Kallappa Vs. the Chairman, Jamakhandi Co-operative Bank Limited, Jamakhandi and Another

Kallappa Vs. the Chairman, Jamakhandi Co-operative Bank Limited, Jamakhandi and Another

SooperKanoon Citation : sooperkanoon.com/370634

Court : Karnataka

Decided On : Apr-07-2000

Reported in : 2001(1)KarLJ49

Judge : K. Sreedhar Rao, J.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 70; Code of Civil Procedure (CPC), 1908 - Sections 9; Indian Contract Act, 1872 - Sections 171

Appeal No. : Civil Revision Petition No. 1080 of 1999

Appellant : Kallappa

Respondent : The Chairman, Jamakhandi Co-operative Bank Limited, Jamakhandi and Another

Advocate for Def. : Sri Shivaraj Mudhol, Adv.

Advocate for Pet/Ap. : Sri M.B. Nargund, Adv.

Judgement :
ORDER

1. The revision is directed against the order of Principal Civil Judge (Senior Division), Jamakhandi passed in S.C. No. 74 of 1994.

2. The plaintiff is the revision-petitioner, who had filed the above suit for recovery of Rs. 5,000/- from the defendant, which is a co-operative bank. The Trial Court, after hearing the plaintiff and the defendants on a preliminary point, dismissed the suit as not maintainable, as the dispute is covered under the Co-operative Societies Act and as per Section 70, arbitration is the only remedy for the plaintiff to recover the amount if it is permissible in law and not by way of civil suit. Being aggrieved by the finding, the revision is filed.

3. The perusal of the order of the Trial Court discloses that, all the relevant facts relating to the case have been copiously set out. The plaintiff, earlier to 1987 has deposited a sum of Rs. 5,000/- in the bank as a customer and in the year 1987 he enrolled himself as a member and while doing so, he deposited the F.D. receipt of Rs. 5,000/- for obtaining membership and later on borrowed a loan. The amount of loan borrowed is in controversy. According to the plaintiff, it is Rs. 10,000/- and according to the defendant-bank it is Rs. 4,200/-. However, that aspect of the matter is not in controversy in the suit.

4. The plaintiff made a claim for recovery of the F.D. amount from the defendant-bank in the above suit. The Trial Court, after going through the material, has given a finding that the Civil Court has no jurisdiction and that under Section 70 of the Co-operative Societies Act, the dispute is to be referred for arbitration.

5. The contention of the Counsel for the petitioner that the F.D. Deposit of Rs. 5,000/- is an independent transaction not in any way connected with his relationship of the society as a member. Therefore Section 70 of the Co-operative Society has no application to the facts of the case does not appear to be a tenable contention.

6. Under Section 171 of Contract Act, any amount held by the bank in whatever account of its customer bank has a general lien over all amounts in its custody. In the instant case the petitioner being member of the Society whatever amount he had deposited in the bank in any capacity also becomes the subject-matter of a general lien and as such, any disputes between the member of the society and the bank will be covered by Section 70 of Co-operative Societies Act. In view of the matter that the Trial Court has rightly dismissed the suit as not maintainable in the

Civil Court. Hence, the revision is dismissed.