

**(2014) 09 KAR CK 0009**

**In the Karnataka High Court**

**Case No : Writ Petition No. 37983/2014 (CS-RES)**

Saptharushi Souharda Credit Co-Operative Limited

APPELLANT

Vs

Lakshman

RESPONDENT

**Date of Decision : 10-09-2014**

**Acts Referred:**

Karnataka Co-operative Societies Act, 1959 — Section 107, 70  
Karnataka Souharda Sahakari Act, 1997 — Section 39, 39(1), 41, 41(3), 46

**Citation : (2015) 1 AKR 349 : (2014) ILR 6725 : (2014) 4 KCCR 3710**

**Hon'ble Judges : B.S. Patil, J**

**Bench : Single Bench**

**Advocate : K.R. Anantha Murthy, Advocate for the Appellant; G. Chandrasekharaiah, Advocate and S. Susheela, A.G.A, Advocate for the Respondent**

## **Judgement**

B.S. Patil, J.—Petitioner No. 1 Saptharushi Souharda Credit Cooperative Limited is a society duly registered under the provisions of the Karnataka Souharda Sahakari Act, 1997 (for short, "the Act"). Petitioner No. 2 is its President. They are challenging the order dated 25.06.2014 passed by the Karnataka Appellate Tribunal (for short, "the Tribunal") dismissing the appeal filed by the petitioners against the order dated 22.03.2014 passed by the Assistant Registrar of Co-operative Societies, South Zone, Bangalore Urban District, vide Annexure-G.

2. Respondent No. 1 raised a dispute before the Joint Registrar of Co-operative Societies, Bangalore Region, Bangalore, in Dispute No. JRB/MD/33/2012-13. This was transferred to the Assistant Registrar of Co-operative Societies, Bangalore South Zone, for disposal. The dispute pertains to removal of respondent No. 1 from the membership of the petitioner-society on the basis of certain allegations made against him.

3. During the pendency of the dispute before the Assistant Registrar, on an application filed by respondent No. 1, an interim order of stay has been granted on 29.09.2012 staying the resolution passed by the society. Petitioners filed an

application seeking to vacate the interim order. The Assistant Registrar has rejected the application filed seeking vacation of the interim order. Against this order on 22.03.2014, an appeal was filed by the petitioners before the Tribunal, in Appeal No. 151/2014. By the impugned order dated 25.06.2014, the Tribunal has dismissed the appeal as not maintainable. Aggrieved by the same, the present writ petition is filed.

4. I have heard the learned Counsel for the parties and perused the orders impugned in the writ petition.

5. It is contended by the learned Counsel for the petitioners that the provisions of the Act do not provide any remedy of filing a revision against an interim order passed, but, as per Section 46 of the Act, an appeal is provided against any decision or award made under Section 41 of the Act by the Assistant Registrar to the Tribunal. Therefore, petitioners had rightly presented an appeal before the Tribunal, as such an appeal against interim order was maintainable.

6. It is contended by the learned Counsel for the respondents that provisions of the Act do not provide for any appeal or revision against an interim order and therefore, the order passed by the Tribunal cannot be found fault with.

7. Having heard the learned Counsel for the parties, the only question that falls for consideration is,

whether an appeal under Section 46 of the Karnataka Souharda Sahakari Act, 1997 against interim order passed by the Assistant Registrar, is maintainable?

8. Chapter-VII of the Act pertains to settlement of disputes. Section 39 of the Act provides for reference of the dispute to the Registrar for decision. It lays down that if any dispute touching the constitution, management or the business of a co-operative or the Federal co-operative, other than a dispute relating to the election of the Board and the election of the office-bearers arises, then such dispute shall be referred for "decision" to the Registrar. This provision is *pari materia* with Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short, "1959 Act"). Section 41 of the Act deals with disposal of disputes. It states that the Registrar may, on receipt of the reference of a dispute under Section 39 of the Act, either decide the dispute himself, or transfer it for disposal to any other person invested with the powers or refer it for disposal to the arbitrator. Section 41(3) which is relevant for our purpose reads as under:

"(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice."

9. As per Section 41(3) of the Act, the Assistant Registrar has power to grant an interim order, keeping in mind the interest of justice, pending decision of the dispute. Section 46 of the Act deals with appeals to be filed. It reads as under:

"46. Appeal: An appeal against the decision or award made under Section 41, or

an order made under Section 37-A shall lie to the Karnataka Appellate Tribunal constituted under the Karnataka Appellate Tribunal Act, 1976 (Karnataka Act No. 10 of 1976) within sixty days from the date of the decision or award or order."

10. Section 46 of the Act while making provision for filing an appeal, states that "against decision or award made under Section 41, an appeal shall lie to the Tribunal". The question now is, whether the interim order passed falls within the ambit of the word "decision" or "award" referred to under Section 41.

11. It cannot apparently fall within the ambit of the expression "award", because an award, unless there is a provision made for an interim award will be an award to be passed after the final disposal of the case. Therefore, the question narrows down to the understanding of the expression "decision". In Section 39(1) of the Act, the word "decision" is referred to while stating that if any dispute touching the constitution, management or business of a co-operative or the Federal co-operative, other than a dispute relating to the election of the board and the election of the office-bearers as stated in sub-clause (a) to (d) of Section 39(1) of the Act were to arise, such dispute shall be referred to the Registrar for "decision". There is nothing to indicate that the term "decision" as used in Section 46 of the Act also encompasses an order or a decision made on an interlocutory application.

12. The term "decision" as used in Section 46 against which remedy of an appeal is provided to the Tribunal cannot be interpreted to include orders passed on interlocutory applications because such an interpretation tantamounts to adding something which is not found in the provision. The duty of the Court is to interpret the provision as it is and not to add something inferring some omission in the provision. If the legislature had intended to provide a remedy of appeal against the interim order, it would have certainly used the expression "interim order" in Section 46 of the Act, apart from and along with making reference to the expressions "decision" or "award" made under Section 41 of the Act, because interim order is also passed under Section 41(3) of the Act. When such a reference to the interim order is not made in Section 46 of the Act and only reference is made to "decision" or "award", then the intention of the legislature has to be gathered to the effect that no appeal has been provided against an interim order and only appeal is provided against a decision or award which is in the nature of final adjudication of the matter referred to the authority concerned. Any other interpretation would result in this Court adding to the existing provision something else than what has been stated. It is well established that Court shall not presume that legislature has omitted to add something and then embark upon adding something to fill in the alleged omission.

13. However, it is necessary to point out that under Section 107 of the Karnataka Co-operative Societies Act, 1959, a specific provision has been made providing remedy of revision against an interim order. Such a provision is not enacted under the Act, which means that no provision for filing a revision is provided under the Act. But, that by itself cannot enable the petitioners to contend that

Section 46 of the Act has to be read so as to include a provision for appeal against an interim order.

14. Hence, it has to be held that no appeal is provided against an interim order under Section 46 of the Act and the Tribunal was right and justified in dismissing the appeal. Therefore, this writ petition being devoid of merit is dismissed.