
(1966) 01 AHC CK 0022
In the Allahabad High Court
Case No : Civil Revision No. 1401 of 1964

Sahakari Ganna Samiti Ltd. and Another	APPELLANT
Vs	
Mahendra Pratap Rao	RESPONDENT

Date of Decision : 18-01-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1967 All 134

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : S.R. Misra and R.B. Misra, for the Appellant; Sripat Narain Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a defendants' application u/s 115 of the CPC against the order of the IInd Addl. Munsif Deoria, rejecting their preliminary objection that the court had no jurisdiction to entertain the suit. The plaintiff respondent Sant Govind Rao filed a suit for a declaration that he was a validly elected delegate of particular society to the Co-operative Cane Development Society and for an injunction to restrain the defendants from electing another delegate. He alleged that he had been elected a delegate but subsequently he received a notice from the Honorary Secretary of the Society that he could not remain a delegate, being an ex-convict, and he was removed by the District Co-operative Officer. He challenged his removal as illegal and without jurisdiction.

2. The defendants resisted the suit and contended that the court had no jurisdiction to entertain it in view of Rule 115 of the Co-operatives Societies Rules 1936. The aforesaid rule provides for compulsory arbitration in certain types of disputes which are enumerated in the rule. The learned Munsif held that the rule did not bar the jurisdiction of the court in cases where the plaintiff alleged that the impugned action was ultra vires and without jurisdiction. He decided the preliminary issue of the jurisdiction against the defendants who have

come here in revision.

3. I agree with the view of the trial court. Rule 115 runs thus:

"Any dispute touching the business of a registered society (i) between members or past members of a society or persons claiming through a member or past member, (ii) or between a member or a past member or persons so claiming and the society or its committee or any officer of the society, (iii) between the society or its committee and any officer of the society, and (iv) between two or more registered societies shall be decided either by Registrar or by arbitration and shall for that purpose be referred in writing to the Registrar."

4. This rule provides for arbitration in case of certain types of dispute. It presumes that the act or acts leading to the disputes were within jurisdiction. But this rule does not take away the jurisdiction of the civil court to determine whether any particular act of any authority was without jurisdiction. It is the function of the Civil Court to ensure that statutory authorities do not exceed their powers under the statute.

5. There is another reason for rejecting the argument that Rule 115 ousts the jurisdiction of the civil court. The Co-operative Societies Rules were framed by the Government in the exercise of its power u/s 43 of the Co-operative Societies Act. That section empowers the Government to make rules to carry out the purposes of the Act. But no rule making power can authorise the executive branch of the Government to take away the jurisdiction of the civil courts which is conferred under the Code of the Civil Procedure. Section 9 of the Code provides that "the courts shall (subject to the provision herein contained) have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred." The words "expressly or impliedly" mean barred by an Act of the Legislature. Therefore, a rule made by the executive is incompetent to deprive the civil court of its jurisdiction conferred by statute, unless every member of the Society has agreed in writing, at the time of admission, to abide by it and submit his disputes to arbitration. Hence Rule 115 of itself cannot be interpreted as ousting the jurisdiction of the civil court.

6. The application is dismissed.