(2001) 01 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Civil Revision No. 02/2001

Krishan Lal Ajit Kumar — APPELLANT

Vs

Indian Farmers Fertilizers Coop Ltd.and Others — RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:
- Constitution of India, 1950 — Article 14
- Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 1, Order 39 Rule 2
- Multi-State Cooperative Societies Act, 1984 — Section 101

Citation : (2001) KashLJ 323

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : B.S.Bali, Anil Sethi, Advocates appearing for the Parties

Judgement

1. The Indian Farmers Fertilizers Cooperative Limited (hereinafter referred to as the society) is a multistate cooperative society. It is governed by

the Multi State Cooperative Societies Act of 1984 (hereinafter referred to as the Act of 1984). It manufactures fertilizers. This is transported to

various places located in the territory of India including the State of Jammu and Kashmir. As per the policy of the society, the allocation of

transportation work in case it is of the value of more than Rupees one crore is to be got done through the system of inviting open tenders. In case it

is of less than Rupees one crore, then this can be got done by negotiating and inviting offers from the approved list of transporters.

2. The case of the petitioner firm is that the said firm is on the approved list of transporters. It is submitted by the petitioner that it offered its

services and the work was infact allocated to the petitioner concern. Later in a malafide manner, the society took a decision that the contract being of the value of more than Rupees one crore is required to be dealt with by inviting open tenders. It is submitted that this situation arose when the

petitioner concern asked for the payment which were pending with the society. It is submitted that instead of meeting that previous financial

commitment i.e. balance payment, the society, in a malafide manner, as a counter blast and with a view to cause harm to the petitioner firm came to

the conclusion that the value of the contract for transportation is of more than Rupees one crore. It is urged that the petitioner concern being on the

approved list of contractors and its contract having been approved being the lowest, cannot be deprived of the benefit of the contract.

3. The trial court considered the matter. An interim exparte order was passed in favour of the petitioner concern. Objections were then preferred

before the said court. After hearing both the sides, the interim order was vacated. This order came to be challenged before the Appellate authority.

The appellate authority has upheld the order of the trial court. In doing so, it has come to the conclusion that the suit as framed was not

maintainable. It has been observed that in terms of Section 101 of the Multi State Cooperative Societies Act, 1984 a notice was required to be left

with the Central Registrar. The term Central Registrar's has been defined in Section 3(c) of the aforesaid 1984 Act. This provision having not been

complied with, it was pointed out that the suit could not be maintainable. As a consequence of this, it was observed that it would not be apt to

grant interim relief. It is the above order passed by the appellate authority which is the subject matter of challenge in this petition. It is urged on

behalf of the petitioner concern :

i) That the provision of Section 101 of the aforementioned Act of 1984 are not attracted.

ii) That the question as to whether the interim relief is to be granted or not is a matter which has to be decided independently of the question as to

whether the civil court has the jurisdiction or not.

iii) That the question of jurisdiction should be left to the decision of the trial court and this should be done after proper issue is framed.

4. The fact that the interim order can be passed notwithstanding the objections taken to the maintainability of civil suit is sought to be buttressed by

placing reliance on a decision of the Supreme Court reported as AIR 1997 SC

1240 Tayabhai M. Bagasarwalla and Another vs. Hind Rubber

Industries Pvt. Ltd. In the aforementioned case, the Supreme Court of India has observed that the correct principle in these matters is the one

recognised and reiterated in Section 9A of the Code of Civil Procedure as amended by Maharashtra Act. When an objection to jurisdiction of a

Civil court is raised to entertain a suit and to pass any interim orders therein, the court should decide the question of jurisdiction in the first instance

but that does not mean that pending the decision on the question of jurisdiction, the court has no jurisdiction to pass interim order as may be called

for in the facts and circumstances of the case. It was held that a mere objection to jurisdiction does not instantly disable the court from passing any

interim order. The courts can yet pass appropriate orders. At the same time, it was observed that it should also decide the question of jurisdiction

at the earliest possible time. The interim orders which are likely to be passed in the meanwhile are orders which would also be within jurisdiction.

These are effective till the trial court decides that the court has no jurisdiction. It was held:'It is open to the court to modify these orders while

holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate

directions"".

5. It is accordingly submitted by the petitioner that this issue should not prevail at this stage for non grant of interim relief to the petitioner.

6. With regard to the question as to whether irreparable loss is likely to be caused or not, the argument addressed is that the balance of

convenience should be seen. It is submitted that the society is infact distributing the fertilizer through other agencies also, and if for the time being,

the interim relief is granted to the petitioner the society would not suffer any loss.

It is in these premises urged that all those ingredients which are required to be there with a view to grant interim relief under 0.39 Rule 1 and 2

exist. The fact that the offer of the petitioner concern is the lowest has also been highlighted.

7. The questions which need to be considered in this petition are as under :

i) As to whether a notice was required to be given under Section 101 of the Act of 1984.

ii) That if a notice is required to be given under Section 101 and if the suit is not properly filed, can this aspect of the matter be considered while

considering the question as to whether the interim relief is to be granted or not.

iii) Whether on merits, the non grant of interim relief would cause injustice to the petitioner i.e. in whose favour the balance of convenience is.

8. Section 101 of the Act of 1984 is clear. A suit cannot be instituted against a Cooperative Society or its officers in respect of any act touching

constitution, management or business of the society unless a notice is left with the Central Registrar and a period of ninety days has intervened

between the giving of this notice and the filing of the suit. Such a provision is mandatory. A similar provision appears in the State Cooperatives Act.

In Rajpal Grover vs. Guru Nand Joint Cooperative Farming Society Ltd. Naithal, 1980 (1) Punjab Legal Reports and Statutes 193 and sale made

by the Cooperative Society was sought to be preempted by filing a suit for preemption. The business of the Society was to deal with the sale and

purchase of property. It was held that such a suit could be filed after serving a notice under Section 79 of the Punjab Cooperative Societies Act of

1961. As the notice was not given, the suit was held to be not maintainable. Reliance was placed on an earlier decision given by the Punjab High

Court in the case of Pt. Jandhu Lal and others vs. Thappar Industries Cooperative Housing Society Ltd., ILR 1957 Punjab 1195. In another

decision reported as Satnam Singh vs. The Tarn Taran Primary Land Mortgage Bank Ltd. Tarni Taran and Another 1986(1) Punjab Legal

Reports and Statutes 39, notice was given to the Secretary of the society. The requirement of law as noticed in Rajpal Grover's case (supra) was

that the notice is to be given to the Registrar Cooperative Societies. It was held that such a notice is not valid and therefore, the suit filed in the civil

court was held to be not properly filed. In the present case, the respondent society is not only engaged in the business of manufacturing but is also

supposed to transport that material. Therefore, the transportation on fertilizer manufactured by the society should fall within the term ""business of

society"". As such, a notice was required to be given. As a matter of fact scope Section 101 of the Act of 1984 has been dealt with by a Division

Bench of the Delhi High Court in the case reported as All India Handloom Fabric Marketing Cooperative Society Ltd. vs. M/s Phelps and Co.

Pvt. Ltd. Delhi Law Times (2000) p. 570. One of the objects of the society was to purchase, take on hire or otherwise acquire land or buildings or

premises. A suit for eviction from the premises was filed. It was observed that the same could not be instituted without complying with the

provisions of Section 101 of the Act of 1984 What is said in para ""11"" is reproduced below:

The use of the expression 'any act"" in Section 101 of the Act and also the use of the expression ""touching the business"" occurring the said section

also include any legal act or illegal omission. Observations made by the Supreme Deccan Merchants case (supra) are fully applicable to the facts of

this case. The nature of the society and the byelaws governing it suggest that one of the functions of the society is to make showrooms and the

emporiums for sale of handloom goods. To take on hire a building for premises is likewise a function of the society admittedly the premises were

hired for its showroom by the society. As such the suit for eviction from the said premises could not be instituted against the appellant society

without serving a notice as provided under Section 101 of the Act is mandatory in nature. In the absence of notice under Section 101 suit could

not be filed against a society registered under the Act. In this case not such notice was served by the respondent plaintiff on the Central Registrar

before the filing of the suit. The learned Trial Court while dealing with this aspect of the case failed to correctly appreciate that one of the objects of

the society as per its byelaws itself is to open showrooms emporia etc for promoting sales of handlooms in India and abroad. Findings recorded by

the Trial Court in this regard are not sustainable in law and are set aside"".

9. The above view is attracted to the facts of this case also. There is not assertion in the petition or in the plaint that such a notice was left with the

Central Registrar. In this situation, prima facie, the suit would not be maintainable. As such, the further grant of interim relief would amount to

granting a relief in a matter which the court is not competent to deal with. So far as the decision given by the Supreme Court in the case of

Tayabhair M. Bagasarwalla, noticed above is concerned, all that it says is that a mere objection to the jurisdiction would not instantly disable the

court from passing an interim order. But if on the face of it the objection is as to the maintainability of suit, then the grant of interim relief would only

amount to exercising a jurisdiction which the court is not possessing at all.

10. Even on the question of balance of convenience, a finding has to be returned in favour of respondent society. The activity of manufacturing and

transporting the fertilizer is a continuing activity. It is not that after this transaction comes to an end, no further work would be available to the

petitioner concern. Again, the grant of interim relief would amount to jeopardising the activity of respondent society in transporting the fertilizer.

This would not be in the interest of public at large. These are months when the fertilizer is needed by the farmers. Judicial notice can be taken of the

fact that the wheat crop is likely to mature and would be fit for harvesting in the month of April. The season is crucial for supply of fertilizer to the

farmers in different parts of the State as well in the country. Any interim relief prohibiting the transportation of fertilizer at this stage would operate

to the prejudice of the public at large. The petitioners on the other hand can always be compensated. The court can always give a direction to

allocate them the same quantum work which they would have done but for the alleged decision of the respondent society. They can also be

compensated by way of damages.

11. I am accordingly of the opinion that the balance of convenience is in favour of respondent society and not in favour of petitioner concern.

Therefore, the interim relief can be and is declined under Order 39 Rule 1 and 2.

12. Before parting with this judgement, it would be apt to notice that the contract which is going to be awarded by the respondent society even if

the assertion of the petitioner concern is taken at its face value to be correct is to the tune of Rs. 99.35 lakhs. A contract of this dimension should

normally be entered into by inviting open tenders so that all eligible persons are in a position to participate. Such an action would be in line with the

decision of the Supreme Court in the case of AIR 1979 SC 1728 (1979) 3 SCC 489 (Ramanga Daya Ram Shetty vs. International Airport

Authority. 13. I am accordingly of the view:

i) That the provisions of section 101 of the Act of 1984 are mandatory. A contract of transportation of fertilizer would be a part of that activity

which would fall within the term business of society. Before filing the suit, a notice should have been left with the Central Registrar. A period of 90

days must elapse between giving of this notice and filing of a civil suit. If this is not done, then the suit would patently be not maintained,

ii) That if there is a patent defect in the filing of the suit which leads to lack of jurisdiction to entertain the suit, then grant of interim relief would

amount to granting a relief in a lis, which the court is not competent to deal with,

iii) That the grant of interim relief in favour of the petitioner concern would cause manifest injustice to the society and also to the public at large. The

balance of convenience is not in favour of petitioner but is in favour of respondent society. The petitioner concern can always be compensated by

damages or by giving a direction to the respondent society to give the petitioner concern, the same tenure of contract, which it has been asking for

if they are ultimately successful.

iv) That a contract for an amount indicated in the suit should normally be entered into by inviting open tenders and by associating everyone eligible

to do this work. This is of course a matter on which a decision has to be taken by the respondent society. It would be apt to take notice of this

aspect of the matter in future transaction.

14. This Revision petition as such is found to be without merit and is dismissed.

