

(2010) 05 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 14160 of 2010

M. Sadananda Rao

APPELLANT

Vs

Chief Executive Officer/The General Manager, Kadaba Co-operative Agricultural Bank Ltd.

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 101, 101 (1) (a), 105, 107

Citation : (2010) 5 KarLJ 574 : (2010) 4 KCCR 2627

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Sarat Chandra Bijai, for the Appellant;

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Order dated 10-11-2009 passed in Ex. No. 7/2006 by the Civil Judge, (Sr.Dn.) and Addl. C.J.M. Puttur, Dakshina Kannada is impugned in the present writ petition. An award came to be passed by the Assistant Registrar of Co-operative Societies, Puttur Sub Division, Puttur, in dispute No. 675/1999-2000 by order dated 9-2-2001 holding that domestic enquiry held by the respondent is invalid and ordered reinstatement of petitioner in the post held by him and also directed the Executive Officer of the respondent bank to hold fresh enquiry in accordance with law and thereafterwards to take steps against the petitioner based on the said enquiry.

2. This order came to be challenged by the respondent bank before the Karnataka Appellate Tribunal at Bangalore in Appeal No. 1040/2001 which resulted in dismissal, by order dated 18-6-2004 which came to be confirmed by this Court in W.P. No. 33126/2004 dated 26-11-2004. During the interregnum period namely between 9-2-2001 and 26-11-2004 the petitioner attained age of superannuation on 5-10-2004 and was deemed to have superannuated from service.

3. After the disposal of the writ petition on 26-11-2004 petitioner sought for issuance of certificate as required u/s 101 of Karnataka Co-operative Societies Act, 1959 to enable him to file execution petition before the Civil Court for enforcing award dated 9.2.2001. The said certificate came to be issued under Annexure-"C" dated 10-2-2006 by the jurisdictional Assistant Registrar of Co-operative Societies. On the basis of the same Execution Petition came to be filed in Execution No. 7/2006 before the Civil Judge (Sr.Dn.) and Addl. C.J.M., Puttur Dakshina Kannada by the petitioner. On hearing the decree holder and the judgment debtor about the maintainability of the execution petition, the executing Court by Order dated 10-11-2009 dismissed the Execution Petition as not maintainable. It is this order which is impugned in the present writ petition.

4. Heard. Sri Sarat Chandra Bijai, learned Counsel appearing for the petitioner would contend that order of the executing Court is erroneous and executing court could not have gone beyond the certificate issued by the jurisdictional Assistant Registrar of Co-operative Societies, particularly when the judgment debtor have not questioned Annexure "C" and thus, Annexure-"C" having become final it was incumbent upon the executing Court to accept the certificate issued by Assistant Registrar of Co-operative Societies in toto and execute the same as if it were a decree and in support of his proposition he pressed into service sub Clause (a) of Sub-Section (1) of Section 101 of the Karnataka Cooperative Societies Act, 1959.

5. Having heard the learned Counsel for the petitioner and having perused the order passed by the trial Court it would be necessary to extract the provisions pressed into service by the learned Counsel for the petitioner namely Section 101(1)(a) which reads as under:

101. Execution of orders, etc. (1) Every order made by the Registrar under Sub-section (1) of Section 69 or u/s 99, every decision or award made u/s 71, every order made by the Liquidator u/s 74 and every order made by the Tribunal under Sections 105 and 107, and every order made u/s 106 or 108 shall subject to any other provision of this Act be binding on the person or co-operative society against whom the order, decision or award has been obtained or passed and shall, if not carried out.

(a) on a certificate signed by. the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(b) XXXXX

6. A perusal of the same, would depict that certificate issued by the Registrar or any person authorised by him in the said behalf, is to be deemed a decree of Civil Court for purpose of executing the same before the Civil Court. In the instant case the award dated 9-2-2001 has been passed to reinstate the petitioner and hold a fresh enquiry and such being the position, the certificate has been issued by the Assistant Registrar of Co-operative Societies calling upon the respondent herein to pay certain amounts which admittedly is not awarded

under the award dated 9-2-2001. Considering this fact executing Court has found that there is no award passed for payment of amount and accordingly held that the certificate cannot be executed. A certificate issued by the Registrar or any person authorised by him under Sub-clause (a) of sub-Section (1) of Section 101 enable the person in whose favour the award is passed to file an execution petition before the Civil Court for executing the award. Thus, it would emerge from combined reading of Section 101(1)(a) that in order to execute the award through the process of Civil Court, the issuance or grant of certificate would be necessary without which execution petition cannot be filed. The issuance of certificate signed by the Registrar or any person authorised by him would have to be construed as enabling provision. A person in whose favour award has been passed, would entitled to ignite the execution proceedings before the Civil Court on the strength of such certificate. The award may also be executed by the authorities designated by the Registrar or such other person empowered under the Act itself. Then in such an event the certificate contemplated u/s 101(1)(a) would not arise at all. In view of this it cannot be held that the certificate if it were to be contrary to award, would also become executable.

7. In view of the same the order passed by the Executing Court is required to be confirmed as it does not suffer from any infirmity in law and accordingly the writ petition is dismissed as devoid of merits. No order as to costs.