
(2000) 06 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 1086 of 2000

R. Soman

APPELLANT

Vs

S. Pushparajan and Others

RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Citation : AIR 2000 Ker 336 : (2000) 3 ILR (Ker) 785

Hon'ble Judges : T.M. Hassan Pillai, J;P.K. Balasubramanyan, J

Bench : Division Bench

Advocate : N. Karunakaran and K.N. Chathukutty, for the Appellant;

Final Decision : Dismissed

Judgement

Balasubramanyan, J.—Heard counsel for the appellant, counsel for respondents 1 to 3 and the learned Government Pleader on behalf of respondent No. 5.

2. The petitioner in O.P. 12913 of 1999 is the appellant. He filed the Original Petition praying for the issue of a writ of certiorari to quash the order Ext. P1 passed by the Arbitrator under the Co-operative Societies Act and rejecting the objection to the maintainability of the arbitration suit raised by him and for other consequential reliefs. The learned Single Judge dismissed the Original Petition upholding the finding of the Arbitrator marked Ext. P1. This decision is challenged in this Writ Appeal.

3. Three members of Panathura Coir Vyavasaya Co-operative Society filed an arbitration case before the Arbitrator u/s 69 of the Kerala Co-operative Societies Act. In that arbitration case, they wanted a declaration that an election held on 25-6-1998 to elect members to the Managing Committee of the Society was void and restraining defendants 3 to 9 to the arbitration case from exercising any rights as elected members of the Managing Committee of the Society. Along with that arbitration case the plaintiffs, who are respondents 1 to 3 herein produced a chaltan for payment of a sum of Rs. 500/- as the fees for deciding the dispute raised by them in terms of Rule 67 of the Kerala Co-operative Societies Rules.

The objection raised by the appellant before the Arbitrator was that since three members had joined together to file an arbitration case the fee payable in terms of Rule 67 of the Cooperative Societies Rules was Rs. 500/- per head and since only a sum of Rs. 500/- had been paid in the place of Rs. 1500/-, the arbitration case was liable to be rejected on being found that it was not maintainable. The Arbitrator took the view that the payment of Rs. 500/- in terms of Rule 67 of the Kerala Co-operative Societies Rules was sufficient in the light of the reliefs prayed for in arbitration case and hence the preliminary objection lacked merit and the arbitration case was maintainable.

4. Before the learned Single Judge it was contended that the view of the Arbitrator was erroneous especially in the light of the decision of this Court in *Peter v. Aravindakshan* 1998 (2) KLT 729 with particular reference to paragraph 10 thereof. The learned Judge held that the observations in Paragraph 10 of the decision in *Peter v. Aravindakshan* did not support the contention raised on behalf of the appellant and the Arbitrator was justified in holding that the arbitration case was maintainable. It is the correctness of this view of the learned single Judge that is questioned before us.

5. Counsel for the appellant submitted that the decision in *Peter v. Aravindakshan* indicated that when more than one petitioner joined an arbitration case, fee had to be paid on behalf of each one of them and unless it is so done the arbitration case would not be maintainable. Counsel also pointed out with reference to the decision in *Satya Narain Vs. Dhuja Ram and Others*, that the right to challenge an election is a special right and the procedure prescribed by the rules in that behalf must be strictly complied with. Counsel also referred to a decision of the Karnataka High Court in *Gnana Jyothi T.C.H. College, Belur, Hassan District and Others Vs. State of Karnataka and Others*, to point out that when a number of persons joined together in filing a writ petition under Article 226 of the Constitution of India, even if they may also raise questions which are common to all of them, each one of them was liable to pay separate Court fee for the enforcement of their rights under Article 226 of the Constitution of India. In answer learned counsel for respondents 1 to 3 pointed out that the fee payable under Rule 67 of the Cooperative Societies Rules is for the resolution of a dispute and here there is only one dispute to be resolved, though at the instance of three of the members of the Society as against six other members of the Society and unlike in the case of *Peter v. Aravindakshan*, there was no prayer in the present petition for declaring the three petitioners elected at the election and the prayer was only for declaring illegal the particular election challenged in the arbitration case. Counsel therefore submitted that the view taken by the learned Judge was justified.

6. On a reading of the prayers in the arbitration case, it is clear that the main prayer is for a declaration that the election held on 25-6-1998 is void and the other reliefs are only consequential in nature or merely ancillary to the main relief claimed in the arbitration case. It is therefore not possible to accept the

contention of learned counsel for the appellant that more than one declaration is involved in the prayers in the arbitration case and each such declaration must be treated as a separate dispute for the purpose of Rule 67 of the Co-operative Societies Rules, The only other contention that requires to be considered is whether by the fact that three members of the society had joined together to raise the dispute, the fee is payable by each one of them for getting an adjudication of the dispute. On a reference to Rule 67 of the Kerala Co-operative Societies Rules it is seen that the fee is prescribed in relation to a dispute and not in relation to the person who raises the dispute. Only if the fee is related to the person or persons who raise the dispute there would arise the question of separate fee being paid by the persons who joined the motion before the Arbitrator for resolution of a dispute. Since Court fee payable is for deciding a dispute, the question that has to be considered is whether the petitioners herein have raised a dispute or have raised several disputes. So considering, it is clear that the dispute that is sought to be raised is regarding the validity of the election held on 25-6-1998. Whether that dispute is raised by one of the members or several of the members would make no difference in terms of Rule 67 of the Kerala Co-operative Societies Rules. We are therefore of the view that the Arbitrator and the learned single Judge were justified in coming to the conclusion that the arbitration case is maintainable even though only a fee of Rs. 500/- had been paid and only a challan for that amount accompanied the arbitration case. The decision of the Karnataka High Court relied on by learned counsel for the appellant cannot have any application in view of our understanding of the rule that the payment of fee for an arbitration is related to the dispute to be arbitrated upon and not to the persons who seek the resolution of the dispute.

We are therefore satisfied that no interference is called for with the decision of the learned single Judge. We therefore confirm the said decision and dismiss this Writ Appeal.