

(2009) 08 KAR CK 0074

In the Karnataka High Court

Case No : Regular First Appeal No. 445 of 2001

The Karnataka Handloom Devlpt. Corpn. Ltd.

APPELLANT

Vs

Mandya Dist. Central Co-op. Bank Ltd.

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 7 Rule 11
Karnataka Co-operative Societies Act, 1959 — Section 125

Citation : (2009) ILR (Kar) 3838 : (2010) 1 KCCR 656

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Ganesh V. Shivaswamy, for S. Shivaswamy, for the Appellant; R.S. Ravi, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The unsuccessful plaintiff has filed this appeal challenging the judgment and decree passed by the XXX Addl. City Civil Judge, Bangalore City, dated 13.2.2001 in O.S. No. 7367/90. For the sake of convenience, the parties would be referred to as per their status before the court: below.

2. The appellant-plaintiff is a company registered under the provisions of Companies Act and it is fully owned by the State of Karnataka. According to the plaint averments, agency was granted to one B.C. Nagaraju of Machiavelli in Mandya District, for the promotion and sale of handloom goods manufactured by the appellant-company under the agreement dated 3.4.1986. In terms of the agreement, the Nagaraj was required to furnish the batik guarantee for a sum of Rs. 2,00,000/-. Accordingly, the respondent-Mandya District Co-operative Bank has furnished the bank guarantee on behalf of Nagaraj on 25.10.1986 and the bank guarantee remained in force till 30.9.1987. Since Nagaraju did not maintain the accounts properly, on account of breach of the agreement, the appellant-company intended to invoke the bank guarantee. The same was not. honoured on the ground that the bank guarantee had expired on 30.9.1987. Therefore, a

suit was instituted for the recovery of Rs. 3,48,903/- which is inclusive of the interest.

3. The respondent-defendant bank contested the case on various grounds. One of the grounds urged by the defendant was that, as required u/s 125 of the Karnataka State Co-operative Societies Act, the appellant had not issued legal notice before institution of the suit. For want of statutory notice, the suit was not maintainable. Based on the above pleadings, the issues were framed. The trial court had framed an additional issue as hereunder:

Whether the suit is bad for non-issue of notice u/s 125 of the Karnataka Co-operative Societies Act?

4. On behalf of the plaintiff one witness was examined as PW1 and it relied upon Exs. P-I to P-18. On behalf of the defendant, one witness has been examined as DW1. The trial court considering the additional issue held that the suit of the plaintiff has to be rejected under Order 7 Rule 11 of CPC for want of statutory notice u/s 125 of the Karnataka Cooperative Societies Act. Therefore, the present, appeal is filed challenging the legality and correctness of the decree.

5. We have heard the learned Counsel for the parties. The main contention of Sri. Ganesh, learned Counsel for the appellant is that the trial court has failed to consider the effect of Ex.P-11 dated 22.6.1990 and the same could have been treated as a notice as required u/s 125 of the said Act.

6. He further contends that along with appeal memo, an application under Order 41 Rule 27 has been filed producing a copy of the notice said to have been issued u/s 125 of the said Act dated 21.11.1990. therefore, the same has to be treated as a notice u/s 125 of the Act. In the circumstances, he requests the court to allow the appeal and remand the matter to the trial court to consider the application filed under Order 41 Rule 27 of CPC.

7. Per contra. Sri. Ravi learned Counsel for the respondent contends that Ex.P-11 cannot be treated as notice u/s 125 of the Act and that the trial court has rightly rejected the contention urged by the learned Counsel for the appellant.

8. So far as the application tiled under Order 41 Rule 27 of CPC is concerned, he contends that there is no necessity for this Court to remand the matter to the trial court to consider the additional document produced by the trial court since the said document under any stretch of imagination cannot be considered as a notice as contemplated u/s 125 of the Act. He alternatively contends that even if the said notice is construed as notice u/s 125 of the said Act for the sake of argument, then also the suit of the appellant, has to be dismissed since the suit was filed before the expiry of the notice dated 21.11.90 which is produced as an additional document in this appeal According to him, the suit, was instituted by the appellant on 20.12.1990 and the said document is dated 21.11.1990. Therefore, he contends that there is no necessity to remand the matter to the trial court.

9. Having heard the counsel for the parties, the only point to be considered by us in this appeal is whether the trial court is justified in rejecting the suit for want of statutory notice u/s 125 of the Karnataka Cooperative Societies Act and whether the application filed under Order 41 Rule 27 has to be allowed by this Court.

10. As rightly pointed out by the learned Counsel for both the parties, in order to find out the legality and correctness of the judgment passed by the trial court, we are required to consider only Ex. P-11 dated 22.6.1990 and the document: which is now produced along with the appeal memo dated 21.11.1990. Before considering these two documents, it would be useful for us to refer to the provision of Section 125 of the Karnataka Co-operative Societies Act which reads as hereunder:

125. Notice necessary in suits: -. No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

11. From a reading of the said provision and the case of the plaintiff and from the copy of the order, it is clear to us that the dispute is with regard to touching of business of the respondent-society. Therefore, a notice u/s 125 of the said Act is a mandatory before institution of the suit. It is not contended by the learned Counsel for the appellant that no such notice was required to be issued by the appellant in order to maintain the suit. Ex.P-11 is a letter addressed by the appellant to the Managing Director of the respondent wherein the respondent-defendant is called upon to pay a sum of Rs. 2,00,000/- towards the bank guarantee issued on behalf of B.C. Nagaraj of on before 30.6.1990. It further reads that if there is no response before 30.6.1990, the appellant could bring it; to the notice of the Department of Co-operation in regard to non-honouring the bank guarantee. The copy of the same is said to have been addressed to the Registrar of Cooperative Societies in Karnataka, Bangalore, but the copy of the acknowledgement for having sent to the Registrar of Cooperative Societies in Bangalore is not produced before the trial court.

12. In view of the contentions in Ex.P-11, no court can hold that it is a statutory notice as required to be issued u/s 125 of Karnataka Co-operative Societies Act since the appellant has only demanded for the payment of Rs. 2,00,000/- from the defendant and it further reads that failing compliance of demand, it would be brought to the notice of the Registrar of Cooperative Societies. Therefore, it is only an intimation to the Registrar of Co-operative Societies as the demand made by the appellant. Even the copy of the acknowledgement for having sent such notice to the Registrar of Co-operative Societies is not placed before the court below, in the circumstances, Ex.P-11 cannot be considered as the statutory notice as required under the Karnataka Co-operative Societies Act. Accordingly,

we are of the opinion that the learned trial judge is justified in rejecting the complaint under Order 7 Rule 11 of the CPC.

13. Now coming to the question of the additional document produced before us, the same is dated 21.11.1990 which is a carbon copy of the letter to whom this letter is addressed is not known, since the name and address of the addressee is not there. However, on the second page of the said document, it is marked to the Registrar of Co-operative Societies and the same is said to have been acknowledged by the Registrar of Cooperative Societies on 22.11.1990 and the reading of the said document would only reveal that it is a request letter to the addressee as well as to whom the copies are marked instructing the defendant-bank to pay the amount covered under the bank guarantee. Therefore, by looking into the entire document, we cannot make out it as a notice as required u/s 125 of the Act. Since notice u/s 125 of the Act has to be issued to the Registrar of Co-operative Societies giving the details of cause of action and the claim of him along with the copy of the plaint containing a statement of such notice and he has to wait for a period of two months. In the instant case, the document now produced along with the application under Order 41 Rule 27 of CPC does not contain the details which are required to be stated in terms of Section 125 of the Act and moreover, the suit is instituted on 20.12.1990. bin; the copy of the document is served on the Registrar of Co-operative Societies on 22.11.1990, Therefore, the suit is instituted within a month from delivering of such document to the Registrar of Co-operative Societies in Karnataka. Under any circumstances, the documents produced under Order 41 Rule 27 of CPC does not satisfy the requirement of law. When it does not satisfy the requirement, of law, we are of the view that there is no necessity for us to allow the application filed under Order 41 Rule 27 of CPC and remand the matter to the trial court to give its finding on the additional documents under the circumstances, the point is answered against the appellant. In the result, the appeal is dismissed.