**(2015) 06 KAR CK 0232**

**In the Karnataka High Court**

**Case No :** Criminal Appeal No. 2733 of 2009

Jagadguru Renukacharya Co-Operative Credit Society (Ltd.) APPELLANT

Vs

Gurusiddappa Basappa RESPONDENT

**Date of Decision :** 17-06-2015

**Acts Referred:**

Karnataka Co-operative Societies Act, 1959 — Section 70, 70A, 70-A, 71-A (2)
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2015) 06 KAR CK 0232

**Hon'ble Judges :** G. Narendra, J

**Bench :** Single Bench

**Advocate :** N.P. Vivekmehta, for the Appellant; Mahadev R. Nargund, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

G. Narendar, J.

1. Heard learned counsel for the appellant. Respondent counsel has continuously remained absent and conduct of the counsel is not appreciated. It is the bounden duty of every counsel to assist the Court in disposal of the cases especially in matters under the realm of criminal law.

2. The facts in a nutshell are that the appellant is a Co-operative Society registered under the Karnataka Co-operative Societies Act and is carrying on the business in terms of its memorandum and articles of association. It is the case of the appellant that the respondent was a beneficiary of a loan granted by the appellant on 17.01.2002 under loan account bearing No. 256:3. Under the said loan account a sum of Rs. 20,000/- was advanced to the respondent. It is submitted that the respondent has executed a loan agreement cum promissory note, etc. As per the loan agreement he has undertaken to repay the loan within a period of 24 months commencing from 17.01.2002, i.e., he has undertaken to service his debt and repay the debt on or before 16.01.2004.

3. It is the case of the appellant that the respondent failed to make payment and was declared as defaulter. But surprisingly it is seen that the appellant has not initiated proceedings as a Society under the provisions of the Karnataka Co-Operative Societies'' Act, i.e., raising a dispute under the provisions of Section 70 of the Act. As per the provisions of Section 70 of the Act, a dispute can be raised and the same shall be referred to the Registrar/nominee of the Registrar for arbitration and adjudication and on passing of the award subject to such reference the same could be executed for recovery of the sum.

4. It is submitted that the Karnataka Co-Operative Societies Act came to be amended and Section 70A came to be inserted by Act No. 39 of 1975 with effect from 23.09.1975. The provision reads as follows:

"70. Disputes which may be referred to Registrar for decision.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises -

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, [or a credit agency]

such dispute shall be referred to the Registrar for decision and [no civil or labour or revenue court or Industrial Tribunal] shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

{(c) xxxxx}

 

[(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society [notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947);

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not]

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

{(4) All disputes related to the election of the members of the board and election of President, Vice-President, Chairman, Vice-Chairman or any other office bearers shall be filed in the jurisdictional Civil Court.

(5) All disputes pending with the Registrar as on the date of the constitution of cooperative election commission shall be disposed of by the Registrar as if this amendment had not been made.}

[70A. Period of limitation.- (1) No dispute under section 70 shall be entertained unless it is referred to the Registrar within six years from the date of the cause of action:

Provided that a dispute relating to the election of a member, President, Vice-President, Managing Director, Honorary Secretary or other officer of the Committee shall be referred to the Registrar within thirty days from the date of declaration of the result of the election.

(2) Notwithstanding anything contained in sub-section (1), the Registrar may entertain a dispute referred after the period specified in sub-section (1) if he is satisfied that the person making the reference had sufficient cause for not making the reference within that period};

{Provided that a dispute relating to the disciplinary action against or service conditions of an employee shall be filed within a period of twelve months from the date of the order relating to such dispute.}"

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5. Thus, a conjoint reading of Section 70 and 70A would demonstrate that Karnataka Co-operative Society Act, 1959, is a self contained code and it provides mechanism for settling of dispute between a particular class of persons, i.e., Societies and its members or another society. In a sense it is a special law enacted in respect of specific class of persons. The reading of Section 70 would

 

demonstrate as to who are the persons whose disputes can be referred to the Registrar for arbitration and decision. Section 70A refers to the disputes u/S 70 and it also provides for an extended period of limitation, i.e., upto six years to recover the money. Section 71-A (2) provides for the mode of recovery.

6. Thus, a conjoint reading would demonstrate that the Act does not permit raising of dispute by any and everybody but it is only that special class of persons who can avail the benefits of Sec. 70 of the Act. Sec. 70A also is made available only with regard to the disputes which have been referred to Sec. 70 and it is not a general clause of limitation. The language is unambiguous and it already refers to disputes u/S 70 only.

7. The fact is that the appellant presented the cheque for encashment and the same came to be dishonoured. The payee bank issued an endorsement stating that the cheque is not honoured for want of sufficient funds. Whereupon the appellant initiated proceedings under the provisions of Negotiable Instruments Act and Central Act. It is alleged that a notice was sent but despite the notice the respondent failed to honour the demand and thereby committed an offence punishable under the provisions of Sec. 138 of N.I. Act. The moot point is whether at all the appellant Society could have presented the cheque without first having the legally dischargeable debt declared under a dispute u/S 70. It is not the contention that the cheque was issued towards satisfaction of the award u/S 70 of the Karnataka Co-Operative Societies Act, 1959.

8. The bone of contention between the parties is the date on which the cheque was handed over by the respondent/accused or the date on which the appellant received the cheque. The questions that falls for consideration of this court are:

"1) Whether the Court below was right in holding that the alleged debt for discharge of which the cheque is alleged to have been given, is barred by limitation?

2) Whether the Court below was right in arriving at the conclusion that no prudent person would issue a cheque for repayment of a time barred debt?

3) Whether the period of limitation of six years as provided under sub Section 1 of Section 70A would apply in respect of proceedings which are outside the scope of the Karnataka Co-Operative Societies Act, 1959?"

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9. This Court answers the first question in the affirmative; to the second question - it is a finding of fact and the trial Court has arrived at the conclusion on the basis of a holistic view. The trial Court has arrived at the conclusion after observing the witnesses and their conduct, appreciation of facts and also on the additional grounds that the appellant has not properly demonstrated the plea as required under the Evidence Act as to when or on what date the subject cheque was handed over to the authorities. It is a settled law that where two views are plausible, the view expressed by the trial Court with regard to a finding of fact it

is but necessary and prudent to not to intervene with the finding of facts. The answer to third question is in the negative.

10. The Karnataka Co-operative Societies is a State legislation which encompasses within its fold only persons and institutions defined therein and it exclusively occupies the field of co-operation and it governs Cooperative Societies and Co-Operative Banks and their respective members only. The act no way extends its hegemony over any other field and hence it is held that the special provision of Section 70A applies to the disputes only arising under the scope of Section 70 of the Act and it has no over-riding effect nor does it impinge on the general law of limitation, i.e., the Limitation Act or the N.I. Act.

11. The N.I. Act is a Central Act and it is a self-contained code with regard to matters pertaining to negotiable instruments. It is held that the provisions of Sec.70-A has no application in respect of proceedings which are outside the purview of the Karnataka Co-operative Societies Act, 1959. Consequently, it is to be held that the beneficial provisions of Section 70 are not applicable to the proceedings initiated under the provisions of Sec. 138 of the N.I. Act.

12. Thus, on overall appreciation of the materials, it is seen that though it has been claimed by the appellant that the cheque was issued on 01.02.2007 the same was emphatically denied by the respondent who claimed that the cheque was issued by him prior to the date of sanction of the loan and it was handed over to the appellant bank on 17.01.2002. In the light of this denial and also keeping in mind the surrounding circumstances it was incumbent upon the appellant bank to let in evidence to demonstrate that the cheque was indeed issued on 01.02.2007. Reading of the complaint does not disclose as to on what date the cheque was issued or under what circumstances the cheque came to be issued on 01.02.2007. There is neither a plea nor evidence to demonstrate as to how the cheque came to be issued on 01.02.2007 and in what circumstances. No doubt it could have been gainfully stated that the cheque was given in discharge of the debt had the proceedings being under the provisions of Karnataka Co-operative Societies Act, the appellant having opted to initiate proceedings under the general law of the N.I. Act. A mandate was cast upon it to plead and prove the case satisfactorily but this singular failure has cut at the root of appellant''s case.

13. In the absence of any plea or evidence to the contrary this Court is unable to appreciate the submission of the appellant counsel who has strenuously canvassed that the cheque was indeed handed over as on 01.02.2007. The complaint does not provide details as to when the first default occurred. The Law of Limitation imposes a time limit of three years for recovery of any debt and the Court has arrived at the conclusion that the proceedings are being initiated beyond the period of limitation provided under the Limitation Act.

14. Admittedly the loan was sanctioned on 17.01.2002 and as per the loan agreement it was incumbent upon the respondent to clear the debt/dues within

 

24 months thereof, i.e., on or before 16.01.2004. Assuming that as the cut off date, the appellant ought to have initiated proceedings on or before 15.01.2007. Hence, the finding of the trial Court that there is no legally dischargeable debt does not warrant any interference at the hands of this Court. As stated supra the provisions of Sec. 70A are inapplicable to the proceedings initiated under the provisions of Sec. 138 of the N.I. Act. As the language of the provision does not leave any scope for ambiguity and it clearly stipulates that the provisions of Sec.70A are applicable to the disputes u/S 70, the contention of the appellant must fail.

15. Learned counsel for the appellant would rely upon judgment of the Hon''ble Supreme Court in Criminal Appeal No. 797/2002 (I.C.D.S. Ltd., v. Beena Shabeer and Anr.) decided on 12.08.2002 and the Judgment of this Court in Crl. A. No. 432/2005 (S.T.P. Ltd., v. Usha Paints and Decorators) decided on 20.03.2006.

16. In the first judgment rendered by the Apex Court the issue in question was whether the cheque issued by a guarantor towards the debt/liability of the borrower can be acted upon and proceed. As stated above, the issue before this Court lies in a different compass. Similarly in the next citation also the issue before the Court was whether a distinction could be drawn in respect of a cheque issued as a guarantee for repayment of debt or liability is illusory in law. This Court held that the distinction of a cheque issued in the normal course and cheque issued as a security is illusory in law. The judgments are inapplicable to the facts of the present case and have been rendered on a different set of facts and circumstances.

17. In that view of the matter, this Court does not find any grounds warranting interference with the judgment and order of the Court. Accordingly, the appeal is rejected.

In view of the above order there shall not be any order as to costs.

 