
(2013) 08 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18460 of 2013

Sunny

APPELLANT

Vs

Assistant Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 258 : (2013) 3 KHC 779 : (2013) 4 KLT 51

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : G. Hariharan and H. Praveen, for the Appellant; Rinny Stephen Chamaparambil, Government Pleader, for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is the purchaser of an extent of 14 cents of land in Sy. No. 302 Pt. in Aranattukara Village, Thrissur Taluk, vide document No. 4491/2004 of Ayyanthole Sub Registry Office. When the petitioner tried to obtain a bank loan, he came to know that the property had been mortgaged to the respondent-Bank by his vendor as per mortgage deed No. 184/1997 of the same Sub Registry. His vendor was a member of the second respondent-Bank. He had paid off the entire loan and had got the title deeds returned. But, the mortgage deed had not been cancelled. Therefore the petitioner approached the 2nd respondent-Bank seeking the issue of a certificate evidencing closure of the loan. Such a certificate has also been issued to him. However, the mortgage deed has not been cancelled so far. Therefore, the petitioner has approached the 1st respondent by filing Exhibit P5 Arbitration O.P. under S. 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act" for short). His case is not being numbered, on the ground that the dispute in the present case would not come within the scope of S. 69 of the Act. The petitioner seeks the issue of appropriate directions to number Exhibit P5 and to consider the matter afresh. I have heard the learned Government Pleader, who appears for the 1st respondent also.

2. Section 69(1)(b) of the Act is reproduced hereunder, for convenience of

reference.

Section 69(1).- Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) xxx xxx xxx

(b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society;

(c) to (h) xxx xxx xxx

such dispute shall be referred to a Co-operative Arbitration Court constituted u/s 70A, in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

In the present case, the petitioner is a person who is claiming through a former member who was granted a loan by the second respondent-Bank. He has paid off the entire amount and has discharged his liability. On such discharge of the liability, it was incumbent on the second respondent to have cancelled the mortgage deed that was executed by the member of the Society, for the purpose of securing the amount that he had availed as loan from the Society. However, the omission to do so has resulted in the present dispute between the petitioner and the second respondent-Bank. Therefore, it can be seen that the petitioner is claiming through a past member of the Bank who had availed a loan transaction from the Bank. For the above reason, the subject matter of the present dispute also is one coming within the scope of the provisions of S. 69 of the Act.

In view of the above, this Writ Petition is allowed. The 1st respondent is directed to number Exhibit P5 Arbitration O.P., to issue notice to the respondents therein and to consider the matter on the merits. The Arbitration O.P. shall be considered and disposed of in accordance with law as expeditiously as possible and at any rate within a period of six weeks of the date of production of a copy of this judgment.