(2012) 09 KL CK 0151

In the High Court Of Kerala

Case No : Regular Second Appeal . No. 1093 of 2012

Muraleedharan APPELLANT

Vs

Koorkanchery Service Co-Operative Bank Ltd. No. 36, P.O. Koorkanchery, Koorkanchery Village, Thrissur Taluk RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:
Kerala Co-operative Societies Act, 1969 — Section 100, 2(i), 25, 69

Citation : (2012) 09 KL CK 0151

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : G. Sreekumar Chelur and Smt. Preethy Karunakaran, for the Appellant;

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—The Second Appeal arises from the judgment and decree of the I Additional Munsiff''s Court, Thrissur in O.S. No.

20 of 2003, modified by the II Additional Sub Court, Thrissur in A.S. No. 322 of 2007. The respondent is a society registered in accordance with

the provisions of the Kerala Co-operative Societies Act, 1969 (for short, ""the Act""). According to the respondent, the shop room belonging to it

was entrusted to the appellant as per Ext. A1, rent deed dated 01.06.1998 for a period of 11 months on condition of payment of Rs. 1,100/- per

month. The period of rental arrangement expired by 30.04.1999. According to the respondent, rent is in arrears from September, 2000 onwards.

The respondent issued notice on 19.01.2002 terminating tenancy and demanding payment of rent arrears. The respondent also pleaded that Act 2

of 1965 has no application since the building belonging to the respondent which is a co-operative society is exempted from the application of the

said Act by virtue of notification issued under Sec. 25 of the said Act.

2. The appellant contended that the suit is not maintainable since the dispute is one referable to the Registrar of Co-operative Societies in

accordance with Sec. 69 of the Act and in that circumstances, the suit is barred under Sec. 100 of the said Act. There was a further contention

that there was no valid termination of the tenancy and that respondent had received Rs. 75,750/- as interest free deposit at the time of Ext. A1

which is to be adjusted in the rent arrears if any. The still further contention is that after the notice terminating tenancy, the appellant has paid Rs.

10,130/- towards rent arrears.

3. The trial court found that the bar under Sec. 100 of the Act does not apply and accordingly granted decree in the suit. The appellant challenged

that judgment and decree before the learned Sub Judge. The learned Sub Judge while concurring with the view expressed by the learned Munsiff

that the suit to the extent it concerned prayer for eviction is not barred under Sec. 100 of the Act, held that the claim for rent arrears is a ''dispute''

referable to the Registrar of Co-operative Societies under Sec. 69 of the Act. Hence the judgment and decree of the trial court were modified

confining the relief granted to the respondent to the decree for eviction. That judgment and decree of the first appellate court are under challenge.

4. The learned counsel has asserted contentions the appellant has raised in the trial and first appellate courts.

5. So far as the question whether the suit to the extent it concerned eviction is maintainable or not, the courts below have observed referring to Ext.

A7, bye-law of the respondent that letting buildings belonging to the respondent is not part of its business of the respondent and hence the

''dispute'' between the appellant and respondent is not one as defined under Sec. 2(i) of the Act. It is also seen that the said view of the courts

below is based on the decisions in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , Meeran Unni v. Kottayam

District Co-operative Bank Ltd. (1985 KLT 384) and K. Khader v. Rajamma John and others (ILR 1991 (3) Ker 305).

6. It is not disputed that the respondent is a society registered under the Act. It is not as if every dispute is referable to the Registrar under Sec. 69

of the Act and the suit is barred under Sec. 100 of the said Act. The ''dispute'' as defined in Sec. 2(i) of the Act must be one touching upon the

business, establishment or management of the society. I stated from Ext. A7 that letting out buildings of the respondent is not part of its business.

The Supreme Court has also stated that if a building belonging to the society and which is not required for its use is let out, that cannot be part of

the business of the society. That decision also applies to the facts of the case. In the circumstances the trial and first appellate courts are right in

concluding that the dispute as to whether the appellant is liable to be evicted from shop room is not a ''dispute'' coming under Sec. 2(i) of the Act

so that, Sec. 69 or Sec. 100 of the Act would apply.

7. So far as the demand for rent arrears is concerned, the first appellate court relying on the decision in Umadevi Vs. Asst. Registrar, has held that

the said dispute will come within Sec. 69 of the Act. The appellant cannot be aggrieved by that part of the decree and hence, at the instance of the

appellant the correctness of that part of the decree of the first appellate court need not be enquired into.

8. Having heard the learned counsel for the appellant I do not find any substantial question of law involved in this appeal.

9. The learned counsel requested that since the appellant is running a medical shop, he may be granted six months time to vacate the shop room.

The learned counsel has explained the difficulties the appellant would suffer if he is evicted forthwith. Having regard to the circumstances stated, I

am inclined to grant four (4) months time to the appellant to vacate the shop room but, subject to conditions:

Resultantly, the Second Appeal is dismissed with the following directions:

i. The appellant is granted four (4) months time from this day to vacate the shop room scheduled in the plaint subject to the condition that the

appellant shall be liable to pay damages for the use and occupation of the said room at the rate of Rs. 1,100/- (Rupees one thousand and one

hundred only) per month from this day till the expiry of the said period of four months or till the appellant vacates the premises, whichever is earlier.

ii. By the expiry of the said period, the appellant shall vacate the schedule room without putting forth any claim or objection.

iii. The appellant shall file an affidavit in the executing court within two weeks from this day undertaking to comply with the above condition.

iv. The damages for the use and occupation referred above shall be deposited in the executing court on or before the expiry of 11th of each month

beginning from this day.

v. If any of the above conditions is violated, it will be open to the respondent to proceed with execution of the decree notwithstanding the time

granted hereby.

vi. It is directed that the execution proceedings to the extent it related to the delivery of the shop room will stand in abeyance during the said period

of four (4) months or till the appellants vacates or default is committed by the appellant, whichever is earlier.

All pending interlocutory applications will stand dismissed.