
(1954) 02 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 176 of 1953

K. Karnan

APPELLANT

Vs

Rameswaram Co-operative Stores Ltd. and Another

RESPONDENT

Date of Decision : 26-02-1954

Acts Referred:

Citation : AIR 1954 Mad 1015

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : T.V. Balakrishnan, for the Appellant; Govt. Pleader, T.M. Chinnayya Pillai, D. Padmanabhan and K. Kalyanasundaram, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala Ayyangar, J.—The petitioner in this writ petition seeks to call for the records in A. R. C. No. 613 of 1952-53 on the file of the Deputy Registrar of Co-operative Societies. Ramanathapuram at Mathu-rai and issue a writ of prohibition or other appropriate direction or order restraining the respondents from taking further proceedings against the petitioner in the said A. R. C. No. 613 of 1952-53.

2. The facts giving rise to this writ petition are shortly these: The petitioner was the President of the Rameswaram Co-operative Stores Ltd., from 19-9-1951 to 4-4-1952. On 30-11-1951 a cash box of the society containing a sum of Rs. 1027-12-4 was found missing. Under by-law 23 (a) of the Society the president of the Society is the Chief Executive Officer of the society under whom all other persons have to work and he is the ex-officio treasurer and has to be in custody of all the properties of the society.

3. The Registrar of Co-operative Societies took action against the Society u/s 43(1) , Madras Co-operative Societies Act (VI of 1932) and appointed a Special Officer to be in charge of the affairs of the society. One of the grounds for the supersession of the society was the loss of the cash box belonging to the society which obviously could have taken place only through the negligence of the

officers in charge. The Special Officer so appointed by the Registrar filed A. R. C. No. 613 of 1952 before the Deputy Registrar of Cooperative Societies, Ramanathapuram, at Mathu-rai, on behalf of the society against three persons, the ex-president, treasurer and ex-cashier of the society praying for a decree that these defendants might make good to the society the loss that had been sustained on account of the missing of the cash box containing Rs. 1027-12-4. The present writ of prohibition is directed to calling in question the Jurisdiction of the Deputy Registrar of Co-operative Societies and enquire into this claim by the society.

4. In support of this petition two grounds were urged as ousting the jurisdiction of the second respondent in this writ petition, namely, the Deputy Registrar of Co-operative Societies, Ramanathapuram. The first was that the claim before the Deputy Registrar did not fall, within Section 51, Madras Co-operative Societies Act which gives jurisdiction to refer any dispute touching the business of a registered society whether the same arises between the society and any officer, agent or servant or any past officer, past agent or past servant of the society, to the Registrar for decision. The Explanation added to Sub-section (1) of Section 51 is in these terms:

"A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such a debt or demand be admitted or not, is a dispute touching the business of the society within the meaning of this sub-section."

The contention on behalf of the petitioner is that a claim for damages for negligence is not a demand within the meaning of the explanation in Sub-section (1) of Section 51 of the Act.

In the first place I am not satisfied that even if the claim is an unliquidated one it is not "a demand" within the meaning of the Explanation. The expression debt would, of course, include only liquidated sums but the word demand is of much wider import and in fact is as extensive as the expression "claim". But in the present case the claim is not for an unliquidated sum but for a liquidated amount representing the loss actually sustained by the society by reason of the negligence of its officers. It is a definite and fixed amount. The mere fact that the basis of the liability is negligence does not necessarily connote that the claim in respect of the relief is unliquidated. It is only where the quantum of damages is in the discretion of the Court as in the case of a claim for damages for personal injuries or claims of that sort that the demand could be said to be unliquidated. There is, therefore, no substance in this contention, based upon the dispute not being referable to arbitration u/s 51 of the Act. The second point that was raised was that the Deputy Registrar to whom the dispute was referred to arbitration u/s 51 was the very person who had initiated these proceedings by directing the Special Officer to file a complaint.

If this were made out there might be some justification for the argument but as

a matter of fact the records clearly prove that it was the Registrar of Co-operative Societies who first superseded the society and not the deputy Registrar and secondly the Special officer of the Society filed this complaint "suo motu" and not at the direction of any officer, be it the Registrar or the Deputy Registrar of Co-operative Societies. There are, therefore, no merits in this writ petition which is dismissed with costs of the respondents which I fix at Rs. 100.