

(1969) 04 MAD CK 0012
In the Madras High Court

T.A. Krishnaveni and Another

APPELLANT

Vs

R. Palaniappan Poosari and Others

RESPONDENT

Date of Decision : 23-04-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (1970) 1 MLJ 280

Hon'ble Judges : A. Alagiriswami, J

Bench : Single Bench

Judgement

A. Alagiriswami, J.—This writ petition is concerned with the effect and validity of Sub-rule (7) of Rule 6) of the Madras Co-operative

Societies Rules, 1963. u/s 91 of the Madras Co-operative Societies Act, 1961, the Registrar or any person subordinate to him empowered by the

Registrar in that behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under the Act, recover the

various sums specified in Clauses (a) to (f) of that section, together with the interest, if any, due on such sum and the costs of process by the

attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order, has been

obtained or passed. u/s 119(2)(p)(iv) the Government have power to make rules for the enforcement of the decisions or awards in such

proceedings and under Clause (ff) to prescribe the procedure for the attachment and sale of property u/s 91 of the Act. Rules have been made in

pursuance of these powers and they are found in Chapter X of the Madras Co-operative Societies Rules, (1963), Rules 59 to 83 of those Rules.

Rule 69 provides for application to set aside a sale on ground of irregularity or fraud, and corresponds to Order 21, Rule 90 of the Code of Civil

Procedure. u/s 96 of the Act, any person aggrieved by any decision passed or order made u/s 91, may appeal to the Tribunal constituted u/s 95 of

the Act, which in this case is the District Judge of the district concerned.

2. In this case the application made by the petitioner under Rule 69 was dismissed. The petitioner then filed a revision petition before the Registrar,

apparently under Sub-rule (7) of Rule 69. The Registrar rejected it, holding that he had no revisional jurisdiction in the matter. Thereupon, the

petitioner filed an appeal to the Tribunal u/s 96 and the Tribunal has rejected it holding that it had no jurisdiction to entertain an appeal in the

matter. This writ petition is filed to quash the order of the Tribunal.

3. It appears to me that the Tribunal has jurisdiction to entertain the appeal and the Registrar does not have the power to revise u/s 97 of the Act.

The reference in Section 91 of the recovery being "subject to the rules" does not mean that any Rules made under the provisions of Section 119

already referred to, can have the effect of whittling down the powers conferred on the Tribunal u/s 96. Section 96 does not say that the power to

entertain appeals against the decisions or orders made u/s 91 are subject to any Rules made under any of the provisions of the Act. Indeed, even if

any rule were permitted to be made u/s 96, they can only relate to the procedure with regard to the entertaining and hearing of appeals and cannot

take away the power of appeal given under that section in respect of matters covered by Section 91. Similarly rules contemplated under (the)

section can only relate to the procedure of recovery and cannot relate to appeals which are provided for u/s 96. All rules made under an Act

should be consistent with the provisions of the Act and advantage cannot be taken of the wide language in which the rule-making power is worded,

to contend that such rules can be made even if they are inconsistent with any part of the Act. All the sections of an Act as well as the Rules made

under the Act must be read together and interpreted consistently with each other and if this principle of interpretation is kept in mind, there can be

no room for the argument that a rule can be made which takes away the power conferred by a section of the Act. There have been cases where it

has been held that Rules can be made conferring powers on certain Bodies or Tribunals, on the ground that they are intended to carry out the

purposes of the Act even though no specific rule-making power permitting such

rules being made are found in the Act. But that is different from

saying that a rule can be made which takes away the power granted under a section of the Act.

4. Under Order 21 of the Code of Civil Procedure, only orders passed under certain of the rules in that Order are made appealable. The result of

my conclusion in this case would be that all orders made under Chapter X of the Madras Co-operative Societies Rules, 1963, would be subject to

appeal u/s 96 of the Act. That no doubt, might throw a heavy burden on the Tribunal, but that cannot be helped. It is a matter for the Legislature to

deal with. The reference to Section 97 in Sub-rule (7) of Rule 69, seems to have been merely copied from the old Rules made under the Madras

Co-operative Societies Act, 1932, under Rule 22 (10) (V-a) of which an order made under that sub-rule was, subject only to the provisions of

Section 57 of that Act, final. Section 97 of the present Act corresponds to Section 57 of the old Act. But, under the old Act there was no provision

for an appeal to the Tribunal. Without bestowing sufficient attention to this aspect, the old Rule 22 (10) (v-a) has been copied as the present Rule

69 (7), merely substituting reference to Section 97 of the present Act in place of the reference to Section 57 of the old Act. I am satisfied that Rule

69 (7) should be deemed to be held to be beyond the rule-making power conferred on the Government under the provisions of Section 119 of the

Act already referred to. It should, therefore, be held that the powers of the Tribunal u/s 96 of the Act have not been and cannot be whittled down

in any way. The result of this conclusion is that the Tribunal has got to hear the appeal. Of course, it is open to the respondents to raise whatever

relevant contentions are available to them regarding the merits of the appeal, including the question whether the appeal is in time. The decision in

this writ petition is only that the Tribunal has jurisdiction to hear the appeal and has therefore a duty to hear it. Ordered accordingly. No order as to

costs.

5. I must thank Mr. Ramanujam, the learned Government Pleader, who was not interested in the matter directly but helped the Court with his

arguments as also Mr. R.G. Rajan, who argued the case fairly. It goes without saying that due credit should be given to Mr. Palaniswami who

argued the case for the petitioner with considerable ability.