
(2013) 02 KL CK 0096
In the High Court Of Kerala
Case No : S.A. No. 765 of 1998

The Managing Director

APPELLANT

Vs

N. Jayakumar

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 100, 2(i), 51(c), 69, 69(1)(f)

Citation : (2013) 2 ILR (Ker) 650 : (2013) 2 KLJ 378

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : B.S. Krishnan and K. Anand, for the Appellant;

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The defendant Co-operative Society in a suit for money is the appellant. The plaintiff who was a contractor engaged in supply of milk to the defendant Society filed the suit for return of Rs. 5,000/- which was deposited by him as a security. The defendant filed written statement admitting the fact that the plaintiff was a contractor who had undertaken to supply milk and that a sum of Rs. 5,000/- was deposited as a security. But the defendant contended that for short supply of milk they (the Society) had sustained a loss of Rs. 4021.75 and so, after adjusting that amount Rs. 979/- only was due to the plaintiff. It was further contended that since the defendant is a Co-operative Society, the dispute involved in this case is one coming under Sec. 69 of the Co-operative Societies Act and so, in view of the bar under Sec. 100 of that Act, the suit is not maintainable. The court below decreed the suit as prayed for. The appellate court dismissed the appeal filed by the defendant.

2. It was contended by the plaintiff before the courts below that the controversy involved in this case is not a matter touching the business, constitution or establishment of the Society but it is purely an obligation of the defendant to pay back the amount due as per a contractual obligation which has nothing to do with the business of the Society. In other words, it does not touch the business of the

Society, it is argued. The contention that was advanced before the courts below was that it has nothing to do with the internal management or business of the Society but it is a case where the Society on the one hand entered into a contract with the plaintiff herein and the liability arose out of that contract. The rights and liabilities which arose out of that contract has to be worked out through the civil court and since it is not something connected with or touching the business of the Society it cannot be treated as a dispute falling within the definition of Sec. 2(i) of the Act so as to contend that it is something to be decided by the Co-operative Arbitration Court and if that be so, the bar under Sec. 100 of the Act also would not be attracted.

3. It is submitted by the learned counsel for the appellant that here it is Sec. 69(1)(f) of the Act that is applicable. Sec. 69(1)(f) of the Act reads:-

Notwithstanding anything contained in any law for the time being in force, if a dispute arises, -

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(f) between the society and a person, other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person

(Other sub clauses which are unnecessary for the purpose of this case are omitted). Sub section (2) reads as follows:-

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Here the sub clauses referred to above have no application since it is not a claim made by the society for any debt or demand due to it from a member of the society nor is it a claim by a surety against the principal debtor. It is also not a dispute in connection with election.

4. The definition of dispute occurring in Sec. 2(i) of the Act can also be referred to, which says:-

"dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and

includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

5. The substantial question of law framed in this appeal are:

(i) Are not the courts below wrong in holding that the dispute in the case on hand is not a dispute coming under Sec. 2(i) of the Act?

(ii) Are not the courts below wrong in holding that the suit is maintainable?

6. In the decision in Angadippuram Co-operative Bank cited supra there was a contract as per which the plaintiff therein was to take delivery of the rationed goods from the go-downs as a representative of the Society. The entire expenses for transporting the goods were to be met by the plaintiff and towards the cost there of he was to be paid at the specified rates both on the basis of the quantity transported and also the distance covered depending upon the place from which the goods were transported. It was found that as per Ext. B1 agreement referred to therein what the Society did was to entrust the work of transporting to the plaintiff on payment to the plaintiff at the rates specified in the contract and as such, it was found that there was no relationship of principal and agent as between the society on the one hand and the plaintiff on the other and as such, it was held that the plaintiff cannot be treated as an agent of the society for the purpose of Sec. 69(1)(c) of the Act.

7. There the court was dealing with the question as to whether the plaintiff was only an agent of the society. Therefore, the facts dealt with in that case are not applicable to the facts of this case. Here, the plaintiff contended that he was only a contractor who was supplying milk and the amount now claimed by the plaintiff is only the security amount given by him and so, it cannot be said that it has anything to do with the business of the society but the liability arose out of a contract entered into between the society and the plaintiff who was not a member of the society.

8. The definite statement made by the plaintiff in paragraph 3 of the plaint is that "the said Jayakumar was a contractor in supplying milk as per the direction of the defendant and after depositing a security amount of Rs. 5,000/- defendant agreed to refund the money along with the termination of the contract if not with interest." With regard to the same it can be seen that the averments so made by the plaintiff was practically admitted by the defendant. It was admitted that a sum of Rs. 5,000/- was due to Mr. Jayakumar, the plaintiff by way of the security deposit. It was also admitted that on the termination of the contract the security amount was to be returned to the contractor.

9. The provisions like Sections 69 and 100 were introduced in the Co-operative Societies Act to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the Societies. It can be found that the dispute in this case would fall u/s 69(1)(f) of the Act since the plaintiff is a person other than a member of

the society. The Society has or had business transaction with the plaintiff. The business of the society was to purchase and supply milk. The plaintiff was a contractor who was bound to supply milk as per the terms of the contract. The defendant/society has raised a dispute that there was short supply of milk and thus the society had sustained loss. That is actually a dispute which arose between the society and a person other than a member of the society who had business transaction with the Society. Similarly, the amount claimed by the plaintiff is the return of the security amount which had to be deposited by the plaintiff in connection with the business transaction he had with the society. As has been said earlier here the defendant society is actually engaged in collection and supply of milk.

10. In *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, it was held that the word "business" occurring in sub-sec. (1) of Sec. 91 of the Maharashtra Co-operative Societies Act has been used in a narrower sense and it means the actual trading or other similar business activity of the Society which the Society is authorised to enter into under the Act and the rules and bye laws. It was also held that although the nature of business which a society does can be ascertained from the objects of the society, it cannot be said that whatever the society does or is necessarily required to do for the purpose of carrying out its objects is part of its business. It was further held that the word "touching" is very wide and would include any matter which relates to or concerns the business of the society. No doubt, the provisions of the Maharashtra Co-operative Societies Act may not be in pari materia with Section 2(i) or Sec. 69 of the Kerala Co-operative Societies Act. In case cited supra it was held that the word "dispute" covers only those disputes which are capable of being resolved by the Registrar or his nominee. The doubt expressed was as to whether the dispute would include a dispute between a landlord society and a tenant which was the subject matter of that litigation. Here the facts are entirely different.

11. The decision in *Angadippuram Service co-operative Bank Ltd. v. K. Ahammed Kunhi* - 1976 KLT 275 : 1976 ICO 891 was relied upon by the plaintiff before the court below. There it was Sec. 69(1)(c) which was relevant for consideration. The sole question considered in that case was whether the plaintiff therein was an agent for the purpose of Sec. 69(1)(c) of the Act. There can be no doubt that since what falls for consideration is a dispute of civil nature unless the cognizance of the same by the civil Court is either expressly or by necessary implication barred the suit would be perfectly maintainable. According to the defendant/appellant Sec. 69(1)(f) read with Sec. 100 of the Co-operative Societies Act is an express bar against taking cognizance of the dispute involved in this case by the civil Court, since the facts dealt with in *Angadippuram Service co-operative Bank's* case (cited supra) are totally different from the facts of this case, the decision rendered in that case can have no application to the facts of this case.

12. The decision in *Ajitha and Others Vs. State of Kerala and Others*, has absolutely no application to the facts of this case. There the dispute was regarding the inter se seniority between the employees of a society and so it was found that it was a dispute within the ambit of Sec. 2(i) and Sec. 69(i)(c) of the Co-operative Societies Act, 1969. *Balachandran Vs. Dy. Registrar of Co-operative Societies and Others*, , was a case where the dispute was concerning the question of relative seniority which was a subject touching the establishment relating to the conditions of service as mentioned under Sec. 80 and it was within the competence of the Registrar to resolve in accordance with the principles of law and contract and therefore it was found that it was a dispute coming under Sec. 2(i) of the Co-operative Societies Act. The facts dealt with therein are entirely different and hence, that decision also has no relevance to the facts of this case. In *Reghunandan v. Joint Registrar* - 1998 (2) KLT 337 - the dispute was as to the cancellation of a recruitment test. It was held that it has no relationship with the business of the Society within the meaning of Sec. 2(i) read with Sec. 69 of the Co-operative Societies Act and so it was held that the Joint Registrar had no jurisdiction to decide a dispute of that nature. Since the facts are different, that decision also has no relevance to the facts of this case.

13. The Co-operative Societies are undoubtedly creatures of statute, controlled by their constitution. Therefore, it is argued that the dictum laid down pertaining to one Cooperative Society may not be applicable to another Co-operative Society since it would depend upon the constitution of the society and the purpose for which it was created and also as to their functioning. It is contended that when the Society itself is formed for collection and supply of milk and other milk products and something connected therewith the supply or collection of milk itself would be part of the business of the society and as the plaintiff was admittedly the contractor who was to supply milk and when there arose a dispute as to the supply, non-supply or short supply and also as to whether the plaintiff is entitled to get back the security deposit that would squarely fall within the term "dispute" occurring in Sec. 2(i) and so it would attract the provision contained in Sec. 69(i)(f) of the Act. It is also argued that it is not a case where the said dispute cannot be resolved by the Arbitration Court constituted under the Act.

14. In *Balachandran's Case* (supra) it was held that if the dispute relates to a subject matter specified under the Act and if it can be resolved in accordance with the provisions of law or contract the Registrar has necessary jurisdiction and the provisions of the Act would prevail over those of the Industrial Disputes Act. In that case the dispute was only with regard to the question of relative seniority which was a subject matter touching the establishment relating to conditions of service as mentioned under S. 80 of the Act and so it was held that it was within the competence of the Registrar to resolve in accordance with the principles of law and contract. The facts of that case are also not identical to the facts of this case.

15. Considering the provisions contained in Sec. 51 of the Tamil Nadu Co-operative Societies Act, the Apex Court in *Pentakota Srirakulu Vs. The Co-Operative Marketing Society Ltd.*, held that the sale of the produce belonging to the members of the Society is part of the business of the Society and thus the charging of commission for those sales and the crediting of the Society's accounts with that commission would certainly be the "business of the Society". But the provision which was dealt with therein was Sec. 51(c) of that Act which is almost identical to Sec. 69(i)(c) of the Kerala Co-operative Societies Act and not identical to Section 69(i)(f) which is the relevant provision so far as the case on hand is concerned. Considering the facts of that case it was held by the Apex Court:

It could not be disputed that the sale of the produce belonging to the members of the Society was part of the business of the Society and then the charging of commission for those sales and the crediting of the Society's accounts with that commission would equally be the business of the Society. Apart therefore, from the question of illegality raised by reason of the sale being at prices in excess of the controlled price, it is not capable of argument that the failure on the part of the appellant to credit to the Society the full amount of commission due on the sales effected by him on behalf of the Society and the resistance by him of that demand, would not be a dispute touching the business of the Society. This objection is clearly without substance and must be rejected.

While interpreting the provisions of the Maharashtra Co-operative Societies Act, it was held by the Apex Court in *O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others*, thus:

In the present case, the Society is a tenant co-partnership type housing society formed with the object of providing residential accommodation to its co-partner tenant members. Now, the nature of business which a society carries on has necessarily to be ascertained from the object for which the society is constituted, and is logically follows that whatever the society does in the normal course of its activities such as by initiating proceedings, for removing an act of trespass by a stranger, from a flat allotted to one of its members, cannot but be part of its business. It is as much the concern of the society formed with the object of providing residential accommodation to its members, which normally is its business, to ensure that the flats are in occupation of its members, in accordance with the bye-laws framed by it, rather than of a person in unauthorised occupation, as it is the concern of the member, who lets it out to another under an agreement of leave and license and wants to secure possession of the premises for his own use after the termination of the license. It must, therefore, follow that a claim by the society together with such member for ejectment of a person who was permitted to occupy having become a nominal member therefore, upon revocation of license is a dispute falling within the purview of Sec. 91 of the Act.

Therefore, the principle laid down by the Apex Court would make it amply clear

that the nature of business which a society carries on has necessarily to be ascertained from the object for which the society is constituted.

16. It is also pointed out by the learned Senior Counsel that Sec. 69 (1)(f) deals with a dispute between the society and a person, other than a member of the society, who had business transactions with the society. That dispute must certainly be pertaining to such business transactions. If any interpretation is given that even such a dispute which arose between the society and a person other than a member of the society who had business transactions with the society would fall outside the dispute mentioned under Sec. 2(i) on the premise that such a business transaction is not connected with the internal management or administration of the society, then Sec. 69(1)(f) would become redundant since a person other than a member of the society can have nothing to do with the internal management or administration of the society. In short, the plaintiff is a person who is not a member of the society but at the same time he had business transactions with the society. The dispute between the plaintiff and the society arose pertaining to that business transaction. Hence, it is to be held that Sec. 69(1)(f) would certainly be attracted in this case. Here, the Society was constituted for the collection and supply of milk. Since that was the concern of the Society it has to be held that whatever is done pertaining to the collection and supply of milk would normally be its business and so the dispute as to whether the security amount was to be returned or any amount was to be deducted towards the alleged loss sustained on account of the short supply of milk would certainly be a dispute coming within the ambit of Sec. 2(i) and Sec. 69(i)(f) of the Act and as such the bar under Sec. 100 of the Kerala Co-operative Societies Act would certainly apply to the facts of this case. Therefore, in the light of what have been stated above. I hold that the dispute in this case is actually a dispute coming under Sec. 2(i) and Sec. 69(i)(f) and as such the suit filed for return of the security amount paid by the plaintiff in connection with the business transaction with the Society in respect of which the bar under Sec. 100 of the Co-operative Societies Act would apply and as such the suit is not maintainable. The necessary corollary is that the decree and judgment passed by the courts below are liable to be set aside.

In the result this second appeal is allowed. The suit stands dismissed. In the facts and circumstances of the case, the parties are directed to bear their respective costs.