

(2007) 10 KAR CK 0038

In the Karnataka High Court

Case No : Civil Revision Petition No. 218 of 2007

Rudrappa and Another

APPELLANT

Vs

Basawaraj

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 9
Karnataka Co-operative Societies Act, 1959 — Section 70, 71

Citation : (2007) ILR (Kar) 4720 : (2008) 2 KarLJ 505 : (2007) 4 KCCR 2756

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Basavaraj Kareddy, for the Appellant; Siddarudha B. Pujari, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This civil revision petition u/s 115 of CPC is directed against the order dated 18-12-2006 passed on preliminary issue No 4 in OS No 11 of 2005, on the file of Court of Additional Civil Judge (Jr Dn), Chincholi.

2. The suit filed by the respondent-plaintiff is for award of damages to the tune of Rs 15,000/- as against the petitioners herein, who happen to be the secretary and the president respectively of the Vyavasaya Seva Sahakara Sangha, Sulepeth, Chincholi taluk, wherein the respondent is working as attender.

3. It appears, the suit is filed on the premise that the petitioners have come in the way of the respondent-employee getting his due and proper salary; that it is because of the inaction or mischievous action on the part of the petitioners herein the respondent-plaintiff is deprived of his rightful enhanced salary.

4. Petitioners had entered appearance in the suit and have filed their written statement and raised a preliminary objection regarding maintainability of the suit. It had been pleaded that the suit is not maintainable in the light of the provisions of Section 70 of the Karnataka Co-operative Societies Act, 1959 [for

short, the Act] and therefore was liable to be rejected outright as not maintainable.

5. The learned trial judge having examined the preliminary issue on this disputed aspect and having answered the issue as against the petitioners herein, the petitioners are before this court in this revision petition.

6. I have heard Sri Basavaraj Kareddy, learned counsel for the petitioners and Sri Siddarudha B Pujari, learned counsel for the respondent.

7. What is urged by the learned counsel for the petitioner is that Section 70 of the Act is a clear bar on the civil courts to entertain suit by an employee of a co-operative society; that it was open to the respondent-employee to have raised a dispute and sought for adjudication as per the provisions of the Act and therefore the learned trial judge has committed a material irregularity in assuming jurisdiction to try the suit when the civil court itself had no jurisdiction.

8. Learned counsel for the respondent has supported the impugned order and submits that there is no need for interference with the impugned order, as there is no illegality or procedural irregularity committed by the learned trial judge.

9. I have carefully examined the submissions. Section 70 of the Act reads as under:

70. Disputes which may be referred to registrar for decision (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the construction, management or the business of a co-operative 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 employee of the society; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employer of the society; or

(d) between the society and any other co-operative society or a credit agency

such dispute shall be referred to the registrar for decision and no court or labour or revenue court or industrial tribunal shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purpose of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a cooperative society, namely:

(a) xxx

(b) xxx

(c) xxx

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a cooperative society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(e) xxx

(3) xxx

The precise plea set up by the petitioners in their written statement to contend that the jurisdiction of the civil court is barred in view of Section 70 of the Act as contained in para-25 of the written statement reads as under:

25. That the matter involved in this suit is essentially a dispute between a co-operative society of which the defendants are officials and its employee-plaintiff as mentioned in Section 70 of the Karnataka Co-operative Societies Act, 1959. Such dispute can only be resolved by the authorities mentioned in Sec 71 of the Act. By camouflaging the dispute about dismissal of plaintiff and nonpayment of salary as claim for damages will not take it out of purview of those sections of the Act which is a complete code in itself. The plaintiff has already invoked the jurisdiction of authorities under that Act. The jurisdiction of civil courts is expressly or impliedly barred to decide such dispute. Therefore this Hon''ble court has no jurisdiction to try this suit.

10. Learned trial judge has examined this contention with reference to the provisions of the Act and with reference to the authorities relied upon by the learned counsel for the plaintiff before the trial court. Learned trial judge has discussed that the suit is essentially in the nature of a suit for damages filed against the defendants in their personal capacity and not in respect of any of their official function; that the Supreme Court had occasion to examine the maintainability of a suit of such nature before the civil court and had opined that a suit filed against a superior officer by an inferior official, both being officials of the government and in respect of service disputes, then such a matter need not go before the administrative tribunal, in view of Section 14 of the Administrative Tribunals Act, and having held that such suits are not barred, as a suit for damages against a superior officer in his personal capacity cannot be subject matter for decision by an administrative tribunal and therefore the suit having been held to be maintainable, has applied the ratio of this judgment to answer the preliminary issue No 4 regarding the maintainability and therefore rejected the contention raised on behalf of the defendants.

11. While the line of reasoning indicated in the impugned order by the learned trial judge is sound and applying the ratio laid down by the Supreme Court to the facts of the case is also very appropriate, I find that even if the petitioners are

taken to be officers of the society being secretary and the president of the society, the provisions of Section 70 does not act as a bar for civil court to entertain a suit of present nature, as such a situation is not contemplated in any one of the clauses mentioned in Section 70 of the Act.

12. The plea in para-25 of the written statement does not bring the dispute between the respondents and the petitioner within the scope of any one of the clauses mentioned in Section 70, though Sri Basavaraj Kareddy, learned counsel for the petitioners, would submit that the officials of the society, particularly the office bearers should be treated on par with the society and it should be construed that the suit is virtually against the society, such a submission cannot be accepted for the simple reason that the suit, in the first instance, is not against the society and secondly, on the ratio of the decision rendered by the Supreme Court in the case referred to above and relied upon by the trial court, such a submission cannot be accepted. In matters of ousting jurisdiction of civil courts, it is settled principle that the ouster provision should be strictly construed and there is no scope for expansion of the ouster clause by way of interpretation. Submission of learned counsel for the petitioners being to extend the bar on the jurisdiction of civil court by way of interpretation by treating the officers or office bearers of the society to be on par with the society, such a submission cannot be accepted on the principle of strict interpretation of an ouster clause. The rule and principle is always to presume the jurisdiction of civil court in terms of Section 9 of Code of Civil Procedure, until and unless it is expressly and precisely mentioned in any other statutory provision that the jurisdiction is ousted. Such is not the case either u/s 70 of the Act or on the facts as pleaded by the defendants.