
(2015) 07 KL CK 0207
In the High Court Of Kerala
Case No : O.P. (C) No. 14 of 2015

Kerala State Co-operative Consumer Federation Ltd.	APPELLANT
Vs	
K. Vasu and Others	RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 23

Citation : (2015) 3 ILR Ker 528 : (2015) 3 KHC 954 : (2015) 3 KLJ 387 : (2015) 3 KLT 636

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : A. Sudhi Vasudevan, T.K. Pushpavathi, R. Syleshwareen Nair and Jose Jones Joseph, for the Appellant; P.N. Mohanan, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Kemal Pasha, J—An Arbitrator under the Co-operative Societies Act, 1969, has passed an ex parte award. The defendant against whom the ex parte award was passed, has approached the Arbitrator through IA 14/2013 in ARC 147/2009 to get the ex parte award set aside. The Arbitrator has taken the view that the defeated defendant ought to have filed an appeal before the Tribunal, and an application filed for getting the ex parte award set aside was not maintainable. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. The position is covered by the decision in Cheru Ouseph Vs. Kunjipathumma, AIR 1981 Ker 266 : (1981) 2 ILR (Ker) 371 , wherein it was held as follows:

"All powers which are not specifically denied by the Statute or the statutory rules should be vouchsafed to a Tribunal that it may effectively exercise its judicial function."

The said decision in Cheru Ouseph (Supra) has been upheld by the Division Bench of this Court in Thankam R. Pillai v. Arbitrator 1996 KHC 49 : 1996 (1) KLT 225 : 1996 (1) KLJ 289 : ILR 1996 (3) Ker. 222.

3. In Ebrahim Ismail Kunju and Another Vs. Phasila Beevi, AIR 1991 Ker 385 , it was held:

"A Tribunal should be facilitated to do all that a Court could do in similar situations; and much more than that. Greater speed and the total liberation from the tentacles of technicalities, give a better look and greater efficiency for effectively manned Tribunals. If there be no statutory prohibition, the Tribunal should therefore normally be in a position to ordain its affairs and modulate its procedures in such a manner as to best sub-serve the interest of the public, and in particular the litigant public. Looked that way, even in the absence of an enumerated head of statutory power on the conjoint reading of Section 23 and the enumerated provisions of the CPC. Referred to in that section, this Court would have permitted the Tribunal to pass an Order which would better serve the interest of the litigant and of the Tribunal."

4. In Thankam R. Pillai (Supra), it was held that the Arbitrator functioning under the Co-operative Societies Act is an adjudicatory body coming within the meaning of the term "Tribunal", which is a quasi judicial adjudicatory body and, therefore, the principles laid down by the Supreme Court in Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, AIR 1994 SC 1176 : (1994) 68 FLR 60 : (1993) 6 JT 337 : (1994) 1 LLJ 376 : (1993) 4 SCALE 407 : (1994) 1 SCC 292 : (1993) 3 SCR 668 Supp : (1994) 1 SLJ 173 : (1994) 1 UJ 13 are equally applicable to a proceeding pending before the Arbitrator. It was held therein that even though there is no specific provision in the Act for enabling the Arbitrator to bring on record the legal representatives of the deceased party, the Arbitrator being an adjudicatory body, which has quasi-judicial powers, has got the authority to implead the legal representatives, even though no specific power for the same is prescribed in the Co-operative Societies Act. It is true that a power to set aside an ex parte award has not been expressly given to the Arbitrator as per the Co-operative Societies Act. At the same time, from all the above, it is evident that the Arbitrator has powers to set aside an ex parte award, as such a power is inherent in the exercise of jurisdiction by such a quasi judicial adjudicatory body. The Arbitrator ought to have exercised his powers to deal with the question as to whether the ex parte award passed was liable to be set aside or not. Instead of it, it seems that the Arbitrator has simply passed Ext. P4 order by finding that the party ought to have filed an appeal and not an IA for getting the ex parte award set aside. The whole approach made by the Arbitrator seems to be illegal in view of the decisions noted above.

In the result, this OP (Civil) is allowed. Ext. P4 order stands set aside and consequently, Ext. P5 passed by the Kerala Co-operative Tribunal is also set aside. IA No. 14/2013 in ARC 147/2009 stands allowed. The ex parte award stands set aside. The Arbitrator is directed to proceed with the matter accordingly.

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