

(2006) 06 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15696 of 2004

K.S. Liu and Another

APPELLANT

Vs

A.P. Co-op. Tribunal and Others

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Citation : (2008) 1 ALT 382

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; S. Ashok Anand Kumar, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—The only controversy involved in this writ petition is whether an appeal u/s 76 of the A.P. Co-operative Societies Act, 1964, (for short "the Act"), is maintainable before the A.P. Co-operative Tribunal, Hyderabad, against an order passed by the Primary Authority (Co-operative Sub-Registrar/Sale Officer) u/s 70 of the Act.

2. Though the attention of the Tribunal was drawn to Section 76 of the Act, instead of entertaining the appeal filed against the order in Claim Petition No. 2 of 2004 in E.P. No. 98/ 94A before the Primary Authority, the Tribunal dismissed the appeal holding that it is not maintainable in view of Sub-rule (21)(c) of Rule 52 of the A.P. Co-operative Societies Rules and the only remedy available to the petitioners is to file a civil suit and work out their remedies.

3. Before the Act was amended there was no tribunal constituted in the State of Andhra Pradesh. After amendment of the Act, Tribunal was constituted and Section 76 was amended in 2001. Therefore, Sub-rule (21)(c) of Rule 52 of the Rules was being invoked and suits were being filed. But, after the constitution of the tribunal, as per Section 76 of the Act an appeal is specifically provided. May be the Rules are not properly amended, but once the Act itself is amended, any

Rules made there under either prior or after the amendment should sub-serve the substantial provision. Hence, Sub-rule (21)(c) of Rule 52 of the A.P. Co-operative Societies Rules, 1964, has to be read down. Therefore, the view taken by the Tribunal that no appeal lies against the impugned order u/s 76 of the Act is misconceived.

The writ petition is accordingly allowed and the matter is remanded to the A.P. Co-operative Tribunal, Hyderabad, and the Tribunal shall entertain and dispose of the appeal under Section, 76 of the Act. No costs.