

(2013) 01 MAD CK 0221

In the Madras High Court

Case No : C.R.P. (PD) No. 3682 of 2012 and M.P. No. 1 of 2012

The Managing Director and Special Officer

APPELLANT

Vs

Muthuselvi

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2013) 5 CTC 877

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : Aravind Pandian, A.A.G. for L.P. Shanmuga Sundaram, for the Appellant; A.V. Arun, for the Respondent

Judgement

R.S. Ramanathan, J.—Defendant is the Revision Petitioner. The Respondent/Plaintiff filed the Suit for an order of injunction restraining the Revision Petitioner from selling or taking any effort to sell the products lying at its his office for a period of six months and in that Suit, the Revision Petitioner filed application in I.A. No. 1231 of 2012 to reject the Plaint stating that City Civil Court has no jurisdiction to entertain the Suit having regard to the provisions of Section 156 of the Tamil Nadu Co-operative Societies Act and therefore, the Suit filed by the Respondent/Plaintiff has to be rejected. That Application was dismissed and aggrieved by the same, this Revision is filed.

2. Mr. Aravind Pandian, learned Additional Advocate General appearing for the Revision Petitioner submitted that the Revision Petitioner is a Cooperative Society and the Respondent/Plaintiff is a member of the Revision Petitioner society and even according to the Plaint, the Revision Petitioner serves as a facilitator for easy interaction between the manufacturers and merchants and the Respondent delivered the finished products at the office of the Revision Petitioner as per the customary practice and the Revision Petitioner initially gave 70% of the value of starch and sago as advance and the same will be repaid by the manufacturers with interest after the goods were sold and as a security, the manufacturers have to deposit the starch and sago with the Revision Petitioner and the goods shall be

sold within a period of one year from the date of receipt of advance amount or the advance amount has to be returned and in the event of default, the Management viz., the Revision Petitioner can sell the finished products as per Article 40 of the Bye-laws and the Respondent deposited 2571 starch and sago bags on various dates between 12.4.2011 & 30.6.2011 & on 5.5.2012, a letter was issued to the Respondent reminding the Respondent about Rule 40 of the Bye-laws as stated above and on 7.6.2012, the Respondent sent a reply stating that she would repay the advance amount and requested three months time to sell the products but, the Revision Petitioner did not concede the request and threatened to sell the products. It is further stated that on 9.6.2012, the Respondent returned the advance amount for six lots which is around Rs. 15,00,000/- and even thereafter, the Revision Petitioner sold the lots for a lower price and in that circumstances, the Suit was filed by the Respondent for injunction restraining the Revision Petitioner from selling or taking any efforts to sell the products lying at the Revision Petitioner's office and as per Section 156 of the Tamil Nadu Co-operative Societies Act, the Civil Court's jurisdiction is barred and a reading of Section 156, also makes it clear that even an action taken by an officer authorised or empowered by the Registrar cannot be called in question in any Court and no injunction shall be granted and therefore, the Respondent cannot file a Suit for injunction restraining the Respondent from selling the commodity entrusted by the Respondent when the Respondent has committed default in repaying the advance amount and as per Rule 40 of the Bye-law, the Revision Petitioner is entitled to sell the finished products and hence, the Suit is not maintainable. The learned Senior Counsel relied upon the judgments reported in *The Harur Co-operative Primary Agricultural and Rural Development Bank Ltd. Vs. Agalya and Others*, , *A. Sarangan Vs. S. Vadivelu Mudaliar* (Since deceased *Nammalwarpet Co-op. Housing Society Ltd. and Others*) and *Others*, , *B. Mathulingam and Others Vs. The Deputy Registrar, Co-operative Societies and The Special Officer, The Nilgiris District Plantation Workers Co-operative Thrift and Credit Society Ltd.* , and *M.M.V. Alagappan and M.M.V. Narayanan Vs. Karaikudi Co-operative House Building Society Ltd. and B. Azhacusundaram* represented by his Power of Attorney Agent *B. Govindarajan* , in support of his contention. In short, the learned Senior Counsel appearing for the Revision Petitioner submitted that the jurisdiction of Civil Court is barred not only in respect of award passed and even in respect of action taken by the officers on behalf of the Registrar under the provisions of the Act, the jurisdiction of the Civil Court is barred and those actions cannot be challenged in a Civil Court and hence, the Court below has committed a serious error in dismissing the Application filed by the Revision Petitioner.

3. On the other hand the learned Counsel for the Respondent submitted that the Civil Court has got jurisdiction to entertain any dispute or Suit unless the jurisdiction of the Civil Court is expressly excluded and Section 156 of the Tamil Nadu Co-operative Societies Act cannot be applied to the facts of the case and the act of the Revision Petitioner in selling the products of the Respondent is a

breach of trust and the Respondent has no remedy if the Revision Petitioner sells the entire products and therefore, the Civil Court has got jurisdiction to grant injunction and relied upon the judgment reported in Margret Almeida and Others Vs. The Bombay Catholic Co-operative Housing Society Ltd. and Others etc. etc., . He further submitted that even as per the Bye-laws of the Revision Petitioner, as per Clause 113, all disputes are subject to the jurisdiction of the Court at Salem and therefore, if the Civil Court has no jurisdiction to entertain any dispute between the parties, members of the society, there is no need to incorporate Clause 113 conferring the jurisdiction on the Courts at Salem and considering the dispute, no measure is provided under the Co-operative Societies Act to decide that issue and only Civil Court can decide that issue and hence, the order of the Court below need not be interfered with.

4. To appreciate the contention of both the parties, we will have to see the Plaint allegations and also the provision of Section 156 of the Tamil Nadu Co-operative Societies Act. As stated supra, the Respondent is a member of the Revision Petitioner society and the Respondent and other members used to get 70% value of the starch and sago as advance after delivering the finished products at the office of the Revision Petitioner and the members are expected to sell the finished products deposited with the Revision Petitioner within a period of one year or to return the advance amount received by them, failing which the Society is entitled to sell the finished products as per Article 40 of the Bye-laws. In this case, the finished products were deposited between 12.4.2011 & 30.6.2011 and within one year period, the finished products were not taken back by the Respondent and therefore, the Revision Petitioner issued notice on 5.5.2012 calling upon the Respondent to comply with the Bye-laws by removing the goods within a period of one year or to return the advance amount failing which the finished goods will be sold by the Society. Admittedly, the entire advance amount was not repaid by the Respondent and according to the Respondent, on 9.6.2012, she returned the advance amount for 6 lots which approximately comes to Rs. 15,00,000/- and as the Respondent attempted to sell the remaining lots for non-repayment of advance amount, the Suit was filed for injunction. Therefore, the transaction as stated in the Plaint is only in the nature of bailor and bailee and the articles were entrusted with the Revision Petitioner with the intention that as soon as the Respondent/Plaintiff repays the advance received, the articles will be delivered back and a further condition is attached that the amount shall be repaid within a period of one year and the articles should be sold within a period of one year.

5. The question now arises for consideration is whether such a transaction can be brought within the provisions of Tamil Nadu Co-operative Societies Act and whether issuance of notice by the Revision Petitioner calling upon the Respondent to repay the advance amount or to sell the articles within a period of one year failing which the articles will be sold by the Revision Petitioner by invoking Article 40 of the Bye-laws and subsequent sale of articles by the Revision Petitioner can be brought under the phrase "action by the officer of the

Society" within the meaning of Section 156 of the Cooperative Societies Act.

6. Section 156 of the Tamil Nadu Co-operative Societies Act reads as follows:

Bar of jurisdiction of Civil Courts -- Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an Arbitrator, a Liquidator, the Registrar or an Officer Authorised or empowered by him, the Tribunal or the Government or any Officer subordinate to them, shall be liable to be called in question in any Court and no injunction shall be granted by any Court respect of anything which is done or intended to be done by or under this Act.

7. Therefore, as per Section 156, no Order or Award passed, decision or action taken or direction issued under this Act by an Arbitrator, Liquidator, Registrar or an Officer Authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court. Therefore, the emphasis is no order, award passed, decision or action taken or direction issued under this Act, shall be called in question before any Civil Court. Admittedly, no order or award was passed and no decision was taken and it is the contention of the learned Senior Counsel appearing for the Revision Petitioner that action has been taken by the officer of the Society in selling the finished products deposited with them and therefore, the said action cannot be challenged before the Civil Court of law. According to me, unless the action taken by the officer of the Society can be said to be an action taken under the provisions of the Act, the Civil Court's jurisdiction is not barred.

8. A reading of the aforesaid provision of Tamil Nadu Co-operative Societies Act will make it clear that the action taken by the Society in this case cannot be said to be an action taken under the provisions of Tamil Nadu Co-operative Societies Act. Chapter VIII deals with paid officers and servants of Society and as per Section 73 of the Act, a registered Society may appoint such paid officers and servants as are necessary for the efficient functioning of the Society. Section 74, deals with constitution of recruitment bureau by the Government and Section 76, deals with suspension of paid officer or servant of the Society. Section 77, deals with removal of services. Chapter IX deals with audit, enquiry, inspection, investigation surcharge and supersession. Chapter X deals with settlement of disputes and a reading of Section 90, also makes it clear that the present dispute that arises between the Respondent and the Revision Petitioner cannot be brought under the term "dispute" as per Section 90. As per Section 90, if any dispute touching the constitution of the board or the management of the business of a registered Society arises among the members and the Society, the Board or any officer, agent or servant of the Society, such dispute shall be referred to the Registrar for decision.

9. The cause of action stated in the Suit does not relate to the constitution of the Board or the Management of business of the Society and the act complained of in the Suit is only in the nature of bailor and bailee and it cannot be brought within

the caption "business of the registered Society".

10. Chapter XV deals with winding up and cancellation of registration of registered Society. Chapter XVI deals with execution of decrees, decisions and awards and orders and Chapter XVII deals with Appeals, Revision and Review. Therefore, unless the Society does any act, as stated above, the same cannot be claimed to be an action taken under this Act and having regard to the fact as stated in the Plaint, the action of the Society in selling the products cannot be said to be an action taken under the provisions of the Act and hence, in my opinion, Section 156 of the Co-operative Societies Act cannot be brought into an operation to exclude the jurisdiction of the Civil Court.

11. In the judgment reported in *The Harur Co-operative Primary Agricultural and Rural Development Bank Ltd. Vs. Agalya and Others*, , the Suit was filed for declaration of title of the Plaintiff to the Suit property and for injunction restraining the Society from selling the Suit properties pursuant to the Revenue Recovery proceedings taken by the society. In that case, admittedly, Defendants 1 to 3 borrowed amount and did not repay the same and therefore, the action was taken by the bank to recover the same and that was sought to be enjoined by filing Suit for injunction. In that context, this Court has held that action was taken under the provisions of Section 120 of the Tamil Nadu Co-operative Societies Act and to recover the money and therefore, the Suit is barred u/s 156 of the Co-operative Societies Act.

12. In the decision reported in *A. Sarangan Vs. S. Vadivelu Mudaliar* (Since deceased Nammalwarpet Co-op. Housing Society Ltd. and Others) and Others, , the Plaintiff in the Suit claimed right on the Sale Deed executed by the Co-operative Society in favour of his vendors and the specific case of the vendor of the Plaintiff was that the Society violated the terms and conditions of the sale and therefore, this Court held that a dispute has arisen as per Section 90, and therefore, the Civil Court has no jurisdiction.

13. In the judgment reported in *M.M.V. Alagappan and M.M.V. Narayanan Vs. Karaikudi Co-operative House Building Society Ltd. and B. Azhacusundaram* represented by his Power of Attorney Agent B. Govindarajan , Housing Board plot was allotted by the Society in favour of one person and he sold the same in favour of the Plaintiff under registered Sale Deed and thereafter, the co-operative Society cancelled the allotment in favour of the original allottee stating that he has suppressed certain facts and after cancellation, the Society sold the plot in favour of the Second Defendant and in that context, the Plaintiff filed the Suit for declaration and injunction. Having regard to the facts of that case, this Court held that the Civil Court has no jurisdiction as effective remedy is available u/s 156 of the Co-operative Societies Act and the dispute has arisen relating to sale of plot. Therefore, having regard to the facts of this case, this Court has held that Civil Court has no jurisdiction to entertain the dispute.

14. In the judgment reported in *Margret Almeida and Others Vs. The Bombay*

Catholic Co-operative Housing Society Ltd. and Others etc. etc., , the Honourable Supreme Court dealt with a similar question and held that the subject matter of the Suit is not covered by Section 91 (Section 90 of the Tamil Nadu Cooperative Societies Act). An enquiry into the question whether a private dispute can be enumerated u/s 91 of the Tamil Nadu Co-operative Societies Act was raised. In that case, the property was originally owned by the Society and the tenant members of the society initiated proceedings and during the pendency of the said proceedings, a resolution came to be passed by the General Body of Society to sell the land in favour of some Respondents and aggrieved by the resolution two Suits were filed in the Bombay High Court and in those Suits, preliminary objection was raised regarding the maintainability in view of Sections 91 & 163 of the Maharashtra Co-operative Societies Act, 1960 and the same was allowed by the Division Bench of the Bombay High Court and the Honourable Supreme Court reversed the judgment of the Division Bench holding that the dispute cannot be brought within the ambit of Section 90 of the Tamil Nadu Cooperative Societies Act. In my opinion also, having regard to the facts stated in the Complaint, it cannot be stated that the transaction between the parties can be brought within the provisions of Tamil Nadu Co-operative Societies Act and unless action taken by the Revision Petitioner is brought within the provisions of the Act, Civil Court's jurisdiction cannot be excluded. Hence, I do not find any merit in the submission of the learned Counsel and I do not find any infirmity in the Order of the Court below.

In the result, the Civil Revision Petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.