
(1999) 11 AP CK 0023
In the Andhra Pradesh High Court
Case No : CCCA No. 23 of 1985

V.J. Dandekar

APPELLANT

Vs

Meera Co-operative Housing Society Limited, Hyd.

RESPONDENT

Date of Decision : 01-11-1999

Acts Referred:

Citation : (2000) 1 ALD 499 : (2000) 1 ALT 751

Hon'ble Judges : I. Venkatanarayana, J

Bench : Single Bench

Advocate : Mr Vilas V. Afzul Purkar, for the Appellant; Mr. M. Mohan Rao, for the Respondent

Judgement

1. Unsuccessful plaintiff is the appellant. OS No.365 of 1980 was filed by the plaintiff on the file of the Additional Chief Judge, City Civil Court, Hyderabad for recovery of a sum of Rs.3,65,887-80. For the sake of convenience the parties to this appeal would be referred to in accordance with their ranking in the suit.

2. The averments in the plaint in brief are set out as hereunder:

The plaintiff is a graduate in Engineering and he has been working as Engineer and Contractor for the last 14 years and has sufficient experience in construction and expertise in construction of residential houses and flats. The defendant is a registered Society and they called for Tenders for construction of 48 flats initially, which was later on increased to 64 flats, al Basheerbagh, Hyderabad. The plaintiff submitted his tender along with the necessary specifications to the defendants, prior to 22-7-1975. The defendant having found the tender of the plaintiff acceptable, accepted the said tender by their letter dated 1-10-1975. It is also further stated that on the same day, on further discussions, the plaintiff gave certain modifications to the written agreement, by his letter and the defendant after consideration of the said agreement to the agreed contract, expressly approved and agreed to the same and at the request of the defendant, the plaintiff gave a letter on 11-10-1975 confirming the same. It is farther stated

that the original letter dated 11-10-1975 is with the defendant and he is called upon to produce the same. The plaintiff has commenced the work in the right earnest as desired by the defendant on or about 25-10-1975. The plaintiff expeditiously carried out the work and was intending to complete the work within the time stipulated. From the work schedule it would be apparent that within about first two months, the plaintiff has turned out the work worth Rs.3 1/2 lacs. The plaintiff also agreed to provide a rebate of 20% of the tender rates to the defendant subject to: (a) the defendant to waive the initial security deposit of Rs.10,000/- but collecting the entire security deposit of Rs.45,000/- by deductions to the extent of 2 1/2% from each bill; (b) the defendant is paying a sum of Rs.25,000/- as advance which was to remain with the plaintiff during the entire period of contract; (c) the defendant shall make weekly payments ranging between Rs.5,000/- to Rs.10,000/- depending on the quantum of work done during the said week. This payment shall be ad hoc payment; (d) by the time the total advance payment made to the plaintiff reaches the figure of Rs.1,25,000/- the plaintiff shall get bills to the extent of Rs.1,00,000/- certified by the Consulting Engineer of the defendant for the work done by that time so that a sum of Rs.25,000/- remains with the plaintiff; (e) The ad hoc and advance payments shall be independent of the supply of material such as cement and steel, the supply of which was the responsibility of the defendant.

3. It is further alleged that though the defendant did not make payments strictly as per the agreement, the plaintiff carried out the work for some time and there after the defendant had no funds and could not make payments and the plaintiff was made aware of the financial position of the defendant and also about the disputes among some of its members and the Managing Committee and therefore the plaintiff was asked not to proceed with the work and the plaintiff could not risk by proceeding with further work, for want of payment by the defendant. It was further alleged that at one stage, there was some Court order restraining the management of defendant from proceeding with the work in and about May/June, 1976. The fact that the work had to be suspended by the plaintiff due to non-availability of the funds with the defendant is evident from the defendant's letter dated 29-06-1976. It is further alleged that the Bank accounts of the defendant would also show that they had no funds except some amount collected towards share capital which could to have been spent in construction. It is further alleged that the defendant is called upon to produce their relevant bank accounts of the relevant period. It is further alleged that the plaintiff had thereafter continued the work and completed the work to the tune of further sum of Rs.1,50,000/- though no payments were forthcoming from the defendant within time. During the period from January to March, 1976, the pace of work was slowed down due to nonavailability of funds with the defendants and only work worth Rs.1,00,000/- could be turned out during the period of January to March, 1976. It is further alleged that after the letter dated 29-6-1976, the plaintiff commenced the work and completed the work worth about Rs.1,50,000/- and the payment for the said work done was neither made as per

the agreement nor was made in proper time. The defendant stopped payment from 13-8-1976 onwards without any reason whatsoever. The plaintiff even then did some more work to the tune of Rs.40,000/-, and even thereafter all the bills submitted by the plaintiffs have not been paid by the defendant till this day. It is further alleged that the total quantum of work done by the plaintiff as intimated by the plaintiffs to the defendant in their letter dated 6-9-1976 was to the tune of Rs.6,23,000/- in addition to further investment of Rs.8,600/- made by the plaintiff towards advance, etc., in expectation of the work that would be earned out. Even on this day as against the total work done by the plaintiff to the tune of Rs.6,31,600/- payments to the tune of Rs.5,50,624-75 was only made by the defendant to the plaintiff. It is further alleged that apart from delayed payments, the defendants did not supply the necessary material inspite of demands as would be evident from the letter of the plaintiff dated 3-9-1976. Since payments in time for the work done and supply of material was essential, the defendant failed to abide by it, the plaintiff could not proceed with further work. The plaintiff has made preparations for laying of the slabs for which centering inaterial including steel plates etc., worth about Rs.50,000/- and which belonged to the plaintiff are lying idle at the site since last one year. As per the agreement, the plaintiff is entitled to charge overhead charges for all such days, when he could not be proceeded with the work due to non- supply of funds or material or any other reason. The plaintiff apart from being interested in completing the contract was earnest in doing it, insofar as, substantial investments, about and time was spent by the plaintiff in the said work. Instead of making payments to the plaintiff and supplying the material and enabling the plaintiff to proceed with the work, the defendant issued a letter dated 1-9-1976, the original of which was marked as document No.6. The plaintiff replied to the letter of the defendant through lawyer's Notice No.63 of 1976 dated 17-9-1976 which was duly received by the defendant. In the said notice the plaintiff has explained the situation and offered to proceed with the work. The defendant was advised to reply to the said notice through lawyer notice dated 21-9-1976 and the said reply notice did not resolve the problem and sensing the altitude of the defendant. Hence the plaintiff sent further reply on 7-10-1976 through lawyer's notice and a copy of the said notice was marked to the Registrar of Co-operative Societies along with the copy of earlier notice dated 17-9-1976 as compliance of the required notice u/s 126 of the Andhra Pradesh Co-operative Societies Act, 1964. The above narration show that inspite of the repeated offers made by the plaintiff to commence the work, the defendant has done nothing to improve the matter. It is also further stated by the plaintiff that the plaintiff has co-operated with the new consulting Engineer of the defendant. Thus the plaintiff was always ready and willing to perform his part of contract. As the defendant failed to perform his part, the plaintiff is constrained to file the present suit seeking recovery of Rs.3,65,887-80 ps.

4. The defendant has resisted the suit contending as follows:

The defendant took the contention that the suit as framed is hit by Section 126

of the Andhra Pradesh Co-operative Societies Act, 1964 for want of proper compliance with the requirements of the said section and the notice alleged to have been issued to the Registrar of Co-operative Societies on 7-10-1976 lacks in material particulars as such it is invalid and inoperative. It is further contended by the defendant that there is no breach of contract committed by the defendant on any account and as such on any account there is no valid cause of action to the suit. It is the case of the defendant that the plaintiff having committed default in performance of a subsisting contract has disintitiled himself for any relief much less for damages and as such the suit claim for damages based on the allegation that his stoppage of work is more attributable to the defendant society is false and liable to be rejected in toto. The defendant denied that he was not in possession of sufficient information as to what actually transpired between the plaintiff and the Secretary K.N. Phadke, who is no other than the brother of R.N. Phadke who claims to be a partner or the local agent of the plaintiff before it has resulted in the contract in question. It is the case of the defendant that a large amount of mishandling of funds and affairs of the defendant society resulting in removal of the Secretary K.N. Phadke on 14-2-1976 and he was found to have misappropriated over Rs.1,78,054-14 during the course of audit and enquiry by the departmental officers and suitable action is being pursued against him. The defendant has denied all the averments in the plaint and contended that payments were made more on the basis of the estimates given by G.D. Vidya and as such they constitute only interim payments subject to final measurements and final certificate by consulting the Engineer and final settlement of contractor's account by the defendant society and in any event no payments made in pursuance of the running bills could be construed as the final settlement of the works in progress as suggested by the plaintiff. The defendant also denied that he ever asked the plaintiff not to proceed with the work, when in fact the defendant in all his anxiety for early progress of the work was more accommodative and liberal in their payments to the plaintiff. It was further contended that for a short period there was some injunction order against the defendant society only and the same was very soon vacated by an order dated 26-7-1976 and it has no bearing on the plaintiff's case as he has admittedly slowed down or stopped the work much earlier. It is the contention of the defendant that the claim of the plaintiff for damages is not only illegal and opposed to the terms of contract but are more imaginary. It is further alleged that they are interested to offset the possible claim by the defendant against the plaintiff based on the present consulting Engineer's report and in any event the defendant cannot be made liable for any of the claims made by the plaintiff when in fact the fault lies on the plaintiff. In short the defendant contended that the plaintiff has no cause of action for the suit and the plaintiff has no fight to sue during the subsistence of a valid contract and in fact there are no amounts due payable by the defendant to the plaintiff.

5. On the basis of the aforementioned pleadings the trial Court framed the issues about the maintainability of the suit and whether the suit is hit by Section 126 of

the Andhra Pradesh Co-operative Societies Act and whether the plaintiff is entitled for the suit claim.

6. The parties were put to trial and based on the oral and documentary evidence the trial Court dismissed the suit. Hence the present appeal.

7. Mr. Vilas Afzul Purkar, the learned Counsel for the appellant has contended that the trial Court has erred in holding that notices under Exs.A7 and A9 are not valid and they are in accordance with Section 126 of the Andhra Pradesh Co-operative Societies Act. Section 126 of the Andhra Pradesh Co-operative Societies Act reads as follows:

"Notice necessary in suits :-- No suit shall be instituted against a Society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of sixty days next after notice in writing has been delivered to the Registrar, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left".

This section is identical to Section 80 CPC. From the above section it is clear that without mandatory notice no suit can be filed. At this juncture it is relevant to refer to a Full Bench judgment of the Madras High Court in M.S. Madhava Rao v. D.V.K. Sitrya Rao, Member of The Pithapuram Co-operative Bank, Pithapuram AIR 1954 Mad. 108, wherein the Full Bench had an occasion to consider importance of mandatory notice under the Madras Co-operative Societies Act. Dealing with the touching of business of a registered society, the Court has held as follows:

"The words "touching the business of a society" must be given their full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word "touching" it indicates that the dispute need not directly arise out of the business of the society but that it is enough that it should have reference or relation to or concern the business of the society. The word "touching" was clearly not intended to restrict the meaning of the word "business" it was designed to enlarge its scope. Similarly, the word "business" in Section 51 is not used in a narrow sense. It is no doubt true that some sections of the Act refer to the "affairs of the society", while others refer to the business of the society. But the words "affairs" and "business" have been used as interchangeable terms in the Act and are not intended to denote different concepts. The business has to be that of the society i.e., the corporate activity of the society are, have to be gathered from the sections of the Act, the rules framed under the Act and the bye-laws made by the corporation which are intra vires the Act. For, the power of the corporation is derived from these three sources and so long as its activity is within those powers, it cannot be questioned as being invalid."

8. Following the judgment of the Full Bench a learned single Judge of this Court in Karimnagar Dist. Co-op. Central Bank Ltd. Vs. Mogili Bakka Veeraiah and Another, , has held that notice contemplated u/s 126 has to be strictly construed

and it has to be complied with accordingly. This Court has held that the words "touching the business of a society" in Section 126 of the Andhra Pradesh Co-operative Societies Act must be given their full import bearing in mind the object of the legislation. The disputes are not to be restricted to matters arising from and out of the business of the society but are also extended to matters which are in some way concerned or related to the business of the society. The word "business" is not used in the narrow sense. In order to determine the business of the society, one has to look into the provisions of the Act, the rules and the Bye-laws framed by the society. All matters comprised in them or incidental or are necessary for carrying out those matters must be deemed to be the business of the society. In another decision of this Court reported in Kona Ramu Vs. The Payakaraopeta Primary Agricultural Co-operative Credit Society Ltd. and Others, , has held that a plaint is liable to be rejected without notice u/s 126 of the Andhra Pradesh Co-operative Societies Act, 1964.

9. In the present case Exs.A7 and A9 were addressed to the defendant. Ex.A9 notice addressed to the defendant was marked to the Registrar of Co-operative Societies along with the copy of Ex.A7 treating it as a notice issued u/s 126 of the Andhra Pradesh Co-operative Societies Act. Considering various judgments of the High Courts, I do not consider Exs.A7 and A9 notices issued u/s 126 of the Andhra Pradesh Co-operative Societies Act.

10. The learned Counsel for the appellant relied on a judgment of the Supreme Court reported in Ghanshyam Dass and Others Vs. Dominion of India and Others, , and contended that such notices should not be construed strictly. The question that arises in the present case relied upon by the appellant is whether fresh notice has to be issued by the legal representatives of a late contractor. The Court held that notice issued earlier by the late contractor u/s 80 of the Act is sufficient and no fresh notice u/s 80 is necessary. That decision has no application to the facts of the present case.

11. On a consideration of the evidence on record and having regard to the principles laid down u/s 126 of the Andhra Pradesh Co-operative Societies Act it has to be held that the plaintiff has neither materially nor substantially complied with the statutory requirements of Section 126 of the Andhra Pradesh Cooperative Societies Act. A reading of Exs.A7 and A9 shows that they are admittedly not addressed to the Registrar but they are addressed only to the defendant-society. It is not in dispute that a copy of Ex.A7 dated 17-9-1976 was not sent to the Registrar. However, Ex.A9 dated 7-10-1976 was sent to the defendant and a copy of it was sent to the Registrar along with a copy of Ex.A7. In view of the settled legal decisions, it has to be held that there is no sufficient compliance of Section 126 of the Andhra Pradesh Co-operative Societies Act and hence the suit is not maintainable for want of notice u/s 126 of the Act.

12. In view of the fact that there is no valid compliance of the notice u/s 126 of the Andhra Pradesh Co-operative Societies Act, I do not wish to go into the merits of the case and I hold that the suit is liable to be dismissed on that

ground alone. Hence, the appeal is accordingly dismissed. No costs.