

(1985) 04 KL CK 0018
In the High Court Of Kerala
Case No : A.S. No. 78 of 1979

Meeran Unni Hameedu

APPELLANT

Vs

The Kottayam District Co-operative Bank

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Citation : AIR 1985 Ker 189

Hon'ble Judges : K. Bhaskaran, C.J;V. Sivaraman Nair, J;P.C. Balakrishna Menon, J

Bench : Full Bench

Advocate : K. Ravindranathan Nair, for the Appellant; C.M. Kuruvila and Koshy George, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Menon, J.—This appeal has come up before a Full Bench on reference by a Division Bench for decision on the question whether a suit for specific performance of an agreement to grant a lease of a shop building by the defendant (the Kottayam District Cooperative Bank) to the plaintiff is barred u/s 69(1)(f) and Section 100 of the Kerala Co-operative Societies Act, 1969 (Act 21 of 1969, hereinafter referred to as the Act).

2. The defendant is a society registered under the Act. The plaintiff is not a member of the Society. He had been carrying on trade in a room on the ground floor of a building belonging to the defendant-Society on a monthly rent of Rs. 12.50. The defendant-Society with a view to reconstruct the building requested the plaintiff to surrender possession of the shop-room in his occupation. It was agreed between the parties that after the reconstruction the plaintiff will be put in possession of a shop-room on the ground floor of the reconstructed building having more or less an equal area as was in his occupation. The plaintiff surrendered possession of the shop-room, but on reconstruction of the building, the defendant-Society declined to put the plaintiff in possession of a shop-room for his trade even though other tenants who had also vacated on the request of

the plaintiff were allotted rooms in the reconstructed building. As per the agreement the rent payable in respect of the shop-room in the reconstructed building is to be fixed afresh. The plaintiff claimed damages Rs. 25,000/- in case it is found that the agreement between the parties cannot be specifically enforced.

3. The defendant-Society contended that the contract between the parties has become frustrated as the building could not be reconstructed within the stipulated time. The plaintiffs shop was on the western side of the demolished building adjoining a public road and as per the Kerala Municipal Buildings Rules the defendant had to leave a margin of three metres between the road and the building. The space occupied by the plaintiff in the building let out had to be kept as vacant land and hence the contract between the parties has become impossible of performance. The defendant denied liability for damages, and raised a further contention that the suit is barred u/s 69(1)(f) and Section 100 of the Act.

4. The court below on the basis of Exts. A1 and A2 letters issued by the defendant to the plaintiff found that the plaintiff has proved the agreement set up in the plaint. The defendant's plea that the contract has become impossible of performance and it is frustrated was found against. On Issue (4) it was found that "the plaintiff should have been provided with accommodation on the western side of the building on the ground floor and facing the road on the west". The claim for damages was negatived as not proved. The suit was however dismissed on the ground that it is barred u/s 69(1)(f) and Section 100 of the Kerala Co-operative Societies Act.

5. The relevant portion of Section 69(1) of the Act is extracted below :

"Notwithstanding anything contained in any law for the time being in force, if a dispute arises : --

XX XX XX (f) between the Society and a person other

than a member of the Society who has been

granted a loan by the Society or with whom

the Society has or had business transaction or

any person claiming through such person

XX XX XX such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute".

Section 2, Clause(i) defines "dispute" to mean :

"any matter touching the business, constitution, establishment or management of a Society capable of being subject of litigation and includes a claim in respect of any sum payable to or by a Society whether such claim be admitted or not".

As per Section 100 no civil or revenue court shall have jurisdiction in respect of any matter for which provision is made in the Act. The plaintiff is not a member of the Society; nor is he the grantee of a loan by the Society. The only ground on which the suit is held barred is that the agreement between the parties would fall within the meaning of the expression "business transaction" in Section 69(1)(f) and the subject-matter of the suit relates to a dispute within the meaning of the Act.

6. Ext. B6 is a printed copy of the Bye-laws of the Society. Bye-law 2 enumerates the objects of the Society. Construction of buildings and letting out the same to tenants do not fall under any of the objects mentioned in bye-law 2. The Society is engaged in the business of banking, and its objects relate principally to banking with a view to develop the co-operative movement. There is a residuary object to do such other work as will be conducive or incidental to the objects of the Society and generally to promote the cause of co-operation. On a perusal of the Bye-laws Ext. B6 we are clear in our minds that construction of buildings and letting out the same to tenants do not form part of the business of the Society. Construing a similar provision in Section 91(1) of the Maharashtra Cooperative Societies Act 1960, the Supreme Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, stated :

"The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the Society is a cooperative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant of a member of the bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank, and the appeal should fail on this short ground."

This decision was followed in a later decision of the Supreme Court in *I.R. Hingorani Vs. Pravinchandra Kantilal Shah and Others*, .

7. In *Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay*, (also a case relating to Section 91 of the Maharashtra Co-operative Societies Act), where the objects of the Society concerned were to carry on business of buying, selling, hiring and letting land in accordance with co-operative principles, the letting by a member of the Society of a flat purchased from the Society was held to be a matter not touching the business of the Society despite regulations of the Society prohibiting such letting. It is stated at page 1895 :

"No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-law and a breach of the bye-law could affect the defaulting member's right to membership. But we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with co-operative principles. The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but such letting by itself did not concern the business of the society in the matter of its letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under the society. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the respondent No. 1 and the business of the society when the society was not itself the landlord of the flat."

In *K.C. Varkey v. Director of Industries and Commerce, Trivandrum* ILR (1978) Ker 143, the dispute was between the owner of a building and a co-operative society to whom the building had been let. A Division Bench of this Court at page 147 stated thus :

"Clause (f) of Section 69(1) provides that if a dispute arises between a society and a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person, such dispute shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. There is no case that the petitioner had been granted any loan by the society; but it is contended by the respondents that the petitioner will come within the description "a person other than a member of the society with whom the society has or had business transactions". The 3rd respondent co-operative society has been formed for the purpose of doing business in handicraft articles. It is no part of the business of the society to take buildings on rent, although for the purpose of its business the society may have incidentally to take on lease premises for its use. But in entering into a transaction of lease for the said purpose the society is not transacting business or entering into a business transaction with the petitioner". The decision of Narendran J. in *Sekharan v. State of Kerala* 1976 KLT 137 was distinguished on the ground that the Society involved in that case was engaged in the business of constructing and letting out godowns and the dispute between the Society and its contractor that had arisen in that case related to the business of the Society. In the light of the decisions of the Supreme Court referred to above, we are in respectful agreement with the view expressed by the Division Bench in *K.C. Varkey's* case ILR (1978) Ker 143.

8. The decision of the court below cannot therefore be sustained. The plaintiff is

entitled to a decree for specific performance of the agreement for the grant of a lease of a shop-room, more or less of an equal area as had been in his occupation on the ground floor on the western side of the reconstructed building facing the public road. The agreement between the parties was to have the rent of the shop-room fixed after its reconstruction. In the view that the court below took, the rent of the shop-room to be let to the plaintiff is not determined. If there is no such shop-room in the reconstructed building the plaintiff will be entitled to a decree for damages in lieu of specific performance. The court below has not determined the quantum of damages for want of evidence. Now that we have held that the suit is not barred under Sections 69 and 100 of the Co-operative Societies Act, and the agreement between the parties is capable of specific performance, the plaintiff should be given a further opportunity to prove the quantum of damages.

9. In the result, we set aside the judgment and decree of the court below and remand the case to the lower court for fresh disposal according to law and in the light of the observations in this judgment. The parties are at liberty to adduce evidence for determining the rent of the shop-room and also the quantum of damages. The parties will appear before the court below on 17th June, 1985.

This appeal is allowed as indicated above with costs.