

(1982) 02 KAR CK 0024
In the Karnataka High Court
Case No : RSA 769, 1152 & 1154/78

Saggiah

APPELLANT

Vs

Tumkur Dist. Co-op. Cen. Bank Ltd. and Another

RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70(2)(D)

Citation : (1982) 1 KarLJ 409

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. These three appeals are by the original plaintiffs and they are directed against the judgment and decrees passed by the Principal Civil Judge, Tumkur, in RA Nos. 107, 153 and 152 of 1976 respectively, allowing the appeals on reversing the judgments and decrees passed by the Prl. Munsiff, Tumkur. in O.S. Nos. 181, 324 and 335 of 1973, decreeing the suits of the plaintiffs for declaration that the order of termination passed against the plaintiffs in each case was void and for consequential relief.

2. The plaintiffs were employees under defendant No. 1 Bank. It is their case that their services were terminated arbitrarily and illegally and as such the said termination order was void. Therefore, they instituted suits praying for declaration that the order passed by the first defendant terminating their services in each case was void and for consequential relief. The suit was resisted by the defendants. They contended, inter alia that the Civil Court had no jurisdiction to entertain the suit. The trial Court raised similar issues in the three suits as follows:

(1) Whether the plaintiff proves that he was dismissed by an order dated 27-10-1971 from service without holding any enquiry and without giving him any opportunity as contemplated under Rule 18 of the Mysore Co-operative Societies Rules, 1960?

(2) Whether he further proves that the order dated 27-10-1971 terminating his services is null and void?

(3) Whether defendants 1 and 2 prove that the suit is not cognizable by a Civil Court and that this Court has no jurisdiction to deal or decide the dispute as contended in para 10 of the written statement?

(4) Whether the suit brought is not maintainable as contended in para 11 of the written statements?

(5) Whether defendants 1 and 2 prove that the service of the plaintiff has been validly terminated as contended in para 9 of their written statement?

(6) Whether plaintiff has no cause of action for this suit?

(7) Whether plaintiff is entitled to the declaration sought?

(8) Whether the plaintiff is entitled to the mandatory injunction sought?

(9) What relief and what order?

3. The trial Court, appreciating the evidence on record, answered all the material issues in favour of the plaintiffs and in that view it decreed the suit of the plaintiff in each case. Aggrieved by the said judgments and decrees, defendants 1 and 2 went up in appeal before the learned Civil Judge, Tumkur, as stated above, and the learned Civil Judge, reassessing the evidence on record, came to the conclusion that the Civil Court has no jurisdiction to entertain the suits and in that view, he allowed the three appeals, reversing the judgments and decrees of the trial Court in the three suits and directed that the plaint in each case shall be returned to the plaintiff for presentation to the proper forum.

Aggrieved by the said judgments and decrees, the plaintiffs in the three suits have come up with the above three appeals before this Court.

4. The learned Counsel appearing for the appellants in the three appeals strenuously urged before me that the learned Civil Judge was not justified in coming to the conclusion that the Civil Court could not proceed with the hearing of the suits, since it had lost jurisdiction in view of the amendment to S. 70 of the Karnataka Co-operative Societies Act, 1959, by inserting clause (d) in sub-sec. (2) of S. 70 of the Act. As against that, the learned Counsel appearing for the respondents in the three appeals argued supporting the judgments and decrees of the learned Civil Judge.

5. Since the same question of law is involved in all the three appeals, they are heard together and a common judgment is being pronounced.

6. The sole point that arises for my consideration in the three appeals is, Whether the learned Civil Judge was justified in coming to the conclusion that the suits could not be heard by the trial Court in view of the insertion of clause (d) to S. 70(2) of the Co-operative Societies Act, 1959.

7. Clause (d) of sub-sec. (2) of S. 70 of the Act was incorporated by the Amending Act No. 19/76 which was published in the Kar. Gaz. Extry., on the 10th March 1976. By S. 14 of the Amending Act, S. 70 of the original Act is amended.

It reads:

"In S. 70 on the Principal Act, in sub-sec. (2) after clause (c) the following clauses shall be inserted, namely:

(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 co-operative society:

(e) "

Thus after the amending Act No. 1976 which came into force on 10th March 1976, clause (d) became part and parcel of sub-sec. (2) of S. 70 of the Co operative Societies Act.

8. Sub-Sec. (1) of S. 70 reads:

"Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of co-operative societies arises

(a) to (d)"

such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

Sub-sec. (2) of that section reads:

"For the purpose of sub-sec. (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society namely.

(a) to (c)

(d) As reproduced above."

S. 118 of the Act further speaks of bar of jurisdiction of Court:

"Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of- (a) (b)

(c) any dispute required under S. 70 to be referred to the Registrar or the recovery of money under S. 100:

(d) "

Thus, reading S. 70(2)(d) with S. 118 of the Co-operative Societies Act, it becomes clear that any dispute between a Co-operative Society and its employees, including a dispute regarding terms of employment, working conditions and disciplinary action taken by a co-operative society has to be referred to the Registrar for decision and that no Court shall have jurisdiction to

entertain any suit or other proceeding in respect of such dispute. It is in that view that the learned Civil Judge held that the suit could not be proceeded with in the Civil Court after the introduction of clause (d) in sub-sec. (2) of S. 70 of the Act and it is in that view that he directed that plaint in each case should be returned to the plaintiff for presentation to the proper forum and it is those decrees that are challenged before me as not legal.

9. It is necessary to remember that the Amending Act No. 19/76 came into force on 10th March 1976 and the suits in the three cases were instituted in the year 1973, much earlier to the enforcement of the amending Act. The short legal question, therefore, that arises for my consideration is: Whether clause (d) introduced by the amending Act takes away the jurisdiction of the Civil Court in pending suits?

9A. The Karnataka Co-operative Societies Act is a State Act. The amendment is by the State legislature. The Karnataka General Clauses Act speaks of effect of repeal. S. 6 of the Karnataka General Clauses Act reads:

"Where this Act or (any Mysore Act) made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed". (*Underlining italics*) is mine)

Thus it becomes clear that the pending action would not be affected by the subsection repealing the jurisdiction, of the Civil Court unless a different intention appears in the amending Act. In Act No. 19/76 by which clause (d) was incorporated in sub-sec. (2) of S. 70 of the Co-operative Societies Act, there is nothing stated that the amendment shall govern even pending proceedings. In the circumstances, therefore, it is obvious that the intended clause (d) would not affect the pending proceedings.

10. It is no doubt true that procedural law, as such, is retrospective in operation and it applies to the pending proceedings also as against substantive law which is always prospective unless it is made expressly or by necessary implication retrospective in operation.

11. Crawford on "Statutory Construction" (1940) at page 587, in S. 288, speaks of "Jurisdiction, Venue and Parties". Writing thereunder the learned Author states:

"A Court may be given jurisdiction over a cause of action which arose before the jurisdictional statute was, passed. On the other hand, it is also possible that a statute may be construed so as to take away jurisdiction from a Court over a case already pending, although such an intent should be clearly expressed in the

statute. So also a statute transferring jurisdiction over certain causes of action, may operate on existing causes of action. Statutes pertaining to venue, like those pertaining to jurisdiction, may, too, where such is the clear legislative intent, be construed as applicable to actions already existing or pending when they are enacted. In like manner, a statute which enumerates the proper parties in an action is subject to a retroactive construction so as to apply to an action pending at the time the statute is enacted, or even to a cause of action already in existence though not pending in Court." (Emphasis added)

Thus, it is clear that according to Crawford a legislation or amendment changing the jurisdiction of a Court would not affect the pending action unless such intendment is made clear in the statute itself.

12. Similar are the views expressed by Craies on, "Statute Law" (1971) 7th Edn. under the heading "Pending actions affected by new procedure or provision as to costs". Writing on the aspect, at page 401, the learned Author states:

"But there is no vested right in procedure or costs. Enactments dealing with these subjects apply to pending actions, unless a contrary intention is expressed or clearly implied." "It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure and do not extend to rights of action". For "it is perfectly settled that if the legislature forms a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way, clearly thereby gone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be". In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties, it will be held to apply prima facie to all actions, pending as well as future". (Emphasis added)

Jurisdiction of Courts, however, is not merely a matter of procedure but something more and normally the jurisdiction of the Court would not be taken away in pending cases unless it is so expressed clearly by the legislature in the statute.

13. In the case *United Provinces v. Atiqah Begum*, (1941) 192 Ind. Cas. 138 FC, the Federal Court of India, speaking through his Lordship Justice Sulaiman has ruled:

"The intention of the legislature has to be gathered from the language actually employed in the Act. For statutes which confer or take away legal rights, whether public or private, or alter the jurisdiction of Courts of law, express and unambiguous words are necessary. No loopholes should be left for escape". (Vide p. 155, Col. 2) (Underlining (italics) mine).

Similar are the observation made by the Privy Council in *The Colonial Sugar*

Refining Company v. Irving, 1905 AC 369 PC.

13A. Our own High Court had an occasion to consider this aspect in a similar context in the case, Yenkappa Timmappa Kolachi v. Shavakha, AIR 1960 Mys. 265. Justice Hegde, as he then was, of this Court speaking on this aspect has observed in para 3 of the judgment thus:

"It is now well settled that a statute relating to matters of procedure operates retrospectively, unless otherwise provided in the Statute. But this principle is not applicable when the statute in question affects the jurisdiction of a Court. Provisions relating to jurisdiction are more than matters of procedure. They touch a right in existence at the passing of the statute. See Colonial Sugar Refining Co., Ltd., v. Irving, 1905 AC 369 PC. In United Provinces v. Atiqa Begum, (1941) 192 Ind. Cas. 138 FC. Sulaiman, J. observed:

"Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending, suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. It is a well recognised rule that statutes should, as far as possible be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well established principle that such statutes must be construed strictly, and not given a liberal interpretation."

14. Later, the Supreme Court of India had an occasion to consider this aspect in the case Shankar Deora Patil v. Ganpatlal Sheodayal, AIR 1978 SC 31. His Lordship Justice Khanna who spoke for the Bench of the Supreme Court has ruled:

"Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act when it was subsequently amended taking away the jurisdiction of the Civil Court did not affect the pending cases."

Speaking further on this aspect in para 6 of the judgment His Lordship has stated thus:

"We have heard Mr. Lokur on behalf of the appellant and Mr. Pillai on behalf of the respondent. No cogent ground has been urged before us to induce us to interfere with the order of the High Court, in so far as it has held that no reference under S. 125 could be legally made because the suit in which the said reference was made had been filed earlier than the coming into force of the Act." That being so, I am satisfied that the law is settled on the point that an amending Act taking away the jurisdiction of the Court would not affect any pending proceeding, unless there is the clear intention of the legislature

expressed in the statute to the contrary. The learned Civil Judge obviously has laboured under a wrong notion that even an amendment changing the jurisdiction of Civil Court is a mere matter of procedure and I am constrained to correct it.

15. Both the Courts have concurrently held that the order of termination of the employees in each case, by the Bank is vitiated and as such it is void in the eye of law. That finding becomes binding on this Court as no infirmity in procedure or in the application of law in coming to the conclusion is canvassed before me. In fact, the point was not pressed for my consideration.

16. In the result, therefore, the appeals are entitled to succeed. I allow the three appeals and set aside the judgments and decrees passed by the learned Civil Judge in the three cases and I sustain and restore the decree passed by the trial Court in the three suits. No costs of these appeals.