

(2011) 07 MAD CK 0138

In the Madras High Court

Case No : Civil Revision Petition (P.D.) No's. 1898 and 1899 of 2011 and M.P. No's. 1 and 2 of 2011

K. Kumaragurubaran and B. Raghunathan Arunkumar

Date of Decision : 06-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80(2)
Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 3 LW 827

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : G. Rajagopal, S., for S. Thiruvengatasamy, for the Appellant; V. Raghavachari, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—C.R.P. No. 1898 of 2011 has been filed by the Defendants in O.S. No. 4174 of 2011 on the file of III Assistant Judge,

City Civil Court, Madras, to strike off the plaint filed by the Respondent herein/Plaintiff in the said suit. Similarly, C.R.P. No. 1899 of 2011 has

been filed by the Defendants in O.S. No. 3452 of 2011 on the file of II Assistant Judge, City Civil Court, Madras, to strike off the plaint filed by

the same Respondent herein/Plaintiff in the said suit.

2. The brief facts, which are necessary to dispose of both the civil revision petitions, are as follows:

(a) Revision Petitioners in C.R.P. No. 1898 of 2011, viz., C. Janaki Raman and K. Kumaragurubaran are the Vice-President and the Secretary of

the Tamil Nadu Circle Postal Co-operative Bank Limited. The 3rd revision Petitioner B. Raghunathan is the Returning Officer appointed for

conducting election in the said co-operative bank. The Respondent in both

revision petitions, by name, A. Arun kumar is the President of the said Cooperative Bank and he filed two suits in O.S. No. 3452 of 2011 before the II Assistant Judge, City Civil Court, Madras as against the Vice-President and Secretary of the Bank and O.S. No. 4174 of 2011 before the III Assistant Judge, City Civil Court, Madras as against the Vice-President, Secretary and the Returning Officer.

(b) It is the case of the Respondent/Plaintiff that he was elected as one of the Directors among the Board of Directors consisting of 12 members and they were elected through an election for a period of five years. The members of the Board elected one K. Sivaraman as the President of the Tamil Nadu Circle Postal Cooperative Bank Limited. After the retirement of the said Sivaraman from service on 30.06.2009, the Plaintiff was elected as the President on 14.10.2009. The Co-operative Bank is governed by its bye-laws and is functioning in conformity with the provisions of the said Bye-laws as well as the Multi-State Co-operative Societies Act, 2002. Three posts of Directors fell vacant on account of death/retirement. Hence, some of the Directors insisted to conduct a by-election for the said vacant posts. Considering the huge expenditure of Rs. 7 lakhs to be made on such by-election, that too for the remaining period of one year, it was informed that the same will be considered on getting legal opinion on the subject and a resolution dated 07.03.2011 was also passed to this effect.

(c) It is the case of the Defendants that in spite of the resolution dated 07.03.2011, the Plaintiff failed to obtain necessary legal opinion till 30.03.2011. But, on 06.04.2011, the Board obtained a legal opinion from a senior counsel that fresh election for the Director of the bank could be held. The Plaintiff is not performing duties in carrying on the day-to-day activities of the bank. Hence, a meeting was conducted on 30.03.2011 and no-confidence motion was moved against the Plaintiff and a resolution was passed to remove the Plaintiff from the Presidentship. As per the decision of the Board of Directors and as per Section 30(iii) of the Bye-laws of the bank, the 1st revision Petitioner C. Janaki Raman is functioning as the President of the Bank. When the notice dated 08.04.2011 was issued to conduct the Meeting of Board of Directors, fixing the date as 15.04.2011, the Plaintiff filed O.S. No. 3452 of 2011 as against the 1st and 2nd

revision Petitioners for the following reliefs:

(a) to grant a decree of declaration declaring the notice dated 08.04.2011 issued by the 2nd Defendant under the head of the 1st Defendant as

illegal, unsustainable, void and against the Bye-law of the Tamil Nadu Circle Postal Cooperative Bank Limited;

(b) to grant a permanent injunction restraining the Defendants, their men, agents, subordinates or anybody claiming through them from in any

manner giving effect to the notice dated 08.04.2011 issued by the 2nd Defendant under the head of the 1st Defendant;

(c) to grant a permanent injunction restraining the Defendants, their men, agents, subordinates or anybody claiming through them from in any

manner interfering with the functions of the Plaintiff from discharging his functions and duties as the President of Tamil Nadu Circle Postal

Cooperative Bank Limited;

(d) to grant a mandatory injunction directing the Defendants 1 & 2 jointly and severally to return the Minutes Book of the Tamil Nadu Circle Postal

Co-operative Bank Limited, which were entrusted with the 2nd Defendant by the Plaintiff on 30.03.2011;

(e) to award costs of the proceedings

(d) Pending suit, the Plaintiff had filed I.A. No. 6510 of 2011 for a direction to revision Petitioners 1 and 2 herein not to convene the meeting on

15.04.2011. When yet another notice was issued to convene a meeting on 29.04.2011, another application was filed by the Plaintiff in I.A. No.

7419 of 2011 for an order of interim injunction restraining the revision Petitioners from convening the meeting of the bank, in violation of the Bye-

laws. In the said application, the following endorsements have been made by the parties;

Endorsement dated 29.04.2011

The Plaintiff/Petitioner is not seeking injunction to stay the functioning of the Bank. The regular course of business like acceptance of deposits,

disbursement of loan and analysing of financial positions can be done.

Sd/- xxxxx

Counsel for Plaintiffs

Endorsement dated 29.04.2011

There shall be regular functioning of the Bank including members deposits, disbursement of loan to the member and other Bank day-to-day function activities, which shall not be disbursed.

Sd/-xxxx

In view of the said endorsements, the trial court has passed the following order: Order dated 29.04.2011 Both side counsel present & also both

side counsel endorsed. In view of the endorsement made by the both sides, no other decision taken by the Respondent side in the Board meeting.

Counter by 6.6.11.

Sd/- xxx

II Assistant Judge

(e) While situation stood thus, according to the Defendants, in the board meeting, it was resolved to conduct election by appointing a Returning

Officer and accordingly, the 3rd revision Petitioner was appointed as the Returning Officer to convene a General Body Meeting for the conduct of

election of the Board of Directors. In this regard, a notice dated 06.05.2011 was served on the Plaintiff by the 3rd revision Petitioner about the

election of 12 Directors to the Board of Management for the term 2011-2016. On being aggrieved, the Respondent/Plaintiff filed another suit in

O.S. No. 4174 of 2011 for a declaration that the notice dated 06.05.2011 issued by the Returning Officer as illegal, unsustainable, void and

against the Bye-Law of the Tamil Nadu Circle Postal Co-operative Bank Limited and also to grant a permanent injunction restraining the

Defendants from giving effect to the notice dated 06.05.2011, contrary to the Bye-laws of the said Bank.

(f) Pending suit in O.S. No. 4174 of 2011, the Respondent herein filed I.A. No. 8321 of 2011 to grant ad-interim injunction restraining the

revision Petitioners from giving effect to the impugned notice dated 06.05.2011, contrary to the Bye-law of the said Bank. The said application

was allowed by the trial court by its order dated 06.06.2011. In this background, now, the revision Petitioners have filed the present revision

petitions to strike off the plaint in both the suits.

3. Learned Senior Counsel appearing for the revision Petitioners submitted that the objects of the Co-operative Societies are not confined to one

State. They are governed by the Multi-State Co-operative Societies Act, 2002. The Tamil Nadu Circle Postal Co-operative Bank Limited is

governed by the said Act. As per Section 84 of the said Act, any dispute, touching the constitution, management or business of a Multi-State

Cooperative Society, arises among members, past members or deceased members, shall be referred to arbitration. Section 84(2)(c) clearly says

that, any dispute arising in connection with the election of any officer of a multi-State Cooperative Society has to be referred to Arbitration. u/s

117, there is a bar of jurisdiction of courts. Above all, as per Section 115, 90 days" notice is mandatory before filing the suit. Hence, even

assuming that the issue raised in the suits will not fall within the purview of Section 84, both the suits are not maintainable for want of statutory

notice. Moreover, unlike Section 80(2) of C.P.C, there is no provision to obtain the leave of the court without serving statutory notice. Therefore,

u/s 115, notice is mandatory. In the instant case, absolutely, no statutory notice was issued by the Plaintiff. Therefore, on that ground also, the

plaints are liable to be rejected. The learned senior counsel for the Petitioner has also relied upon the decisions reported in Bannari Amman Sugars

Ltd., rep.by Its Chairman.v. R. Sakthivel 2008 (1) CTC 288 and Southern and Rajamani Transport Pvt. Ltd., rep.by Its Director v. R. Srinivasan

and Ors. 2010 (4) CTC 690 in support of his submissions.

4. Per contra, the learned Counsel for the Respondents submitted that the entire case of the Respondent/Plaintiff rests upon Bye-law 37 of the

Tamil Nadu Circle Postal Co-operative Bank limited, which deals with the powers and functions of the President. As per Bye-law 37, the

President alone is having the power to convene the meeting of the Board of Directors, Executive Committee and other Committees, of which he is

the president. Unless the President delegates his powers and functions to the Vice-President, the Vice-President cannot convene a meeting.

Therefore, passing a no-confidence motion against the Respondent, the so-called meeting conducted by the revision Petitioners on 30.03.2011 is

not sustainable. Moreover, even after 30.03.2011, in all the notices sent to the Respondent by the revision Petitioners, the Respondent was termed

only as President, which fact would throw away the case of the revisin Petitioners that the Respondent was removed from the post of President in

the so-called meeting held on 30.03.2011. The very fact that the resolution dated 30.03.2011 was denied by the Respondent/Plaintiff would show

that the case needs a trial and the same cannot be a subject matter of jurisdictional issue under Article 227 of the Constitution of India. Since a

personal injury has been caused to the Respondent by the revision Petitioners/Defendants, the application of Section 84 of Act does not arise in

this case. It is well settled principle that if principles of natural justice are violated and injury has been caused to a person, a suit filed by the injured

person is very well maintainable. Similarly, the plea raised by the revision Petitioners/Defendants that ""the suits are not maintainable for want of

statutory notice u/s 115 of the Act"", does not arise in these cases since the dispute between the parties is of civil nature in simplicitor and it cannot

be termed as the act touching the constitution, management and business of the society. The learned Counsel has also relied upon the judgments

reported in Commissioner of Income Tax, Bhubaneshwar and Another Vs. Parmeshwari Devi Sultania and Others, , Kubrabai Taherbai.v. State

of Tamil Nadu 1999 1 L.W. 403 and H. Vijaya Samundeeswari Vs. The Dindigul District Co-op.Milk Producers Union Limited, .

5. This Court has carefully considered the submissions made by the learned Counsel on either side.

6. The submissions of the learned senior counsel appearing on behalf of the revision Petitioners/Defendants are two folds;

(i) u/s 84 of the Multi-State Cooperative Societies Act, any dispute arises in the election of the Multi-State Cooperative Bank, should be referred

to an Arbitrator; and

(ii) even assuming that if the issue does not fall within the ambit of Section 84(2) (c) of the Act, both the suits are not maintainable for want of notice

u/s 115 of the said Act.

7. For easy understanding, it could be better to extract the relevant provisions hereunder.

Section 84. Reference of disputes: (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a

dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in

Clause (k) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947)

touching the constitution, management or business of a multi-State co-operative society arises-(a) among members, past members and persons claiming through members, past members and deceased members or....such dispute shall be referred to arbitration.

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

(a) a claim by the multi-State co-operative 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 multi-State co-operative 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) any dispute arising in connection with the election of any officer of a multi-State co-operative society

Section 115: Notice necessary in suits: No suit shall be instituted against a multi-State co-operative society or any of its officers in respect of any

act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been

delivered to the Central Registrar or left at his office, stating the cause of action, the name, description and place of residence of the Plaintiff and

the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

8. A reading of the above provisions would show that if any dispute touching the constitution, management or business of multi-State co-operative

society arises, it shall be referred to arbitration. Section 84(2)(c) says, any dispute arising in connection with the election of any officer of a multi-

State co-operative society shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society

and it shall be referred to arbitration. Now, according to the revision Petitioners, since the dispute is relating to the election of Officers of the Multi-

State co-operative society, it shall be referred to arbitration. Even assuming that if the issue does not fall u/s 84, as per Section 115, both the suits

are not maintainable, since no such notice was ever served by the Respondent.

9. In view of the above provisions, it has to be seen that, whether the issue involved in these cases can be construed as touching the constitution,

management or the business of the Multi-State co-operative society. On a reading of the pleadings, it could be understood that it is the claim of the

revision Petitioners that they have removed the Respondent from the Presidentship and thereafter, by passing a resolution and appointing the 3rd

revision Petitioner as Returning Officer, decided to conduct the election, whereas it is the case of the Respondent/ Plaintiff that the revision

Petitioners/Defendants have no power to remove him from the Presidentship. As per Bye-law 37, the Respondent alone is having the power to

convene a meeting and even today, he is continuing as the President, which could be evident from the subsequent notices sent by the revision

Petitioners after the meeting conducted on 30.03.2011 by the revision Petitioners. Therefore, the issue involved in both the suits is per se in nature

and only if there is any dispute in the election process, the same needs to be referred to the arbitration. Therefore, in my considered opinion, the

issue involved in the suits cannot be termed as the ""dispute touching the constitution, management or the business of the society"". Under such

circumstances, the judgments relied upon by the learned senior counsel for the revision Petitioners cannot be made applicable to the facts of the

cases on hand because the dictum laid down in those judgments depends upon the facts and circumstances of that cases. But, as contended by the

learned Counsel for the Respondent, only on going through the pleadings found in the complaints, it could be made out, whether the pleadings are liable

to be struck off. In the instant case, in my considered opinion, the issue involved in both the cases needs a full-fledged trial.

10. In view of the above finding, it is apparent that when a suit is instituted in respect of any dispute touching the constitution, management or the

business of the society, a notice u/s 115 of the Act is necessary. In the instant case, the issue between the revision Petitioners and the Respondent

is personal in nature, which resulted in conducting election by the revision Petitioners claiming that they have removed the Respondent from the

post of President, whereas the Respondent claimed that the revision petitioners have no power to conduct a meeting and as such, he cannot be

removed from the post of Presidentship and thus, intends to restrain the conducting of election. Therefore, issuance of notice u/s 115 of the said

Act is not mandatory in both the cases, since the dispute involved in these cases cannot be deemed to be touching the constitution, management

and business of the society"" and on the other hand, it is per se in nature between the parties. Under such circumstances, I do not find any valid

ground to accept the submissions made by the learned senior counsel for the revision Petitioners to strike off the plaint in both the suits.

Accordingly, both the revision petitions fail and they are dismissed. No costs. Consequently, connected M. Ps. are closed.