
(2001) 02 KL CK 0002

In the High Court Of Kerala

Case No : C.R.P. No. 3017 of 2000

Tripoonithura Handloom Weavers Co-Operative Society Ltd.

APPELLANT

Vs

K.P. Ratnakumar

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Citation : (2001) 1 KLJ 651

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : P.V. Baby, for the Appellant; V.K. Viswambharan, for the Respondent

Judgement

M.R. Hariharan Nair, J.—The question arising for decision in the case is whether a contract entered into by a Co-operative Society with a builder is a business transaction for the purpose of Section 69(1) (f) read with Section 100 of the Kerala Co-operative Societies Act. The. revision Petitioner-Society, who was the Defendant in O.S. No. 1428/97 of the II Additional Munsiff's Court, Ernakulam, contended that the suit was not maintainable before the Civil Court and that only an arbitration as provided under the Kerala Co-operative Societies Act would lie. The revision Petitioner is aggrieved that the said contention was turned down by the civil court.

2. During hearing today, the learned Counsel for the revision Petitioner relied on the decision in Sekharan v. State of Kerala 1976 KLT 137 in support of the contention that the civil suit is not maintainable.

3. The learned Counsel for the Respondent, on the other hand, relied" on the decisions in K.C. Varkey v. Director of Industries and Commerce, Trivandrum ILR 1978 Ker 143, Meeran Unni v. Kottayam District Co-operative Bank 1985 KLT 384 (F.B.) and K. Khader Vs. Rajamma John Kandathil and Others, to contend: that the bar u/s 100 would be applicable only if the. transaction in question relates to or touches the business of the society as contemplated in bye-laws concerned and that as far as the present case is concerned, the purpose for which the

Society was formed was to deal with handloom weaving and that construction activity is not the business of the Society.

4. Section 69(1)(f) of the Kerala Co-operative Societies Act provides as follows:

69. Dispute to be decided by Co-operative Arbitration Courts.--(1) Notwithstanding . anything contained in any law for the time being in force, if a dispute arises.

* * *

(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;

* * *

Such dispute, shall be referred to and decided by the Co-operative Arbitration Court constituted u/s 70A and no other court or authority shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

5. It is clear from the above provision that if the Society has or had "business transaction" with the Respondent herein, the bar u/s 100 of the Kerala Co-operative Societies Act would be attracted. In other words,-the question for consideration is whether the contract for construction of a building between Plaintiff and Defendant in the suit is a business transaction of the Society.

6. It is true that in Sekharan's case 1976 KLT 137 a learned Judge of this Court took the view that the definition is an inclusive definition and that even a claim for damages against a contractor for construction of godown for the Society would be within the scope of Section 69(1)(f). However, later decisions of this Court are to be contrary. A Bench of this Court in K. C. Vairkey's case ILR 1978 Ker 143; considered the question whether a dispute between the Society and its landlord with regard to the tenancy in respect of the building occupied by the Society will fall within the purview of Section 69(1)(f) of the Act. It took note of the fact that the Co-operative Society involved there was formed for the purpose of doing business in handicrafts articles and that it was no part of the business of the Society to take a place on rent although the tenancy concerned was for the purpose of the Society. That transaction was only incidental to the functioning of the Society and in entering into the lease for the said purpose, the Society was not transacting business or entering into a business transaction with the landlord. In that perspective, the contention of the Society was turned down and the civil suit concerned was found to be maintainable.

7. What the Full Bench of this Court in Meeran Unni's case 1985 KLT 384 considered was whether a dispute between the Society and a person with whom the Society had entered into an agreement to grant a lease of a shop building belonging to the society would fall within the purview of Sections 69(1)(f) and 100 of the Act. The Court noted that the particular Society was engaged in the

business of banking and its objects related principally to banking with a view to develop the co-operative movement. On a perusal of the bye-laws concerned, what was clear was that construction of the building and letting out the same to the tenants was not part of the business of the society. In that perspective, the Court found that the dispute concerned was not one that would fall within the scope of Section 69(1)(f) of the Act and that the civil court was entitled to give a decree for specific performance of the agreement concerned.

8. K. Khader Vs. Rajamma John Kandathil and Others, dealt with a suit for eviction of a tenant from a building owned by the Society. The Society concerned was established for production and marketing of milk and letting out buildings and collecting rent was not the avowed object of the Society. In the circumstances, this Court held that the suit concerned did not fall within the scope of Section 69(1)(f) and that the civil suit was maintainable.

9. In view of the consistent view taken by this Court after the Full Bench decision aforementioned, I am of the view that the contention of the Petitioner-Society cannot be upheld. Admittedly, the Society was formed to do the business of production and marketing of handloom cloths. Construction of a building, albeit for its own purposes, was not the object of the Society.

Viewed from that angle, the dispute between the parties to the suit in question fell outside the purview of Sections 69(1)(f) and 100 of the Kerala Co-operative Societies Act and in that perspective, the impugned order is perfectly sustainable. The revision is found to be without merit. Dismissed.