
(2004) 09 KL CK 0013
In the High Court Of Kerala
Case No : W.A. No. 1648 of 2004

Umadevi	Vs	APPELLANT
Asst. Registrar		RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:

Citation : AIR 2005 Ker 31 : (2005) 1 ILR (Ker) 68 : (2004) 3 ILR (Ker) 497 : (2004) 3 KLT 450

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : B.N. Shivasankar, for the Appellant; P.V. Lonachan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This Writ Appeal is filed against the judgment dated 27th July, 2004 in W.P.(C) No. 22171 of 2004. The appellant is the petitioner in the Writ Petition.

2. Admittedly, the appellant is a member of the People's Urban Co-operative Bank Ltd., No. 51, Tripunithura (hereinafter referred to as the "Bank"). Two rooms of the building bearing Door Nos. XX/966 and XX/967 of the Tripunithura Municipality and the charthu adjoining those rooms were rented out to the appellant by the Bank. The Bank filed A.R.C. No. 3137 of 2003 claiming an amount of Rs.2,32,007/- with interest at the rate of 19% per annum from the appellant towards arrears of rent. The appellant raised a preliminary objection regarding the maintainability of the arbitration case. According to the appellant, a dispute between a Co-operative Bank as landlord and a member as tenant with regard to matters which are governed by the Kerala Buildings (Lease and Rent Control) Act or the CPC is not a dispute referable to the Registrar under the provisions of the Kerala Co-operative Societies Act. It was also contended that the dispute between the Bank and the appellant was not a dispute touching the business of the Bank. The appellant relied on the decision of the Supreme Court

in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . The preliminary objection raised by the appellant was overruled by the Arbitrator as per Ext.P6 order. In Ext.P6 order, the Arbitrator held that since the appellant is a member of the Bank and since the amount claimed is an amount due to the Bank from the appellant towards arrears of rent it is a dispute coming under the purview of Section 2(1) and Section 69(1)(b) of the Kerala Co-operative Societies Act. Challenging Ext.P6 order the appellant filed the Writ Petition praying for quashing Ext.P6 order and for a declaration that the Arbitrator has no jurisdiction u/s 69 read with Section 2(1) of the Kerala Co-operative Societies Act, 1969 to entertain the rent control matter, The learned Single Judge dismissed the Writ Petition at the admission stage itself. The learned Single Judge did not find any merit in the Writ Petition and hence dismissed the Writ Petition. Aggrieved by the dismissal of the Writ Petition, the appellant has filed this Writ Appeal.

3. According to Section 69(1)(b) of the Kerala Co-operative Societies Act, notwithstanding anything contained in any law for the time being in force, if a dispute arises between a member and the society such dispute shall be referred to the Registrar and the Registrar shall decide such dispute and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. According to Section 2(i) of the Act, "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. According to Section 69(2)(a) of the Act, a claim by the society for any debt or demand due to it from a member, whether such debt or demand be admitted or not, shall be deemed to be a dispute for the purpose of Sub-section (1) of Section 69. In the present case, admittedly the Bank is a co-operative society governed by the provisions of the Kerala Co-operative Societies Act and the appellant is a member of the Bank. The dispute relates to amounts due from the appellant who is a member of the Bank to the Bank towards arrears of rent. As per Section 2(i) "dispute" includes a claim in respect of any sum payable to a society whether such claim be admitted or not. According to Section 69(2)(a) a claim by the society for a demand due to it from a member, whether such demand be admitted or not, shall be deemed to be a dispute for the purposes of Sub-section (1) of Section 69. Admittedly the Bank had demanded the amount of arrears of rent from the appellant and the appellant had failed/refused to make the payment. Thus the dispute involved in A.R.C. No. 3137 of 2003 is a dispute between the Bank and a member of the Bank in respect of a claim by the Bank for a demand due to it from the member and such dispute is liable to be referred to the Registrar and the Registrar shall decide such dispute and no other Court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Hence we are of the view that there was no merit in the preliminary objection raised by the appellant regarding maintainability of the A.R.C. Therefore, there is no illegality in Ext. P6 order and the learned Single

Judge was right in refusing to entertain the Writ Petition.

4. Though a contention is raised in the Writ Petition and the Writ Appeal that the 3rd respondent-Arbitrator was a Sale Officer of the Bank and therefore he is biased, we do not find it necessary to consider the said contention since no such contention was raised before the Arbitrator while raising the preliminary objection regarding the maintainability of the A.R.C.

5. Learned counsel for the appellant placed reliance on the judgment of the Supreme Court in *Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others*, , to support his contention that the A.R.C. is not maintainable. However, we find that in the above mentioned decision the Supreme Court was considering the meaning of the expression "touching the business of the society." That question arose in the context of Section 91(1) of the Maharashtra Co-operative Societies Act (32 of 1961) which said;

"Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following:....."

The Supreme Court held that in Sub-section (1) of Section 91 of the said Act, the word "business" was used in a narrower sense and it meant the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws. The above decision of the Supreme Court has no application to the facts of the present case in view of the clear statutory provisions contained in the Kerala Co-operative Societies Act. As already observed, a dispute between a society and a member of the society can be referred to the Registrar and the Registrar shall decide such dispute u/s 69(1)(b) of the Kerala Co-operative Societies Act. In view of Section 69(2)(a) a claim by the society for a demand due to it from a member, whether such demand be admitted or not, shall be deemed to be a dispute for the purposes of Section 69(1) of the Act. According to Section 2(i) of the Act, "dispute" includes a claim in respect of any sum payable to a society, whether such claim be admitted or not. It is not stated in Section 2(i) that such claim should arise from any matter touching the business of the society. In Section 69(2)(a) also it is not stated that the claim by the society for any demand due to it from a member should be in respect of a matter touching the business of the society. Therefore, we hold that the above mentioned judgment of the Supreme Court has no application to the facts of this case.

6. Learned counsel for the appellant also placed reliance on the decision of a learned Single Judge of this Court in C.R.P.No. 3017 of 2000, *Tripoonithura Handloom Weavers Co-op. Society Ltd. v. Ratna Kumar* 2001 (2) KLT SN 41. It was a case in respect of a claim u/s 69(1)(f) of the Kerala Co-operative Societies

Act. Section 69(1)(f) relates to dispute 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 transaction or any person claiming through such a person. The Court held that only if the society has or had business transaction with a person other than a member of the society the provisions of Section 69(1)(f) and Section 100 would be attracted. In the present case the dispute arising in A.R.C.No. 3137 of 2003 is a dispute between the society and its member and it is deemed to be a dispute u/s 69(2)(a) of the said Act. Hence the above mentioned decision in CRP No. 3017 of 2000 also has no application to the facts of this case.

7. For the reasons stated above we hold that the Writ Appeal is liable to be dismissed. Hence the Writ Appeal is dismissed.