Registrar of Cooperative Societies under the Act.

8.Though the act is a special enactment which provides machineries for settlement of dispute between the member and the society, touching the

constitution of the Board or the management or the business of a registered society, the dispute is with regard to the property let out to the

petitioner, cannot be decided by the machineries provided under the Act. It is also stated that there is no bar u/s 9 of CPC to maintain the suit. It is

further stated that the suit is of a civil nature and the cognizable of the same is not a bar u/s 9 of CPC. The act does not provide any machinery to

solve the dispute or enforce any civil right. As long as there is no specific bar u/s 9 CPC, the suit filed by the petitioner is maintainable.''

9.Learned counsel appearing for the petitioner would contend that the lease granted to the petitioner by the respondent is not disputed. Once

having admitted that the petitioner is a tenant under the respondent in respect of specific immovable property, the right of the petitioner to move the

civil court is not barred. It is further stated that the dispute could be resolved by the Registrar or by any other machinery provided u/s 90 of the

Act. Further, the dispute is not in respect of the business that is being carried on by the respondent society and as the dispute arose out of the civil

right, the petitioner is not precluded from bringing the suit before the civil court.

10.Learned Advocate for the revision petitioner would contend that the bar as provided u/s 156 of the Act is not a total bar. Section 156 reads as

under:

Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction

issued under this Act by an arbitrator, a liquidator, the Registrar or an officer

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authorised or empowered by him,the Tribunal or the Government or

any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of

anything which is done or intended to be done by or under this Act.

11.In order to invoke the power u/s 156 of the Act, the order should have been passed by the authority under the Act and it is not an order

passed under any of the provisions of the Act. The dispute between the petitioner and the respondent could not be resolved under any of the

provisions of the Act. As the relief sought for by the petitioner is outside the jurisdiction of the Act, it cannot be contended that the civil court has

no jurisdiction to entertain the suit of civil nature.

12. A similar question arose in the case of Somasundaram Vs. Liyakat Ali and another, , in respect of inter-se seniority of employees under the

Tamilnadu Cooperative Societies Act, 1983 and in the said case also, there is a bar u/s 156 to bring out a civil suit. By referring to Section 156 of

the Tamilnadu Cooperative Societies Act, 1983, the learned Judge, (S.S.Subramani, J) had observed, ""A reading of the above section makes it

clear that to get protection under that Act, the authorities under that Act must pass an order or award for which, they are empowered under the

Act. It is only those powers which they are asked to do under that Act and impounded from Civil action, cannot be called in question in a civil suit.

In the said case,the learned Judge put a question whether the Registrar has got jurisdiction to decide the inter se seniority between the two

employees and the learned Advocate was not in a position to show any provision of law regarding the same. In the said context, it was held that

the powers given to the Registrar are only of disciplinary character, where he can with hold promotion, etc. Admittedly, this is not a case of

disciplinary proceedings. Once it is found that the Registrar was not acting under any provisions of the Act, he has to decide the inter se seniority

only in accordance with law. It is a common law right. Hence, the bar u/s 156 of the Cooperative Societies Act has no application to the facts of

this case.

13.Here also I put a question to the learned Advocate for the respondent to show whether the Registrar could resolve the dispute between the

petitioner and the respondent with regard to the tenancy created between the

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parties. The learned advocate for the respondent is not in a position

to say such a dispute could be resolved by the Registrar constituted u/s 96 of the Act. That apart, it is clearly made out that the dispute between

the petitioner and the respondent is of civil nature and that cannot at all be resolved by the machineries created under the Act.

14.In this connection, it would be useful to refer another case in V.S. Lakshminarayanan Iyengar and 8 others Vs. M.C. Arunachala Pillai and 8

others, , The said case arose under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The suit was filed for declaration that

the plaintiffs are hereditary Archahas or Stanigars in the suit temple and that they are entitled to receive ''Padi Arisi'', which is being given by the

devotees and collected by the plaintiffs and for consequential mandatory injunction, directing to remove Hundi for collection of ''Padi Arisi'' and for

consequential permanent injunction. There is a bar u/s 55 of the said Act for the plaintiffs to seek the relief of declaration of status as hereditary

archahas. In that case, (E.Padmanabhan,J) relied upon the earlier judgement in the case of Mooka Velar Vs. Baluchami 1977 90 LW 615,

wherein (Sethuraman, J.) has held, ""The provisions of Section 63 of the Act will not bar the suit claim there, to restrain the defendants from

interfering with the right of the plaintiffs to be in management of the suit trust as joint hereditary trustees of the temple, which hereditary trusteeship

has already been declared"" and the learned judge also relied upon the case of Sri Thulukka Choodamani Mariamman Temple, etc. Vs.

Subramanian Pandaram 1986 99 LW 606, wherein, (Venkataswamy, J., as he then was) has held, ""The claim of the plaintiffs will not fall u/s 63

and the offerings being in the nature of appeasing the God through the medium of Poojari and that too originally on special occasions, which in

course of time came to be a regular event, but, not on daily basis, this Court has to uphold the claim of the poojaries that they are entitled to the

offering of ''padi arisi'' which will not come within the purview of Section 63 of the Act.

15. The case of Easwaramoorthy Velar Vs. Parvathathammal, deals with the Tamil Nadu Debts Reliefs Act, (Act 40 of 1979, 13 of 1980 and 50

of 1982), wherein, the learned Judge (S.S.Subramani, J) had observed that the bar of jurisdiction of civil court created under the said Act is not a

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total bar and the Tamil Nadu Debt relief Act,1982 has not excluded the common law remedy. In fact, reliance is made on the decision in

Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , wherein the apex court enunciated various principles regarding exclusion

of jurisdiction of civil court, which reads thus:-

(1)Where the statute give a finality to the orders f the special tribunals the civil court''s jurisdiction must be held to be excluded if there is adequate

remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the

particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial

procedure.

(2)Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act of find the adequacy or the

sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express

exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the

inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination

of the right or liability and further lays down that all questions about the said rights and liability shall be determined by the tribunals so constituted,

and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3)Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High

Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4)When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of

certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy

to replace a suit.

(5)Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

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(5)Questions of the correctness of the assessment apart from its constitutionality for the decision of the authorities and a civil suit does not lie if the

orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular

Act must be examined because it is a relevant enquiry.

7.An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply; Case law discussed.

16.It is therefore made clear that the jurisdiction of the civil Court is not a total bar in respect of the civil right arising between the parties. In the

case of Prakash Narain Sharma Vs. Burmah Shell Cooperative Housing Society Limited 2002 3 CTC 795, which arose under Delhi Cooperative

Societies Act, 1972, the very same view was taken.

17.I have also had an occasion to consider the bar of jurisdiction, u/s 34 of The Securitisation & Reconstruction of Financial Assets &

Enforcement of Security Interest Act in CRP.PD.No.1041 of 2003 dated 19.3.2004 and ultimately held that there is no total bar, for bringing the

civil suit, when dispute is between the parties of a civil nature.

18. The Tenancy between the petitioner and the respondent is in dispute and the said dispute of a civil nature and it would not take away the right

of the parties. As the dispute between the parties is of a civil dispute in simplicitor, the right of the petitioner to approach the civil court cannot be

held to be a bar and the said relief cannot at all be granted by the machineries created under the Act and in view of the same, the petitioner is well

within his right to file the suit before the civil Court and the Court below has fallen into an error, in coming to the conclusion that the bar u/s 156 of

the Act is applicable to the case on hand, is not correct and the said order is liable to be set aside and accordingly, it is set aside.

19.In the result, the Civil Revision petition is allowed. After the orders have been passed, learned Advocate for the respondent submitted that the

petitioner is in huge arrears and the same is disputed by the learned Advocate for the petitioner. If the petitioner is in arrears of rent, the respondent

is at liberty to take appropriate action before the Court below. No costs. Consequently, C.M.P.No.19583 OF 2003 AND VCMP.NO. 4200

OF 2004 are closed.

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