

(1954) 07 KL CK 0001

In the High Court Of Kerala

Case No : A.S. No"s. 858, 873, 891 and 894 of 1951

Kannu Neelakantan and others

APPELLANT

Vs

Ramakrishna Pillai and others

RESPONDENT

Date of Decision : 08-07-1954

Acts Referred:

Travancore Co-operative Societies Act, 1112 — Section 57(2)

Citation : AIR 1954 Ker 260

Hon'ble Judges : Subramonia Iyer, J;Sankaran, J

Bench : Division Bench

Advocate : K.P. Abraham in No. 858, T.P. Poullose in No. 873, P. Narayana Pillai in No. 891 and T.K. Narayana Pillai in No. 894, for the Appellant; K.N. Narayanan Nair and C.M. Ramachandra Menon, for the Respondent

Final Decision : Dismissed

Judgement

Subramonia Iyer, J.—These are four appeals presented by the plaintiffs in four suits, O.S. Nos. 25 and 28 of 1122, 9 of 1125 and 31 of 1123 respectively. The plaintiff in O.S. 31 of 1125 and 9 of 1125 is the same person. The suits related to an award (Ext. A) by an arbitrator, appointed under the Travancore Co-operative Societies Act, 5 of 1112.

What occasioned the reference was this: On 6-12-1119 a shortage of cash of the society to the tune of Rs. 4,633 was found. The liability for the missing cash had to be fixed. The committee of the society by resolution marked Ext. A-5 in Ext. A requested the intervention of the Registrar. Defendant 4 was the President of the Society. The plaintiff in O.S. 25 was the Secretary and the other two plaintiffs were other office-bearers of the society, all being members. Part of the amount was brought in first in the name of defendant 4 which was afterwards distributed and credited in the names of the three plaintiffs.

The relief asked in three of the suits is setting aside the award. Ext. A, which found the plaintiffs liable, in certain specific amounts so as to make up the total

of the cash that waft-found short. The primary liability to make good the amount was fastened upon the plaintiffs and should the amount be not recovered from them ultimate liability was cast upon defendant 4, the President. The plaintiff in O.S. 31 of 1123 has filed another suit O.S. 9 of 1125 for return of the money which has been credited in his name as aforesaid.

2. The Court below found that S. 57(2) of the Act which provides:

Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred under sub-s. (2) of S. 56 shall save as otherwise provided in sub-s. (4) of the same section, be final and shall not be called in question in any Civil Court.

was a bar to the entertaining of these actions and dismissed them, it also found that what-ever irregularity there might have been in the matter of the appointment of the arbitrator or otherwise was cured by acquiescence of the plaintiffs who appeared before the arbitrator and conducted the case pleading to the merits and attempting to establish their immunity.

3. The only document filed in the case is the award Ext. A. Learned counsel for the applts. urged mainly that the arbitrator had no jurisdiction to enter upon the arbitration and pass an award. This contention is elaborated by adding that the reference to arbitration must be made by the Registrar under S. 56 which has not been done. It is further contended that the Registrar's jurisdiction to refer should arise on a reference of the dispute made to him by the committee of the society which has also not been done in this case. It is next contended that it is only a dispute within the meaning of S. 56 of the Act that can be referred to arbitration and there has not been any such dispute in this case. It is lastly contended that the Travancore Arbitration Act 11 of 1115, applies to the case and that for a proper reference to arbitration concurrence of both parties thereto is essential.

4. In the Court below the plaintiffs sought to put in evidence the records which were dealt with by the arbitrator in Ext. A. The Court directed them to apply to their being written for to the proper authorities. The plaintiffs did not appear to have pursued the matter any further. The result is that the questions of fact as to whether there was any reference to the Registrar by the Committee, whether there was any reference to arbitration by the Registrar, which under the act should be in writing, are matters on which we have no evidence at all. Appellants' learned counsel urged that the objection to jurisdiction of the arbitrator having been taken it was up to the defendants to produce the said records before Court. From what has been said above the obligation was cast upon the plaintiffs should they require the papers to get them from the proper custodian by taking steps in that behalf. Under the circumstances it cannot be said that any fault lay on the defendants or any of them in the matter of non-production of the papers required by the plaintiffs.

5. The plaint avers that there was in fact an arbitration under S. 56 of the Act.

The result of the arbitration is the award Ext. A. If there has been such an arbitration and award, the prohibition in cl. (2) of S. 57 comes into play and a suit in the civil Court is barred. The party aggrieved by the award is entitled to seek a revision thereof before the Registrar under S. 56 and is entitled to a further revision to the Government under the proviso to S. 57(1). These are the only remedies available to a party Aggrieved by an arbitration under S. 56 of the Act. Seeing the force of this position learned counsel for the appellant urged before us that the arbitrator had no inherent jurisdiction and if he had no inherent jurisdiction no consent can confer it.

The plaint is a long winded document, almost every paragraph containing, several sub-paragraphs. We sought in vain to and anywhere therein an allegation to the effect that the arbitrator had no jurisdiction. Complaints are raised regarding irregularity of procedure. It is also mentioned that the subject-matter of the reference did not come under S. 56 of the Act but only under S. 54 of the Act as the latter section is the appropriate one as regards a case of misappropriation of society's funds.

This Court held in - "Guruswami Pillai v. Chitra Cardamom Co-operative Society Bank Ltd.", AIR 1954 Trav-C. 419 (A), that it is only in the four cases specified in S. 54 that that section applies and that if there is a dispute between a member and the society relating to society's funds found short the 56th is the section that applies. - Public Prosecutor Vs. P.V. Audinarayana Chetty, , supports this view.

Learned counsel for the appellants relies upon the decision in - Shyam Co-operative Housing Society Ltd. Vs. Ramibai Bhagwansing Advani and Others, . That was a case where a member of the society under the Bombay Cooperative Societies Act, 7 of 1925, who had advanced a loan to the society sought to recover it by suit in a civil Court. The contention was that the suit was not maintainable and that the only remedy available was to resort to the provisions of the said Act. The learned Judges held that there being no rules in the Society that loans should be advanced by members to the society or can be taken by the society only from members the advancing of a loan by a member is not "qua member" and therefore in respect of the amount due from the society to that member as a tender there is no dispute between the society and a member "as a member.

The case in - "Municipal Permanent Building Society v. Richards", (1888) 39 Ch. D. 372 (D), quoted at p. 88 of Russel on Arbitration, 1952 Edition, which was also relied upon is based on the language of the concerned Act which is different. At p. 87 the learned author referring to the Building Society Act says:

When the matters in dispute are between the building society and the member, as member, such matters must be referred to arbitration, if the arbitrators have been duly appointed.

The Building Societies Act, 1884, provides that the word "dispute" does not

include disputes as to the effect or construction of any mortgage deed. The Society, therefore, may sue for money due from a member under such a deed, though while the Act of 1874 was alone in force such a dispute would have had to go to arbitration.

It is clear that the matter depends upon the wording of the particular statute. In the Travancore Act the language of S. 56 is wide enough to take in disputes between the society and a member, however the dispute might have arisen. In this case it cannot be contended that the Society's case was that the plaintiffs became liable in any other capacity than as members. Indeed, except as members they had no other capacity. Whether as members they should or should not have been found liable is a question which is beyond the competence of this Court to consider in these proceedings. The arbitrator may have been right or he may have been wrong.

It must also be borne in mind that the rules of evidence and procedure applicable to civil Courts are not binding upon an arbitrator, if he is satisfied he can pass an award according to his conscience though that decision may not stand the test applicable to strict judicial proceedings. In the words of Lord Halsbury "We must not insist upon a too minute observance of the regularity of forms" and as Cockburn, C.J., observed in "In re Hooper" "We must not be over-ready to set aside award".

Learned counsel for the appellants placed before us instances of non-compliance with various details of procedure applicable to reference to proceedings at the arbitration which are unsubstantial as they do not affect the merits of the cause of the jurisdiction of the tribunal. The question of the arbitrator's jurisdiction was raised before him and he found in favour of his jurisdiction. If the plaintiffs were aggrieved, the remedy was as already stated, provided by the Act which is self-contained.

6. The rules framed under the Act have the same effect as enacted in the Act itself, Section 74, cl. (4) provides:

All rules made under this section shall be published in Our Government Gazette and on such publication shall have effect as if enacted in this Regulation.

Rules were framed and R. 38 provides in cl. (2):

(2) Where on receipt of such a reference the Registrar wishes to refer for disposal lay arbitration, the reference shall be made either by a single arbitrator appointed by the Registrar or to a body of arbitrators of whom one shall be nominated by the Registrar and one by each of the parties to the arbitration.....

No concurrence of any party is thus necessary when reference is to a single arbitrator which can be made by the Registrar alone. This is as per the express terms of the Statute. The contention urged by learned counsel for the appellant based on Travancore Act II of 11115 is that even for the appointment of a sole

arbitrator the consent of the party is required because the general rules of arbitration embodied in that Act apply to the case. We cannot agree. When a statute provides as the Co-operative Societies Act does in this case, for the forum for adjudication of certain matters and provisions are made regarding the details thereof a subsequent statute cannot in the absence of inconsistency or express terms in that behalf operate to abrogate any of the provisions of the earlier. The preamble to Act 11 of 1115 reads:

Whereas it is expedient to enact a law relating to arbitration by agreement without the intervention of a Court of Justice, it is enacted as follows.

The Act has, therefore, no application to statutory arbitration. There is no section in the Act corresponding to S. 31, English Arbitration Act, 195S, which enacts that:

31(1) Subject to the provisions of Section thirty-three of this Act, this Part of this Act, except the provisions thereof specified in sub-s. (2) of this section, shall apply to every arbitration under any other Act (whether passed before or after the commencement of this Act) as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement except is so far as this Act is inconsistent with that other Act, or with any rules or procedure authorised or recognised thereby.

2. The provisions referred to in sub-s. (1) of this section are sub-s. (1) of section two, section three, sub-s. (2) of section four, section five, sub-s. (3) of section eighteen and sections twenty-four, twenty-five, twenty-seven and twenty nine.

The argument of learned counsel for the appellant that even for a statutory arbitration an agreement signed by both parties is necessary cannot be accepted even if the case had arisen under the English Act. Much less can it be under the Travancore Act. The Travancore-Co-operative Societies Act contained a complete machinery for the adjudication of disputes and there is nothing in the later Act 11 of 1115 abrogating any of those provisions. The contention that the rules have only subordinate importance cannot be accepted in view of the provisions contained in cl. (4) of S. 74 which has been read.

7. We agree with the view of the lower Court that the matter is one coming under S. 56, Travancore Co-operative Societies Act, that there was a reference to arbitration under that section and that therefore a suit in a civil Court is barred under cl. (2) of S. 51. There is no case here of want of inherent jurisdiction. Whatever irregularities there might have been have all been cured by the consent and acquiescence of all the plaintiffs.

8. The result is that all the appeals fail and are dismissed with costs.