

(1989) 11 KL CK 0021

In the High Court Of Kerala

Case No : Original Petition No. 5542 of 1989-I

T.D. Kavi Rajan

APPELLANT

Vs

Kerala Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 15-11-1989

Acts Referred:

Citation : (1991) 72 CompCas 498

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant;

Final Decision : Dismissed

Judgement

Malimath, C.J.—This case has been referred by Justice Chettur Sankaran Nair to the Division Bench at the stage of admission in view of the contention of learned counsel for the petitioner that there is an apparent conflict between two Division Bench decisions of this court in *Thilakan v. M. C. V. Co-operative Society Ltd.* [1978] KLT 256 and *Deputy Registrar of Co-operative Societies v. Velayudha Kurup* [1979] KLT 24, that is, the decision in *Writ Appeal No. 312 of 1976* rendered by V. P. Gopalan Nambiyar C. J. and M. P. Menon J. on January 31, 1979. The Kerala Co-operative Tribunal has taken the view that the provisions of the Limitation Act are not applicable to arbitration proceedings u/s 69 of the Kerala Co-operative Societies Act, 1969. That is precisely the view taken by the Division Bench of this court consisting of Balakrishna Eradi J. (as he then was) and Narendran J. in *Thilakan v. M. C. V. Co-operative Society Ltd.* [1978] KLT 256 decided on December 21, 1977. It has been laid down in the said decision that the Assistant Registrar not being a court governed by the Code of Civil Procedure, the provisions of the Limitation Act do not have application to the adjudication proceedings by him u/s 69 of the Co-operative Societies Act. The case relied on by learned counsel for the petitioner, namely, *Writ Appeal No. 312 of 1976* is the one decided by V. P. Gopalan Nambiyar C. J. and M. P. Menon J. on January 31, 1979. In that case, what the court was required to examine was in

regard to the application for impleading and the Bench observed that even assuming that there is power to implead, the same should be done within the time allowed by the Limitation Act. It is this decision that is relied upon by learned counsel for the petitioner in support of his plea that the authority functioning u/s 69 of the Kerala Co-operative Societies Act is a court and that the provisions of the Limitation Act, therefore, get attracted to those proceedings. Hence, it was submitted that there is an apparent conflict between the two Division Bench rulings which requires to be examined and settled by a larger Bench. But we find that this question is no more *res Integra* as the same had come up before this very Division Bench in O. P. No. 1678 of 1980, decided on July 31, 1980. The very same decision in Writ Appeal No. 312 of 1976 was pressed into service in support of the contention that the authority functioning u/s 69 of the Kerala Co-operative Societies Act is a court and that, therefore, the provisions of the Limitation Act are applicable. Dealing with a similar contention, this is what we have observed :

"It has become unnecessary for us to resolve this conflict as the conflict stands resolved by the pronouncement of the Supreme Court in the decision *Sakuru Vs. Tanaji*, . Dealing with this aspect of the matter, this is what the Supreme Court said in paragraph 3 of the judgment :

"After hearing both sides, we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in *K. Venkaiah and Others Vs. K. Venkateswara Rao and Another*, , is perfectly correct and sound. It is well-settled by the decisions of this court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, *Nityanand M. Joshi v. Life Insurance Corporation of India* [1970] 2 SCR 396 and *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, that the provisions of the Limitation Act, 1963, apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Code of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a court, the Limitation Act as such had no applicability to the proceedings before him. But even in such a situation, the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings . . . "

Following the above decision, we have to hold that the Co-operative Tribunal is not a court and that, therefore, the provisions of the Limitation Act are not applicable. The pronouncement of this court to the contrary in Writ Appeal No. 312 of 1976 cannot, therefore, be regarded as good law."

2. It is thus quite clear that there is already a pronouncement by this court to

the effect that the decision rendered by the Division Bench in Writ Appeal No. 312 of 1976 stands overruled by the principle laid down by the Supreme Court in *Sakuru Vs. Tanaji*, , and, therefore, the said decision cannot be regarded as laying down good law. It is, therefore, clear that what holds the field is the earlier decision of this court in *Thilakan v. M. C. V. Cooperative Society Ltd.* [1978] KLT 256 as the principle laid down in the said decision stands affirmed by the Supreme Court in *Sakuru Vs. Tanaji*, . Hence the law stands clearly settled that the Limitation Act does not apply to proceedings under the Kerala Co-operative Societies Act. As that is the only question that arises for consideration in this case, for the reasons stated above, this writ petition is dismissed.