(2015) 08 KAR CK 0119

In the Karnataka High Court

Case No : C.R.P. No. 226/2009 (RES)

K.S. Chaugule — APPELLANT

Vs

The Bijapur District Central Co-Operative Bank Ltd. and Others — RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d), 115, 115(b), 9
Karnataka Co-operative Societies Act, 1959 — Section 100, 101, 115, 118, 30(A)

Citation : (2015) 08 KAR CK 0119

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Hemalekha K.S., Advocate for G. Balakrishna Shastry, Advocate, for the Appellant

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—Present petition is filed calling in question the judgment and decree passed by the Principal Civil Judge (Sr. Dn.), Bijapur in S.C. No. 43/1994 dated 25.8.2009 in holding the defendant Nos. 1 and 2 jointly and severally liable to pay a sum of Rs. 10,110/- along with interest at 18% p.a. from the date of the suit till the date of realisation to the plaintiff bank.

2. I have heard arguments and carefully perused the judgment of the trial Court and also the entire records of the trial Court. For the purpose of convenience I would like to retain the ranks of the parties as per their ranking before the trial Court.

3. The plaintiff-Bijapur D.C. CO. Bank Ltd., filed a suit for recovery of a sum of Rs. 10,110/- along with interest at the rate of 18% p.a. against the defendant Nos. 1 and 2. It appears during the pendency of the suit, defendant No. 2 died and his LRs were brought on record. The case of the plaintiff is that, the plaintiff appointed defendant No. 1 as a Special Officer of plaintiff Bank under the provisions of Sec. 30A of the Karnataka Co-Op. Societies Act and in turn

defendant No. 1 during the tenure as such a Special Officer appointed defendant No. 2 who was a retired District Auditor from the Department of Co-Operative Society as his personal assistant on temporary basis on monthly remuneration of Rs. 1,000/-. Subsequently, holding that the first defendant has no authority to appoint second defendant as his personal assistant and the amount which has been paid by the Bank a sum of Rs. 6,500/- in favour of second defendant sought to be recovered from defendant Nos. 1 and 2 in the suit.

4. It is the case of the plaintiff that, because of the illegal order passed by defendant No. 1 appointing defendant No. 2 as his personal assistant, the bank had to pay an amount of Rs. 6,500/- to the second defendant. Therefore, illegality is committed by defendant No. 1. Hence, defendant Nos. 1 and 2 are jointly and severally liable to pay that amount to the bank.

5. The defendants have appeared before the Court, filed written statement, they have specifically taken up both the factual and legal contentions. They have specifically stated on facts that the defendant No. 1 has got all the authority to appoint defendant No. 2 as his personal assistant. Therefore, the plaintiff bank is legally liable to pay remuneration to defendant No. 2. Secondly, a specific contention is taken that even if the plaintiff has paid the said amount on behalf of the defendant No. 1 it only amounts to a dispute between the plaintiff and defendant No. 1 inter se as per the provisions of Co-Op. Societies Act. Under Sec. 70 and 118 of the said Act suit is not maintainable before the Civil Court and the dispute has to be raised before the Registrar of the Co-Op. Societies. On these two important questions, the defendants have contested the suit.

6. The trial Court in fact framed the points for consideration on the basis of rival contentions in the following manner.

1) Whether the defendant-1 was authorized in the bye-law of the plaintiff-bank or having authority to appoint personal assistant to him on contract basis?

2) Whether the appointment of defendant-2 as personal assistant by the defendant-1 and payment advance of Rs. 6,500/- is sustainable under law?

3) What order?

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7. The trial Court has not concentrated on the legal grounds raised by the defendants as to whether the suit itself is maintainable before the Court in view of Sec. 70 and 118 of the Act.

8. The parties have lead evidence. In fact the plaintiff examined one of its officer-Mallappa Veerappa Aigali as P.W. 1 and got marked Exs. P. 1 to 11. The defendants also examined themselves as D.W. 1 and 2 and they have also produced Exs. D. 1 to Ex. D. 3.

9. On perusing the documents both oral and documentary the trial Court has held that the first defendant has no authority to appoint second defendant as his

personal assistant and therefore the amount paid by the plaintiff on behalf of the defendant can be recovered from the defendant Nos. 1 and 2. Being aggrieved by the said judgment and decree the revision petitioner has approached this Court for setting aside the said judgment.

10. Before adverting to the facts and law involved in this case it is just and necessary to note here as to under what circumstances the Court can exercise its power u/S. 115 of CPC which reads as under.

115. Revision - {(1)} The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such Subordinate Court appears,-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

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Sec. 115 categorically shows that the High Court can call for the records of any case and if the trial Court has not exercised properly its jurisdiction, or committed any illegality or material irregularity, then the High Court can interfere with such order and pass orders as it thinks fit.

11. In this background the Court has to see whether the trial Court has committed any serious legal or factual error in decreeing the suit.

12. Now first let me consider the legal issue raised in this case as the trial Court has not touched upon this particular aspect. Therefore, it has not exercised the jurisdiction in proper manner, which was vested with it as contemplated u/S. 115(b) of the CPC.

13. It is the case of defendant No. 1 that he was appointed as a Special Officer as per Sec. 30(A) of the Karnataka Co-Operative Societies Act, 1959 (for short hereinafter referred to as ''Act''). The plaintiff has also admitted before the trial Court that defendant No. 1 was legally appointed by the bank as Special Officer. Therefore, as long as the Special Officer works under the provisions of Karnataka Co-operative Societies Act, legally appointed by the bank unless his tenure has completed he acts as an Officer of the plaintiffs bank. Therefore, the learned counsel is right in contending that Sec. 70 of the Act is attracted. Sec. 70 of the Act, which is a very peculiar provision, which oust jurisdiction of the Civil Courts and explains what are the matters that can be referred to u/S. 70 of the Act to the Competent Authority which reads as follows;

"70. Disputes which may be referred to Registrar for decision: (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a cooperative society arises:

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its (board) or any officer, agent or employee of the society, or

(c) between the society or its (board) and any past (board), any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent or deceased employee of the society, or

(d) between the society and any other cooperative society (or a credit agency) such dispute shall be referred to the Registrar for decision, and (no court or labour or revenue court or Industrial Tribunal) shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

(2) For the purpose of sub-section (1), the following shall be deemed to be dispute touching the constitution, management or the business of a cooperative society, namely-

(a) a claim by the 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 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) xxxxx}

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a cooperative society (notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947)};

(e) a claim by a co-operative society for any deficiency caused in the assets of the cooperative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its (board), past or present whether such loss be admitted or not)

(3) If any question arises whether a dispute preferred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society the decision thereon of the Registrar shall be final and shall not be called to question in any Court.

(4) All disputes related to the election of the members of the board and the election of President, Vice-President, Chairman, Vice-Chairman or any other office bearer shall be filed in the jurisdictional Civil Court.

(5) All disputes pending with the Registrar as on the date of the constitution of co-operative election commission shall be disposed of by the Registrar as if this amendment had not been made.}

(emphasis supplied)

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Sec. 118 of the Act also is a connecting provision to Sec. 70 of the Act, which also reads as follows:

118. Bar of jurisdiction of courts: (1) Save as provided in this Act, no (civil, labour or revenue court or Industrial Tribunal) shall have any jurisdiction in respect of-

(a) the registration of a co-operative society or bye-laws or of an amendment of a bye-law;

(b) the removal of a member or the removal and disqualification of a director or the removal of a board;

(c) any surcharge application required under Section 69 or any dispute required under Section 70 to be referred to the Registrar or the recovery of moneys under Section 100 or the execution of any award or order referred to the Registrar for execution under Section 101.

(d) Any matter concerning the winding up and the dissolution of a co-operative society.

(2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with, or instituted against, the Liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever.

(emphasis supplied)

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14. On combined meticulous and meaningful reading of the above said provision it clearly disclose that the dispute between the members, past members and persons claiming through members, past members and deceased members and between the Society or its any officer, agent or employee or any past officer past agent or past employee or nominee, heirs or legal representatives of any

deceased officer, deceased agent, or deceased employee of the society or between the society and any other co-operative society or a credit agency, if the dispute falls u/S. 70 of the Act Civil Courts have no jurisdiction to entertain any suit. Therefore, it goes without saying that the first defendant being appointed as Special Officer by the Bank, he is virtually an Officer or comes under the category of employee of the bank even if it is for a limited point of time. Because there is no dispute by the plaintiff with regard to the appointment of first defendant as its Special officer.

15. Sec. 70(2) also defines what is the definition of the dispute touching the constitution management of the Co-op. Society. The explanation given under Sub-Section (2) of Sec. 70 of the Act also clears out the doubt that even in respect of any claim by the society towards any debt or demand due to it by a member or nominee or officer, i.e., the persons who are coming under the category of ''a, b, c, d'' of Section (1) of Sec. 70 such dispute is to be referred u/S. 70 to the Registrar of Co-Operative Societies to resolve the dispute.

16. Therefore, from reading of Sec. 70 of the Act, it is clear that any claim by the plaintiff against defendant No. 1 precisely an amount of Rs. 6,500/- which was paid by the bank to the second defendant amounts to a claim or demand by the plaintiff against its officer, i.e., defendant No. 1. Therefore, the dispute between the parties falls u/S. 70 of the Act. Sec. 70 of the Act once it is attracted it follows the consequence u/S. 118 of the Act, which specifically oust the jurisdiction of the Civil Court. Therefore, I am of the opinion, the trial Court has not bestowed any of its attention so far as this particular aspect is concerned, it should have been considered at the threshold itself under Order VII Rule 11(d) of the CPC.

17. Be that as it may, Section 9 of the CPC also have a bearing so far as the case on hand is concerned wherein if the Civil Court''s jurisdiction is ousted by express or implied provision then also the Court shall not try such case. Section 9 of the CPC reads as follows:

9. Courts to try all civil suits unless barred - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred.

(Explanation 1) - A suit in which the right to property or to an office is contested in a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

(Explanation II) - For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.)

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18. Generally speaking the Civil Courts have plenary power to try all types of suits which involve determination of any civil rights wherein the dispute is of a

civil nature and its cognizance must not have been barred by other statute either expressly or by necessary implication. Though ouster of Civil Court''s jurisdiction cannot be readily inferred but the Court has to see the surrounding circumstances whether the ouster is expressly contended in any other enactment or impliedly that can be inferred by the Court. It all depends upon the facts and circumstances of each and every case.

19. It is a well settled law that jurisdiction of the Court is to be determined on the basis of the allegations made in the plaint. In this particular case also it is specifically narrated by the plaintiff that the defendant No. 1 was appointed by it and he acted as its employee and there is a claim against that particular man. Therefore, it clearly attracts Sec. 70 and 118 of the Act. In my opinion, the trial Court should have looked into the provisions of Section 9 of CPC coupled with Section 70 and 118 of the Co-Operative Societies Act, 1959 and ought to have held that jurisdiction of the Civil Court is ousted expressly by the above said provision of law.

The Civil Court should be very careful in dealing with the suits and cases before them. If they can dispose of a case on any legal issue itself, the dispute between the parties shall be nipped at the bud instead of wasting valuable judicial time of the Court. It appears that has not been done by the learned judge in this particular case.

20. Even the trial Court has not properly appreciated the evidence and on facts also. Admittedly, during the pendency of the suit the dispute was taken up before the High Court by plaintiff bank itself with regard to the legality of appointment of defendant No. 2 by defendant No. 1. If the defendant No. 1 is appointed the defendant No. 2 in accordance with law and it amounts to virtually appointment by plaintiff itself, then the defendant No. 2 is legally entitled to the said remuneration from the bank itself. In this view if the bank has paid any amount to defendant No. 2 that cannot be recovered from defendant No. 1 or 2.

21. In this background the trial Court has not at all bestowed its attention to the document produced before the Court marked at Ex. D. 2. Ex. D. 2 which is the certified copy of the judgment in W.P. No. 7484/94 which was filed by the plaintiff bank against defendant Nos. 1 and 2 along with the Joint Registrar of Co-Operative Societies and also the Karnataka Appellate Tribunal as other respondents. In the writ petition virtually it was challenged that the first defendant has no authority to appoint defendant No. 2 as his personal assistant. Therefore, the amount of Rs. 6,500/- paid as remuneration to defendant No. 2 shall be treated as a personal amount so far as defendant No. 1 is concerned and as such it virtually amounts to illegal appointment by defendant No. 1. The said aspect has been precisely considered by this Court in the writ petition.

22. At paragraph No. 4 of the judgment in the said writ petition this Court has observed that the petitioner has questioned the appointment of the first respondent (defendant No. 2) as personal assistant by the second respondent

(defendant No. 1) was without any authority of law. It is their specific contention that neither the Act nor the Rules permit such an appointment and any appointment made in violation of Rule 17 of the Rules is unenforceable. Therefore, the petitioner contended before the High Court that the first respondent cannot maintain a dispute against the bank. Answering this question it is observed that the respondent was appointed by the Bank, it cannot be said that it is without authority of law. The second respondent had all the power of the Board of Directors and in exercise of such power he appointed the first respondent as his personal assistant on monthly remuneration of Rs. 1,000/-. Appointment by the second respondent is the appointment given to him by the bank. First respondent cannot be deprived of his remuneration in respect of the services rendered by him. If the appointment is illegal and arbitrary it is open for the bank to proceed against the respondents in respect of the omission or commission. This order was not subjected to any challenge and it reached the finality. These observations are binding on the parties.

23. The Court has specifically stated that the defendant No. 1 had all the authority to appoint defendant No. 2 as his personal assistant because he exercised power of the Board of Directors and in exercise of said power the appointment was made. Therefore, for all the practical purposes the defendant No. 1 had jurisdiction and power to appoint defendant No. 2 as his personal assistant. As could be seen from the judgment of the trial Court, the trial Court has not even touched upon this particular document and expressed its view whether on facts the plaintiff has proved its case.

24. It is the burden on the plaintiff to establish the liability of defendant Nos. 1 and 2 when plaintiff itself had approached this Court in the writ proceedings and taken such an order during the pendency of the suit, in my opinion, this document should have been taken into consideration by the trial Court and exercised its jurisdiction vested in it in properly appreciating the material on record. The irregularity in not considering the document at Ex. D. 2 by the trial Court is not a mere irregularity or material irregularity but it is an illegality committed by the trial Court. Therefore, I am of the opinion, on both the counts the suit of the plaintiff ought to have been dismissed by the trial Court.

Therefore, this Court by exercising the power u/S. 115 definitely can interfere with such illegal orders.

In view of the above said facts and circumstances and the observations made above, I proceed to pass the following order.

The petition is allowed. Judgment and decree passed in S.C. No. 43/94 dated 25.08.2009 by the Principal Civil Judge (Sr. Dn.), Bijapur, is hereby set aside. Consequently, suit of the plaintiff is dismissed with costs throughout.

If any amount is deposited by the defendant No. 1 before this Court or before the trial Court, the same is ordered to be returned to defendant No. 1.

Office is directed to return the entire records to the concerned Court with a copy of this order.

