

(1988) 08 KAR CK 0032
In the Karnataka High Court
Case No : W.P. No. 1839/86. etc

Koosappa Gowda K.

APPELLANT

Vs

Administrator, Koyyur Service Co-op. Bank Ltd., and Others

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Karnataka Co-operative Societies Rules, 1960 — Rule 31(7)

Citation : (1988) 2 KarLJ 337

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-In all these writ petitions, common questions of law and facts arise for consideration and hence they are disposed of by this common order.

2. The only point which requires to be considered in these writ petitions is whether the judgement dated 23-1-1985 passed by the Karnataka Appellate Tribunal (Respondent-4) vide Annexure-A dismissing the appeals of the petitioners could be sustained in law.

3. It may not be necessary to go into detailed facts of these cases. Appeals were preferred before respondent 4 by all these petitioners in separate appeals questioning the awards passed on various dates by the Arbitrator appointed by the Asst. Registrar of Co-Operative Societies. Puttur Sub-Division, Puttur.

4. In the impugned order of respondent-4, the relevant portion of the judgment is herein extracted:

"Once they were served with notice, it was their primary legal responsibility to find out the nature and the results of the proceedings initiated against them. We are therefore, not inclined to accept the arguments of the learned Counsel for the appellants that the date of knowledge must be reckoned from the date the certified copies were obtained by them."

5. On the basis of the material available on record, it is in evidence, that in accordance with the provisions of sub-rule (7)(a) of Rule 31 of the Karnataka Co operative Societies Rules, 1960 ("the Rules" for short) notice of filing of the

award was sent under Certificate of Posting to each of the petitioners by the Arbitrator. But, according to the petitioners, they did not receive any such notice of filing of the award from the Arbitrator. The award was passed in respect of the petitioner in W.P. No. 1839/86 on 24-10-1981, in W.P. No. 2061/86 the award was passed on 30-10-1981 and in W.P. No 2062/86 on 3-11-1981. The notice of filing of the awards is stated to have been issued on different dates with reference to the petitioners in these three writ petitions which are 29-10-1981, 5-11-1981 and 14-11-1981.

6. The contention of the petitioners is that there is non-compliance with the requirements of sub-rule (7)(a) of Rule 31 of the Rules in so far as the service of notice of the filing of the award is concerned. It is further submitted that since the petitioners did not have knowledge of the passing of the awards, they were not in a position to prefer appeals before the appellate authority within the time limit prescribed and, in the absence of knowledge, the petitioners, for the first time, came to know of the passing of the awards on 20-1-1982 when the Sale Officer approached them for the purpose of executing the awards. It is the case of the petitioners that immediately thereafter on 22-1-1982 they applied for grant of certified copies of the awards and the copies were granted on 22-2-1982. Appeals were filed on 22-3-1982. According to the petitioners, assuming that the petitioners had knowledge of the awards on 20-1-1982, deducting the delay in the supply of certified copies, their appeals before the appellate authority are in time and, therefore, the appeals are not barred by limitation.

7. On the other hand, it is strongly contended by the learned Counsel for respondent-1 that, as far as the Arbitrator is concerned, he has fulfilled the requirements of law inasmuch as he has sent the notice of filing of the awards to each of the petitioners through post under Certificate of Posting. According to the learned Counsel, limitation commences from the date on which the notices were despatched under Certificate of Posting. If that is taken into consideration, the appeals deserve to be dismissed as barred by time and that is what the appellate authority has justifiably done. It was further contended by the learned Counsel for respondent-1 that, whereas under Rule 32 of the Rules in the matter of service of summons under the Act, the mode of service prescribed are of four kinds. The first mode of service is by giving or tendering it to such person. The second method is if such person is not found, by leaving it at his last known place of residence or of business or by giving or tendering it to some adult member of his family. The third method is if the address of such person is known to the Registrar or other authorised person by sending it to him by registered post pre-paid for acknowledgement. The last method is if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of residence or business. Under Rule 31(7) of the Rules, it is provided as follows:

"When an award has been made, the person who made it should cause it to be

filed in the Office of the Registrar together with any depositions and documents which have been taken and proved before him and notice of the filing shall be given to the parties".

Under Rule 32(3) (a) of the Rules, the method of service contemplated is "by giving or tendering it to such person" whereas under Rule 31(7) (a) the words used are "notice of the filing shall be given to the parties".

8. In the light of the above fact, the question for consideration is whether the Tribunal was justified in holding that mailing of notice of the filing of the award under Certificate of Posting is deemed to be sufficient service and, therefore, limitation begins to run from" the date on which the notices are sent by Certificate of Posting.

9. By drawing a comparison between the words used in Rule 31 (7) (a) and Rule 32(3) (a) of the Rules, I am convinced that the intention of the Legislature in so far as service of the notice of filing of the award is concerned, the manner of service contemplated is only one and that is by giving the notice to the parties. Under Rule 32(3) of the Rules, there are four methods of service. But under Rule 31(7) (a) of the Rules only one method is prescribed. By analogy it may be stated that under Rule 32(3)(a), the method of service is almost identical with the one that is prescribed under Rule 31(7) (a). In other words, under Rule 32(3), the first method of service of notice of filing of the award is by giving or tendering it to such person. Three other alternatives are provided under Rule 32(3). But not so under the provisions of Rule 31(7) (a).

10. The meaning that could be attributed to the words "notice of the filing shall be given to the parties" is that the notice should be actually served on the parties and that the parties should have received the notice. Such a service of notice cannot be established merely by mailing the notice through Certificate of Posting. Sending the notice through Certificate of Posting may be proof of having posted the notice but cannot be held to be proof of receipt of the notice by the parties nor due service of notice on the parties nor "giving the notice to the parties". If the notice had been despatched by Registered Post with Acknowledgement Due, certainty of service could have been established. Therefore, I cannot subscribe to the assumption that the parties were duly served with notice of the filing of award on the basis of service through Certificate of Posting. Sub rule (7)(a) of Rule 31 does not convey a meaning to the contrary. Incidentally, it may be pointed out that unless the award is filed before the Registrar of Co-operative Societies, the parties will not be entitled to grant of certified copies of the award. Hence due service of notice of filing of the award assumes added significance. Unless the parties receive the certified copies of the award, they will not be in a position to know if any question of law is involved in the case for being challenged before the appellate authority. In the absence of knowledge, the ability to challenge the award and to bring it within the scope of appeal would be undermined. I, therefore, hold that sending the notice of award by certificate of posting is neither supported by law nor would

meet the ends of justice and by such a postal service, knowledge of the award cannot be imputed or presumed. In the circumstances, I hold that the service of notice of award on the petitioners is not proved.

11. In the result, for the reasons stated above, in all these writ petitions rule is issued and made absolute. The writ petitions are allowed. The impugned common judgment dated 23-1-1985 passed by the 4th respondent in Appeal Nos. 1027, 1031 and 1005 of 1982 is quashed. These cases are remitted back to the 4th respondent for disposal on merits in accordance with law after affording a reasonable opportunity of hearing to the parties who had appeared or represented before it at the time of disposal of the appeals. The parties are directed to appear before the 4th respondent on 17-10-1988 without further notice. The 4th respondent is further directed to dispose of the appeals within a week from 17-10-1988.

Writ Petitions Allowed.