
(1974) 05 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 2879 of 1972

Thilakan and Another

APPELLANT

Vs

M.C.V. Co-op. Society and Others

RESPONDENT

Date of Decision : 27-05-1974

Acts Referred:

Arbitration Act, 1940 — Section 37

Kerala Co-operative Societies Act, 1969 — Section 69

Citation : AIR 1975 Ker 14

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : N.K. Sreedharan and M.C. Gopi, for the Appellant; V. Ramakrishnan, Thomas John and P. Sankaran Kutty Nair, for the Respondent

Final Decision : Dismissed

Judgement

P. Subramonian Poti, J.—The Kerala Co-operative Tribunal, Trivandrum, in the order Ext. P3 which is under challenge here, held that there is no question of applying the provisions of the Limitation Act, 1963 in the matter of adjudication of a claim u/s 60 of the Travancore-Cochin Co-operative Societies Act 1952 materially corresponding to Section 69 of the Kerala Co-operative Societies Act. The only ground of attack as against Ext. P3 order is that the Tribunal was in error in holding that the Limitation Act would not apply in the matter of adjudication of the claim under the provisions of Section 60 of the Travancore-Cochin Co-operative Societies Act or Section 69 of the Kerala Co-operative Societies Act,

2. No period of limitation is prescribed in the Travancore-Cochin Act or in the Kerala Act for adjudication of a claim under the Act, whether it be an adjudication by the Registrar himself or an adjudication by arbitrators to whom he refers the matter for decision. The provisions of Indian Limitation Act are not made applicable to proceedings under the Co-operative Societies Act. Nevertheless the petitioners contend that it should be deemed to be applicable and in support of

this reliance is placed on Section 37 of the Arbitration Act 1940. Sub-section (1) of Section 37 of this Act provides that all the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court. Counsel therefore contends that since this is a case of arbitration the provisions of the Limitation Act must apply. But it is evident that the reference to arbitrations in Section 37(1) of the Arbitration Act can only be read as reference to arbitration under the said Act. It is by virtue of Section 46 of the Arbitration Act, 1940 that the provisions of the Arbitration Act are extended to other enactments relating to arbitration. That section reads :

"46. The provisions of this Act, except Sub-section (1) of Section 6 and Sections 7 12 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder."

That section particularly excludes Section 37 and therefore it is only the provisions other than Section 37 and certain other sections similarly excluded that would apply to other arbitrations. But counsel submits that Section 46 refers only to arbitrations "under any other enactment for the time being in force" which according to him would in turn could refer only to such enactments as were in force when the Arbitration Act 1940 came into force. That is a matter on which this Court has spoken and the view expressed by this Court is against the stand taken by the petitioner. The decision of this Court is in *Sivaraman Nair v. State of Kerala* ILR (1974) Ker 97. Apart from that, I am afraid the argument of counsel is suicidal, for, if Section 46 has no application because the enactment with which one is concerned here is not an enactment "for the time being in force; still the petitioner does not gain by it since Section 37 of the Arbitration Act by itself does not(?) provide that the Limitation Act is to be applied to an arbitration contemplated in the Co-operative Societies Act. Therefore, in any view of the matter Section 37 of the Arbitration Act will not promote the case of] the petitioner.

3. Even otherwise in view of the decision of the Full Bench of this Court in *Jokkim Fernadez Vs. Amina Kunhi Umma*, it may not be possible to accept the contention of the petitioner that provisions of the Limitation Act must be read as applicable to proceedings before the arbitrator under the Cooperative Societies Act. That the provisions of the Limitation Act are applicable only to proceedings before a court and "court" in that context refers to Tribunals the proceedings before which are governed by the provisions of the CPC or in some cases of the Code of Criminal Procedure has been held by the Full Bench. Reference has been made in that case to the decision of the Supreme Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, which has expressed the view that an Industrial Tribunal or Labour Court will not be a court within the scope of the terms (used in the Limitation Act. Therefore, in

any view of the matter the petitioners cannot succeed.

In the result, the Original Petition is dismissed. But in the circumstances, parties are directed to suffer costs.