

(1976) 07 KAR CK 0020
In the Karnataka High Court

Shivaputragouda Chandregouda Patil	APPELLANT
Vs	
S.G. Hiremath and Another	RESPONDENT

Date of Decision : 08-07-1976

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 63, 64, 69, 70, 70 A
Karnataka State Co-operative Societies Rules, 1960 — Rule 31 (2)

Citation : AIR 1977 Kar 87 : (1976) 2 KarLJ 62

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : R.P. Hiremath, for the Appellant; M. Rama Bhat, for the Respondent

Judgement

1. The validity of an award made by the Arbitrator and affirmed by the Karnataka Co-operative Appellate Tribunal, is called into question in this petition under Article 227.

2. The petitioner was a Secretary of the Shiggaon Taluka Co-operative Agricultural Association, which is a society, registered under the Karnataka Co-operative Societies Act, 1959. The Society raised a dispute u/s 70 of the Act claiming Rupees 3,358-51 from the petitioner stating that he was liable to pay as per the accounts maintained by the Society. Before the Arbitrator, on behalf of the Society, its President and the Auditor were examined as P. Ws.1 and 2. The petitioner did not examine himself. Instead, he filed a statement describing the same as a statement made on oath. The Arbitrator on his own appraisal of the evidence, held that there was a shortage in cash balance and deficiency in stock worth Rs. 3,358-51, which the petitioner was liable to make good. He accordingly made an award, against which the petitioner preferred an appeal to the Cooperative Appellate Tribunal. The Tribunal has dismissed the appeal. Hence this petition under Article 227.

3. Out of the three contentions urged by Sri. R. P. Hiremath, learned counsel for the petitioner, the first related to the law of limitation. Counsel said that the case against the petitioner was governed by the rule of two years as provided by the

proviso to Rule 31 (2) of the Co-operative Societies Rule, 1960 and not by the rule of six years as stated by the Tribunal. In support of his contention, he relied upon a decision of this Court in *Timanna Vishveshwar Bhat v. Vijravalli Village Vyavasaya Sahakar Sangh Ltd* (1970) 1 Mys LJ 80. Therein, this Court was concerned with the scope of R. 31 (2) which provides a period of limitation of six years from the date of the cause of action. The case is not directly on the point with which we are now concerned. Counsel also relied upon another decision of this Court in *Sri Kaishnaraja Wadayar Co-operative Society Ltd. v. Ratnam Gopalaswamy Iyengar* (1971) 2 Mys LJ 455 : AIR 1972 Mys 117. This case was also not concerned with the scope of the proviso to Rule 31 (2). In that case, the Court considered only the validity of Rule 31 (2), and therefore not relevant to our problem.

The case which is directly on the point and against the contention urged for the petitioner is *D. H. Raghavendra Rao v. Bellary Town Co-operative Stores Ltd.* (1973) 1 Mys LJ 12. A Bench of this Court while dealing with the scope of the proviso to Rule 31 (2) has stated that the words "act or omission" in the first proviso to Rule 31 (2) would not include every act or omission giving rise to a dispute, but they have reference only to a civil wrong where a claim is based on tort or wrongful act. In the said decision, it was clearly held that the claim of the Society, unless it is based on tort or wrongful act, is governed by the rule of six years of limitation as provided by Rule 31 (2). The Tribunal has applied the ratio of *Raghavendra Rao's* case, and in my opinion, very correctly.

But all these decisions are only of academic importance today. After the introduction of Section 70A by Karnataka Amendment Act 39 of 1975, the period of limitation for all disputes except those relating to election, is six years from the date of the cause of action. The said Section is retrospective in nature and reads thus:

"70A. Period of, limitation- (1) No dispute u/s 70 shall be entertained unless it is referred to the Registrar within six years from the date of the cause of action:

Provided that a dispute relating to the election of a member, President, Vice-President, Managing Director, Honorary Secretary or other officer of the Committee shall be referred to the Registrar within thirty days from the date of declaration of the result of the election.

(2) xx xx xx xx

In view of the above provisions, I reject the first contention.

4. The second contention urged for the petitioner related to the legality of the enquiry held by the Arbitrator. Counsel submitted that the Arbitrator did not examine the petitioner, but proceeded on the wrong assumption that he had deposed before him. He also said that the Tribunal was also of the same erroneous view while dismissing the appeal.

5. It is true that the petitioner was not examined as a witness, but nobody could

be blamed for that. It was his own fault. He was in the position of a defendant. The Society as a plaintiff had no right to demand his examination. In fairness, the petitioner himself ought to have stepped into the witness box and subjected himself to cross-examination. But, he preferred to submit a written statement, in the preamble of which, he said that he was making that statement under oath. Quite naturally, the Arbitrator and the Tribunal has to consider that statement as a sworn statement of the petitioner. If it has been ignored, it would have been error calling for interference. The proceedings before the Arbitrator were not governed by the strict rule of evidence. The Arbitrator was bound to consider the statement of the parties, written or oral. I, therefore, reject the second contention also.

6. The last contention urged for the petitioner was that having regard to the facts of the case, the dispute raised ought not to have been entertained by the Arbitrator u/s 70, as the matter falls within the surcharge proceeding u/s 69 of the Act. In support of the contention, reliance was placed on a decision of this Court in *K. Rana v. Katapady Service Co-operative Society Ltd.* (W. P. No. 2155 of 1972 disposed of on 5-11-1974) (Kant). That was a case in which the audit report of a Society stated that the President of one Society has not handed over certain stock of goods to another Society at the time of the merger of those two Societies. The Arbitrator, to whom the dispute as to the liability of the President was referred u/s 70, held that the President was liable to make good the loss. The Award to that extent was challenged on the ground that the Arbitrator had no jurisdiction to adjudicate the dispute u/s 70, Accepting that contention, this Court observed that if a dispute against an officer of a Society relates to any deficiency caused in the assets of the Society either by breach of trust or wilful negligence or by misappropriation or fraudulently retaining any money or other property belonging to such Society, such dispute cannot be adjudicated u/s 70 of the Act, and it ought to be taken up for surcharge u/s 69 of the Act. The above case was explained in *Shivappa v. Kunimellalli Doddapramanada Pattin Vyavasaya Sahakari Sangha* (1975) 2 Kar LJ 118 in which it was observed that Section 69 of the Act would be attracted only where the loss caused to the Society or deficiency in the assets of the Society has been discovered in the course of an audit, enquiry, inspection or the winding of the Co-operative Society under Sections 63, 64 and 65 or Section 72 and it has no application if the deficiency complained of was discovered in the course of the official business.

In the instant case, the entire amount claimed from the petitioner was not on the basis of an audit report. One item, however, amounting to Rs. 842-70 towards short credit was based on the audit report of the years 1966 67 and 1967-68. The rest of the claim falls squarely within the scope of Section 70. Now the question is whether I would be justified in bifurcating the claim at this stage on the objection raised for the first time. It seems to me that such bifurcation is uncalled for and unjustified on the facts. Nothing prevented the petitioner to raise that objection either before the Arbitrator or before the Tribunal. He not only did not raise that objection, but practically admitted the claim of the Society.

Therefore, regard being had to the peculiar facts of this case and the conduct of the petitioner; I reject the third contention also.

7. In the result, rule is discharged, but in the circumstances, no costs.

8. Rule discharged.