(1976) 02 MAD CK 0057

In the Madras High Court

Muthammal and Another APPELLANT

Vs

The Secretary, Kolathur Balcksmithy and Carpentry Worker's Industrial Co-operative Society Limited and Another RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1976) 89 LW 507

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioners are the legal representatives of one deceased Ramalingam who was the president of the Kolathur Blacksmithy and Carpentry Workers'' Industrial Co-operative Society. Limited, Kolathur, Mettur Taluk, Salem District till 31st August, 1969 when he was removed from that office. From the audit report for the period from 1st April, 1966 to 31st March, 1969 it was found that there has been a deficit in the stocks of various articles to the extent of about Rs. 5,946-19. The society filed an arbitration case for the recovery of the said amount of Rs. 5,946-19 being the value of the stock found short, u/s 73(1)(c) of the Tamil Nadu Co-operative Societies Act, 1961 (hereinafter called the Act). While the said arbitration case was pending, the said Ramalihgam died on 8th November, 1970. Taking note of his death, the arbitrator dismissed the claim of the society on 12th November, 1970 on the ground that the claim has abated and that it is for the society to file a fresh claim against the legal representatives.

2. The society took the matter in appeal to the Co-operative Tribunal (the Principal District Judge, Salem), and the Tribunal by its Order, dated 12th February, 1975 held that the arbitrator was in error in dismissing the arbitration case with a direction to file a fresh claim on the same cause of action as against the legal representatives and that the proper thing would have been to permit the society to bring the legal representatives on record in the arbitration case which was pending on the date of the death of the said Ramalingam. In this

View, the Tribunal directed the arbitrator to take the arbitration case on file and to proceed with the same after bringing the legal representatives on record. The society, however, did not take advantage of the Tribunal''s decision and take steps to bring the legal representatives on record. The result was the arbitration case came to be dismissed by the arbitrator for non-prosecution.

3. Subsequently the society filed a fresh arbitration claim against the petitioners the legal representatives of the said Ramalingam. On 16th August, 1972 for recovery of the said sum of Rs. 5,946-19. The petitioners defended the said arbitration case inter alia on the ground that the fresh arbitration claim was barred by limitation, in that it has been filed beyond the three-year period prescribed under Rule 56 of the Tamil Nadu Co-operative Societies Rules, 1963 (hereinafter Called the Rules). The arbitrator, however, by his order, dated 24th April, 1973 overruled the petitioner''s contention based on limitation and proceeded to pass a decree against the petitioners after holding them liable on merits.

4. Aggrieved against the said orders dated 24th April, 1973 of the arbitrator, the petitioners filed an appeal before the Go-operative Tribunal again reiterating their contention among others that the reference to the arbitrator as against them u/s 73 is beyond time and therefore the arbitration claim should have been dismissed in limine. The Tribunal took the view that as the fresh claim against the petitioners on 16th August, 1972 was filed within three years from the date of the audit report from which the deficiency in stocks was found it was in time and that in any event the arbitration case could be validly entertained u/s 25(1)(b) of the Act which preserved the liability of a deceased member for the debts of the society for the period of 2 years from his death. As the death of the president was on 8th November, 1970 and the fresh arbitration claim has been filed on 16th August, 1972 i.e., within a period of two years from the date of the death of the president, the Tribunal took the view that the arbitration case which has been filed within two years from the date of the death of the president should be held to be within the time. The Tribunal also disposed of the appeal on merits and ultimately held the petitioners liable for the sum claimed by the society.

5. In this revision filed under Article 227 of the Constitution, the petitioners have challenged the validity of the order of the Tribunal both on the ground of limitation as well on merits. Having regard to the view I take on the question of limitation, it is not necessary to deal with the case on merits.

6. As regards the question of limitation, the learned Counsel for the petitioners has taken me through the provisions in Section 73 of the Act and Rule 56 of the Rules which occurs under the chapter--Settlement of disputes. u/s 73(1) the society has to approach the arbitrator for deciding a dispute between the society and its member, past member or a person claiming through a member past member or a deceased member. According to the learned Counsel that dispute having been admittedly referred to u/s 73(1), Rule 56 which prescribes a time-limit for making such a reference should strictly be followed and if any dispute

has been referred beyond the time-limit prescribed under the said Rule, it would be incompetent. Rule 56(1) states that the reference of any dispute under Sub-section (1) of Section 73 shall be in writing and Sub-rule (2) states that the, period of limitation for referring a dispute mentioned in Sub-rule (1) shall be regulated by the provisions of the Indian Limitation Act, 1963 as if the dispute were a suit, and the Registrar, a civil Court. Then comes the following proviso to that Sub-rule:

Provided that a dispute between (i) the society or its committee; and (ii) any past, committee, any past officer, past agent or past servant or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society shall, where the dispute relates to any act or omission on the part of the society or its committee, or any past committee, any past officer, past agent, or past servant, or the nominee, heirs or legal representatives of any deceased servant of the society, be referred to the Registrar within three years from the date on which the act or omission with reference to which the dispute arose, took place.

7. The learned Counsel for the petitioner submits that all the arbitration claims filed u/s 73 are to be governed by Rule 56 and that in this case the act or omission in respect of which the dispute arose has clearly taken place in any event before 31st March, 1969 and that therefore the arbitration claim filed against the petitioners on 16th August, 1972 should be taken to be barred by time. In this connection the learned Counsel points out that the original claim against the deceased member and the present claim against the petitioners who are legal representatives are based on the audit reports, dated 24th July, 1969; 31st October, 1969 and 30th June, 1970 respectively. The learned Counsel also attacks the finding of the Co-operative Tribunal that the arbitration claim could be filed within two years from the date of the death of the ex-president u/s 25(1)(b) on the ground that even if the liability of the deceased president is kept alive by virtue of the provisions of Section 25(1)(b) the enforcement of that liability can only be u/s 73 and that so long as the claim has not been filed u/s 73 within the time-limit prescribed by Rule 56, the liability even if it exists cannot be validly enforced against the petitioners. I am inclined to agree with the above contentions.

8. The view of the Tribunal that the claim u/s 73 is not barred by time in view of Rule 56, as it has been filed within 3 years from the date of audit report and that in any event, the claim is in time in view of Section 25(1)(b) which keeps alive the liability of the deceased member for a period of two years, is in my view erroneous. On the facts there could be no doubt that the claim, filed against the petitioners on 16th August, 1972 is beyond the period of 3 year''s provided for in Rule 56. The claim is based on the act or omission said to have taken place when the deceased ex-president was functioning as the president, for the period 1st April, 1966 to 31st March, 1969. Therefore, the last date before which the act or omission could have taken place can only be on 31st August, 1969. Therefore,,

the arbitration claim having been filed more than three years before that last date before which the act or omission could have taken place, it is clearly out of time as per Rule 56(1). Both the arbitrator as well as the Co-operative Tribunal have proceeded on the basis that the limitation will begin to run under Rule 56 only from the date of the audited report from which the society came to know about the act or omission of the ex-president. I do not see how the date of the audit report will be material for interpreting Rule 56. The Rule says that the limitation will begin "from the date on which the act or omission...took place". The date of act or omission cannot in any sense be equated to the date of the report by the auditor. Even if the said report forms the basis for taking action against the ex-president that can-rot be taken to be the date from which the period of limitation is to be reckoned. If that was the intention the proviso would have used the expression "from the date of knowledge of the act or omission with reference to which the dispute arose took place". I am therefore of the view that the date of audit report cannot be material for the purpose of reckoning the period of limitation and it cannot have the effect of extending the period of limitation prescribed under Rule 56, which has relevance, only, to the date on which the act or omission took place.

9. As regards the view taken by the Tribunal that the said Section 25(1)(b) will extend the period of limitation if deceased member or president dies, and therefore the claim filed against the petitioners on 16th August, 1972 being within two years from 8th November, 1970, the date of the death of the ex-president, should be taken to be in time the same cannot be accepted as correct. Section 25(1)(b) merely keeps alive the liability of the deceased member for a period of two years to be enforced against his estate. Having regard to the fact that even such liability has to be enforced only by filing a claim u/s 73, the claim has to be filed within the period of three years referred to in Rule 56. Apart from Section 73 there is no other provisions in the Act under which the claim u/s 23(1)(b) may be enforced. A perusal of Section 73 indicates that even the claims against the heirs or legal representatives of any deceased member or past member should be agitated only thereunder. Therefore, it is not possible to say that for enforcing the claim u/s 24(1)(b) there is a different procedure with a different period of limitation. Where a claim is made against a member, past member or against the legal representatives of such a member or past member, the claim has to be agitated only u/s 73 read with Rule 56. The claim in this case having been filed beyond the period prescribed under Rule 56, it is not maintainable. In this view the order of the Arbitrator as confirmed by the Co-operative Tribunal has to be set aside and it is set aside accordingly.

10. The civil revision petition is allowed. No costs.

