

(1954) 01 MAD CK 0035

In the Madras High Court

Case No : Second Appeal No. 699 of 1949 and C.M.P. No. 3602 of 1949

Ijjana Bhogayya and Others

APPELLANT

Vs

Arthamur Devaravada Parapathi Sangam Ltd. and Others

RESPONDENT

Date of Decision : 12-01-1954

Acts Referred:

Citation : AIR 1954 Mad 935 : (1954) 67 LW 547 : (1954) 2 MLJ 279

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : P.M. Srinivasa Ayyangar, for the Appellant; A. Sambasiva Rao, K. Ramanathan and V. Parthasarathy, for the Respondent

Judgement

Krishnaswami Nayudu, J.—The scops and extent of the bar of suits and other legal proceedings u/s 48 of the Madras Co-operative Societies Act 6 of 1932 arises for determination in this appeal.

The plaintiff-appellant bid certain properties put up for sale by a Co-operative Society known as the Arthamur Devaravada Parapathi Sangham Ltd, Arthamur. He also made an initial deposit of over one-fourth of the bid and paid also the balance. The second defendant, to whom some of the properties belonged and who was a defaulter, was given back two of the items of properties on his paying the arrears of dues. The appellant instituted the present suit for specific performance of a contract of sale by virtue of his having bid at the sale in auction held on 19-7-1942 when he made the bid and made the initial payment. Specific performance was refused by the trial court.

Alter the termination of the suit and before the filing of the appeal, the first defendant-Society was wound up, and a liquidator was appointed.

In the appeal preferred by the appellant, a preliminary objection as to its maintainability was raised, relying on Section 48 of the Madras Co-operative Societies Act, 1932. The learned Subordinate Judge of Masulipatam upheld the objection and rejected the appeal without going into the finding on the other

issues.

2. Section 48 of the Act is in the following terms :

"Save in so far as is expressly provided in this Act, no civil court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act, and when a liquidator has been appointed no suit or other legal proceedings shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose".

There was an application to the Registrar for leave; but it was refused. In the absence of such leave, the lower appellate court held that an appeal would not lie.

3. It is urged that the words "other legal proceeding" in the section should not be construed as including an appeal, as was understood by the lower appellate court, and that the bar is only in respect of the initiation of a suit or other legal proceeding, which is not a suit but an original proceeding initiated for the first time and not an appeal, at any rate. In so far as the bar of a suit is concerned, apart from the clear language of Section 48, there is a decision of this court reported in -- Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society, but the question as to whether an appeal would come under the mischief of Section 48 did not arise for consideration.

Mr. Srinivasa Aiyangar referred to some of the cases where similar words occurring in Other enactments have been construed as including not an appeal but only a suit or other original proceeding. In -- Benares Bank Ltd. Vs. Sashibhushan Misra, cited by counsel, a Bank in liquidation obtained a decree and in execution of the decree, properties were sold and purchased by the respondent, who afterwards discovered that the judgment-debtor had no saleable interest in the property on the date of the sale, and filed a petition for setting aside the sale. An objection was raised by the decree-holder bank that the petition was not maintainable in view of Section 171 of the Companies Act. It was held that Section 171 did not apply to appeals or applications by unsuccessful parties to a litigation brought by a company, and that therefore the petition for setting aside the sale was maintainable without the leave of the court.

Section 171 of the Companies Act, says: "When a winding up order has been made (or a provisional liquidator has been appointed) no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose".

The language in this section is almost identical with that employed in Section 48 of the Madras Co-operative Societies Act, except that the leave that is prescribed in Section 171 of the Companies Act is that of the court, whereas .with reference to the similar provision in the Madras Co-operative Societies Act it is the Registrar of Co-operative Societies who has to give leave.

The expression "suit" or "legal proceeding" is as pointed out not dennded in the

Companies Act, the CPC or the General Clauses Act or even in the Madras Co-operative Societies Act. In their view, so far as the words "legal proceeding" in Section 171 of the Companies Act are concerned, they would not include an appeal. They observed at page 400:

"The expression "legal proceeding" in this section, is coupled with "suit" and obviously means proceedings "ejusdem generis", that is to say, original proceedings in a court of first instance analogous to a suit, initiated by means of a petition similar to a plaint. It does not include proceedings taken in the course of the suit nor proceedings arising from the suit and continued, in a higher court like an appeal from an interlocutory or final order passed in the suit. The rule of interpretation to be followed in such cases is contained in the maxim "Couplatio verborum indicat acceptationem in eodem sensu" the coupling of words shows that they are to be understood in the same sense."

The same view as to the meaning of the words "legal proceeding" was taken by a Full Bench of the Lahore High Court in -- "Shukantala v. Peoples Bank of Northern India, Ltd", AIR 1941 Lah 392 (C) which view the learned Judges in -- Benares Bank Ltd. Vs. Sashibhushan Misra, adopted. Reference was made by the learned Judges in the Full Bench case to the decision of the House of Lords in -- Humber v. John Griffiths Cycle Co.", (1901) 85 LT 141 (D) where under the corresponding provision of Section 87 of the Companies Act Of 18G2 it was held that no leave of the liquidation court was necessary for the institution or continuance of the appeal.

In -- "Jiwandas v. Peoples Bank", AIR 1937 Lah. 926 (E) where the Bank in liquidation itself instituted the suit and the suit was proceeded with and the Bank was successful, it was held that there was no necessity for the defendants in the action to obtain leave for any defensive proceeding on their behalf, as the defendant could not be said to proceed with or commence any legal proceedings against the Bank. Reliance was placed on the observations and the view taken by the Law Lords in "(1901) 85 LT 141 (D)."

4. In -- "Hood Barrs v. Heriot, 1897 AC 177 (F), the question arose as to the construction of Section 2 of the Married Women's Property Act, 1893. That section provided:

"In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just."

The suit was against a married woman, who preferred an appeal and her appeal was dismissed. The plaintiff sought to obtain an order for payment of the costs of the appeal out of her property notwithstanding any restraint upon anticipation u/s 2 of the Married Women's Property Act. The court refused the application

against which an appeal was filed.

Lord Herschell construed the words "in any action or proceeding instituted" in the following manner :

"If we were to hold that an appeal presented by a married woman is a "proceeding instituted" by her, then I do not think it would be possible to avoid holding that any proceeding taken by a married woman in the course of an action against her would be a proceeding within the meaning of the section. The court, in each of those steps she might take in an action brought against her, would have jurisdiction to enter upon this inquiry and to deal separately and independently with the costs of each of those "proceedings" under the section. I do not think that was ever intended, or do I think that the words which the Legislature has employed are apt to give the court any such jurisdiction. The words "in any action or proceeding instituted" refer I think to an action or some other litigation initiated by the married woman. Unless the proceeding is one which initiates litigation, it seems to me that it is not a proceeding within the true intent and meaning of the clause upon which reliance is placed."

(4a) Counsel on behalf of the respondents referred to the decision in -- "Registrar. Co-operative Societies v. Raghubir Bam," ILR 1948 Pat 337 (G) where a suit was instituted against the Registrar of Co-operative Societies and others for a declaration that a certain award obtained was illegal, ineffective and liable to be set aside with an alternative prayer that the property belonging to the plaintiff and sold by the liquidator might be returned to the plaintiff on payment of a certain sum. An objection was taken u/s 57 of the Bihar and Orissa Co-operative Societies Act 6 of 1935.

Sub-section 2 of Section 57 is in the following terms : "While a society is in liquidation no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society except by leave of the Registrar and subject to such terms as he may impose."

The learned Judges while holding that a suit against the Registrar was barred under that provision referred to an earlier decision of the Patna High Court reported in -- "Shamji Lire v. Central Co-operative Bank Ltd., 1944 Pat W N 172 (H) in which it was held that during the pendency of an appeal against a Co-operative Bank the Bank went into liquidation and the liquidator was made party respondent, and the appellant applied to the Registrar u/s 57(2) of the Bihar and Orissa Co-operative Societies Act for leave to proceed with the appeal, but permission was not given. It was held in that case that the appeal was not maintainable.

The facts of the case in -- The Registrar Co-operative Societies and Others Vs. Raghubir Ram and Others, " refer only to the maintainability of a suit and not to an appeal; but there is the decision of that High Court as is seen from a reference to -- " 1944 pat W N 172 (H)" that the bar was held extended also to

appeals and not only to suits. The Report of that case is not available, and I am therefore unable to deal with any arguments in support of that view.

5. The meaning that is given to the words "other legal proceeding" in the corresponding provision of the companies Act by the Lahore and Patna High Courts appears to be just and reasonable, as in respect of a suit which had already been filed and decided in favour of the Society, the right of the unsuccessful litigant could not be held to have been taken away by a construction put upon the language of Section 48 of the Madras Co-operative Societies Act which a plain reading of it would not warrant. There is no reason to construe the identical words in this Act to the disadvantage of the unsuccessful party and contrary to the meaning that is given to the corresponding provision in the other statutes.

As was observed by Lord Davey in the well known case of -- "(1901) 85 L. T. 141 (p)", "....the respondents having been successful in the lower court cannot now object to the appellants defending themselves against the consequences of the judgment by the ordinary means of an appeal to this House." That right should not be denied on an extended construction of the language of Section 48. What is intended u/s 48 is the initiation of a proceeding in its original stage and not the continuation of a proceeding already instituted prior to the liquidation.

It may further be noted that the leave that is provided for in S 48 is the leave of the Registrar himself, sometimes a party to the appeal and not the leave of the court, as is provided for in the corresponding Section 171 of the Companies Act and Section 28 of the Provincial Insolvency Act. The Legislature would not have intended to place a party at the mercy of the opponent, even though he may be an officer of court and there is no safeguard provided as and by way of an appeal or revision, against an order of the Registrar refusing leave in cases arising u/s 48. It is unnecessary in the circumstances to read into the language of Section 48 more than what its plain language warrants and I am of opinion that the "suit" or "other legal proceeding" would not include an appeal.

6. In the result, this second appeal is allowed and A. Section No. 272 of 1946 is remanded for being heard on its merits by the lower appellate court. Costs will abide the result. Court-fee paid on the memorandum of second appeal will be refunded. No leave.

C. M. P. No. 3602 of 1949 : The liquidator will be made a party to the appeal in the lower court.