

(1957) 01 KL CK 0003
In the High Court Of Kerala
Case No : S. A. 332 of 1955 (E)

Raman Achari

APPELLANT

Vs

Paramu Achari

RESPONDENT

Date of Decision : 23-01-1957

Acts Referred:

Travancore Co-operative Societies Act, 1112 — Section 56
Travancore-Cochin Co-operative Societies Act, 1951 — Section 60

Citation : (1957) KLJ 286

Hon'ble Judges : G. Kumara Pillai, J

Bench : Single Bench

Advocate : Mathew Muricken, for the Appellant; M. Krishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

Kumara Pillai J

1. The only question for decision in this second appeal is whether an award passed u/s 56 of the Travancore Co-operative Societies Act, V of 1112, is valid or not. When the award in question was sought to-be executed by the appellant in whose favor it has been passed, the respondent, who was defendant 2 in the arbitration proceedings, objected to the execution on the ground that it was passed without jurisdiction and was therefore invalid. The execution court overruled this objection, but the Temporary Additional District Judge of Quilon, to whom the matter was taken up in appeal by the respondent, upheld the objection and dismissed the appellant's application for execution. The appellant has, therefore, preferred this second appeal. The appellant and the respondent, who were members of the Paravur Co-operative Urban Bank Limited, No. 1649, were sureties for a loan taken from the said bank by another member thereof, who was defendant 1 in the arbitration proceedings. On account of the failure of the primary debtor to repay the loan the appellant was compelled to pay the amount due to the Co-operative Bank, and after thus discharging the debt he

filed a suit before the Registrar of Cooperative Societies, Trivandrum, for reimbursement of the amount paid by him from defendants 1 and 2. Acting u/s 56 (2) (c) of the Travancore Co-operative Societies Act, 1112, the Registrar referred the matter for disposal to an arbitrator; and the arbitrator, to whom the matter was referred, has passed the award which the appellant is seeking to execute. The respondent's objection to the execution of the award was that, as the dispute referred to the arbitrator was one relating solely to the liability inter se of the sureties and of the sureties and the primary debtor, and as it did not affect at all the rights and liabilities of the Co-operative society, the Registrar was incompetent to refer the dispute for arbitration u/s 56 of the Travancore Co-operative Societies Act and that, therefore, the award was made without jurisdiction and is invalid. The learned temporary Additional District Judge accepted this contention saying:

Admittedly the present dispute is between the plaintiff and defendants. That is a suit filed by the plaintiff against defendant for contribution. It is purely a matter concerning the plaintiff and defendants only. The society is not in any way affected by it. Hence I would come to the conclusion that the Registrar has no jurisdiction to pass the award, that the award is therefore void and is not executable by the civil court.

2. The relevant portion of section 56 of the Travancore Co-operative Societies Act, 1112, reads as follows:-

56. (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society) or its Committee against a paid servant of the society arises-

- (a) among members, past members and persons claiming through members, past members and deceased members, or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its Committee or any officer, agent or servant past or present of the society, or
- (c) between the society or its Committee and any officer, agent or servant past or present of the society, or
- (d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation:-A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not, is a dispute touching the business of the society within the meaning of this sub-section.

(2) The Registrar may, on receipt of such reference,

- (a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by Our Government with powers in that behalf; or

(c) Subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators:

Provided that if any party to the dispute applies for action being taken under clause (c), the Registrar shall act accordingly.

Identical provisions are made in section 60 (1) and (2) of the Travancore-Cochin Co-operative Societies Act, X of 1952. It is plain from clause (a) of section 56 (1) that, to give jurisdiction to the Registrar to decide a dispute himself or to refer it for disposal to an arbitrator, the Co-operative Society need not be a party to the dispute and that the Registrar is competent to decide the dispute himself or to refer it to an arbitrator even if it is only a dispute purely among the members of the society. What is required in such a case to give jurisdiction to the Registrar is that the dispute, which is purely among the members of a co-operative society, should be one touching the business of that society, as contemplated by the words, "touching the business of a registered society", occurring in the first paragraph of section 56 (1). Provision is made in clause (a) as regards one class or category of disputes touching the business of a society, namely, disputes purely among the members and provision is made in clause (b) as regards another class of disputes, touching the business of a society namely, disputes between a member on the one hand and the society on the other. The legislature itself has thus drawn a distinction between disputes purely among the members and disputes between a member and the society, and allowed both classes of disputes to be referred to arbitration. To say that a dispute, purely among the members of a society cannot be referred to arbitration, even though the dispute touches the business of a society, would, therefore, be the very negation of the enactment. On the plain words used in the statute, there can be no doubt of the competency of the Registrar to refer to arbitration a dispute purely among the members of a society if it touches the business of that society, even though the society itself is not a party to the dispute. Clauses (a) to (d) of section 56 (1) contemplate four different classes or categories of disputes, having one common characteristic or feature which is mentioned in the first paragraph of the section, namely, the dispute being one touching the business of the society; and if that feature is present in any dispute coming under any of the four categories, the Registrar will be competent to decide the dispute himself or to refer it to arbitration. So, the real question for decision in this case is whether the dispute which is referred by the Registrar to the arbitrator was one touching the business of the society or not. If it is a dispute touching the business of a society, the reference and the award would be valid as the case would come under clause (a) of section 56 (1), and if it is not one touching the business of the society, both the reference and the award would be without jurisdiction and therefore void.

3. Now, the Co-operative Society, of which the plaintiff and defendants 1 and 2 are members, is a bank, and it is conceded that the financing of its members is

one of the regular items of its business. It is also not disputed that, under the rules of the society, loans are given to individual members on the surety of two other members. The suretyship, out of which the present dispute has arisen, has therefore sprung directly from the business of the society; and, although, because of the discharge of the debt due to the society by one of the sureties, the suretyship is no longer likely to affect the business or the rights and liabilities of the society, it cannot be denied that it was on account of the business of the society that the legal rights and liabilities inter se of the sureties, which formed the subject matter of the dispute referred to the arbitrator, came into existence. The plain meaning of the expression "dispute touching the business of a registered society" is that the dispute should have some concern or relation to the business of the society and not that it should directly affect that business itself. The words used in section 56 (1), "disputes touching the business of a society", are very general and would include not only disputes, directly affecting the business of the society but also disputes which have some reference or relation to the business of the society. If only disputes directly affecting the business of a society were meant to be brought within the ambit of section 56, effect could have been given easily to that intention by using the word "affecting" instead of "touching".

4. Section 51 of the Madras Co-operative Societies Act, VI of 1932, is almost similar to section 56 of the Travancore Act, and the words "touching the business of a society" occurring in section 51 of the Madras Act have been construed by a Full Bench of the Madras High Court in *Madhava Rao v Surya Rao* (A. I. R. 1954 Mad. 103). At page 107 of the report in that case, it is said:

We may now proceed to consider the meaning of the expression "disputes touching the business of a registered society". The words "touching the business of a society" must be given their full import. Here we should bear in mind that the object of the legislation, which brought into existence these corporations for a definite purpose, was not only to confer complete autonomy on them in matters of internal administration but as part and parcel of the same scheme to set up a forum to settle what may be generally referred to as their internal disputes finally and without interference by the ordinary courts of the land. The word "touching" does not present much difficulty, as its dictionary meaning is "in reference or relation to, respecting, regarding or concerning" thus indicating that the disputes need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. The word "touching" was clearly not intended to restrict the meaning of the word "business"; it was designed to enlarge its scope. The disputes were not to be restricted to matters arising from and out of the business of the society, but were also extended to matters which are in some way concerned or related to the business of the society.

I would respectfully agree with these observations, especially in view of the objects and the spirit of the legislation. The preamble to the Travancore Co-

operative Societies Act says that the Act was being enacted

for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic need so as to bring about better living, better business and better methods of production...

One of the modes provided for promoting these objects is granting quick and easy financial assistance through co-operative societies which give loans to its members on the security of co-members and which can easily enforce repayment of the loans without resort to costly and tortuous litigation in civil courts. The facilities for a member to obtain sureties would be rendered difficult if the surety is denied the easier remedy of resorting to the domestic forum and compelled to have recourse to costly and protracted litigation in civil courts in case of dispute between himself and the primary debtor or a co-surety.

5. The learned counsel for the respondent referred to the Explanation to section 56 (1) which reads;

A claim by a registered society for any debt or demand due to it by a member, past member or the nominee, heir, or legal representative of a deceased member, whether such debt or demand be admitted or not, is a dispute touching the business of a society within the meaning of this sub-section.

and contended that this Explanation would show that without there being an existing debt to a society there could be no dispute touching its business within the meaning of that expression as used in the first paragraph of section 56 (1).

The Explanation does not say that the dispute referred to in section 56 (1) must be a dispute in respect of an existing debt or demand. All that it says is that a claim for a debt or demand due to the society from a member or other persons mentioned therein, whether it is admitted or not, will also be a dispute touching the business of the society, that is to say, the explanation only enlarges the meaning of the expression "dispute touching the business of a registered society" used in section 56 (1) so as to include claims by the society against certain classes of persons, whether such claims are admitted or not, and does not restrict its meaning. Section 54 (1) of the Bombay Co-operative Societies Act, VII of 1925, is similar to section 56 (1) of the Travancore Act, and paragraph 2 of section 54 of the Bombay Act is a provision similar to the explanation to section 56 (1) of the Travancore Act. The effect of this provision was considered by Chagla, C. J., in *Malvan Co-operative Union Bank Limited v Kamalaker* (A. I. R. 1954 Bom. 101), and the learned Chief Justice has said therein:

The Legislature by enacting this second paragraph was extending the scope of a dispute which had been defined in section 54 (1). To put it in a different language, the Legislature, by the second paragraph, was enlarging the definition of a dispute which it had already given in section 54 (1). The clear meaning of this paragraph is that a dispute, whether it touches the constitution or business of the society or not, would be a dispute for the purpose of reference to

arbitration u/s 54 if it consists of a claim by a society for past member or the heirs or assets of a past member, whether such debts or demands be admitted or not.

6. The plain meaning of the words used in section 56 (1) supports only the construction which the appellant seeks to put on it, and that construction is also in consonance with the spirit and objects of the legislation. I would, therefore, hold that, if there is a dispute among the members of a co-operative society, which has some reference or relation to the business of that society, the requirements of paragraph 1 and clause (a) of section 56 (1) would be satisfied and that the Registrar would be competent to decide the dispute himself or to refer it to an arbitrator u/s 56 (2). In this view, the dispute between two members of a co-operative society, who were sureties for a loan taken from the society by another member, as to their rights and liabilities inter se in regard to a claim for contribution on account of the discharge of the debt by one of them, being a dispute about rights and liabilities which came into existence on account of the business of the society, as pointed out in paragraph 4 above, is a dispute "touching the business of a society" falling u/s 56 (1) (a). I may also state here that the same view was taken by a Single Judge of the former High Court of Travancore-Cochin, Nandana Menon, J., in an unreported case decided on 26-9-1956 (S. A. No. 520 of 1955). It follows that this award in this case was passed with jurisdiction and that the respondent's contention that the award is invalid and cannot be executed has to be over-ruled. The second appeal is therefore allowed with costs through out. The order of the lower appellate court is set aside and that of the execution court dated 18-3-1953, holding that the award is valid and executable and rejecting defendant 2's objections, is restored. Advocate's fee Rs. 30/-.