

Dr. K. Satyavathi Vs. Dhatri Mutually Aided Co-operative Credit Society Limited

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Court : Andhra Pradesh

Decided On : Mar-31-2004

Reported in : 2004(3)ALD738; 2004(4)ALT165

Judge : Elipe Dharma Rao, J.

Acts : Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 - Sections 37 and 37(1)

Appeal No. : CRP No. 4375 of 2003

Appellant : Dr. K. Satyavathi

Respondent : Dhatri Mutually Aided Co-operative Credit Society Limited

Advocate for Def. : B. Vijaysen Reddy, Adv.

Advocate for Pet/Ap. : I. Aga Reddy, Adv.

Disposition : Civil revision petition dismissed

Judgement :

ORDER

Elipe Dharma Rao, J.

1. Aggrieved of the office objection dated 12-8-2003 raised by the Senior Civil Judge, Peddapally, Karimnagar District, returning the plaint to the petitioner herein, for presentation before appropriate forum on the ground that with effect from 25-4-2001 the jurisdiction of the Senior Civil Judge's Court is ousted in view of amendment to Section 23 of the A.P. Cooperative Societies Act (for brevity the Act) and that the petitioner was no longer a member of the Committee or the Member of the Society, but since the matter relates to its affairs, the suit has to be filed before the District Court, the plaintiff preferred this Civil Revision Petition, contending that the Court below has grossly erred in holding that the amended provisions of A.P. Societies Registration Act, 2001 are applicable to the instant suit, inasmuch as the suit relates to a declaration about the petitioner not being liable for payment of the amounts due by the defendant Society which is purely a civil right in respect of which a civil suit lies under Section 9 of the Code of Civil Procedure (for brevity the Code). It is further contended that even assuming that the said Act applies, at best it gives an option to the member of the Society to proceed with the dispute under the provisions of Arbitration and Conciliation Act, 1996, or to file an application before the District Court and by no stretch of imagination, it can be treated as a bar to the Civil Court. It is further case of the petitioner that the defendant - respondent Society is formed under the provisions of A.P. Mutually Aided Co-operative Societies Act, 1995 which is applicable to the society and the provisions of the said Act do not bar filing of a civil suit. It is lastly contended that for the redressal of a dispute under any Act, the jurisdiction Of Civil Court is not ousted unless there is a specific provision barring the jurisdiction of Civil Court.

2. The learned Counsel for the respondents submits that the respondent-Society is registered under Section 7 of the A.P. Mutually Aided Co-operative Societies Act, 1995 and under Section 37, thereof read with Bye-Law 51 of the Bye-Laws of the Society and it expressly ousts the jurisdiction of the Civil Court under Section 9 of the Code.

3. Section 37 manifestly makes it clear that if any dispute arises touching the constitution, Management or business of a Co-operative Society, and matters connected therewith or incidental thereto, among members, past members or

persons claiming through members, past members and deceased members; or between a member, past member or a person claiming through a member, past member or deceased member and the Co-operative Society, its Board, Director, office bearer or liquidator past or present, etc...., such a dispute may be referred to the Co-operative Tribunal for decision. Thus, the jurisdiction of the Civil Court is ousted with regard to the settlement of dispute and, therefore, the petitioner has wrongly approached the Civil Court. That apart, Section 9 of the Code mandates that the Courts shall have jurisdiction to try all the suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Therefore, by virtue of Section 37 of the A.P. Mutually Aided Cooperative Societies Act, 1995 read with Bye-Law 51 of the Bye-Laws of the Society, the jurisdiction of the Civil Court is expressly barred. Therefore, the contention raised by the learned Counsel for the petitioner cannot be countenanced.

4. Insofar as the decision *Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh*, : [1963]50ITR93(SC) , relied on by the learned Counsel for the petitioner is concerned, that case arose under Section 18A of the Madras General Sales Tax Act. The suit was filed by an assessee for recovery a sum of money against the State on the ground that the said amount had been illegally recovered from him as Sales Tax under the said Act. The Court held that Section 18-A provides that no suit or other proceedings shall, except as expressly provided in the Act, be instituted in any Court to set aside or modify any assessment made under the Act. It is further held that the prohibition is express and unambiguous and there cannot be any doubt on a fair construction of the section that a suit cannot be entertained by a Civil Court, if by instituting the suit, the plaintiff wants to set aside or modify any assessment made under the Act. Therefore, by virtue of the remedies available under the Sales Tax Act, to assail the correctness or otherwise of the orders passed under Section 18A, civil suit was held to be not maintainable.

5. As can be seen from Section 9 of the Code, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. This provision makes it abundantly clear that until and unless, the jurisdiction of a Court is expressly or impliedly barred, the Courts

shall have jurisdiction to try all suits of a civil nature.

6. I shall now dwell upon the contention of the learned Counsel for the petitioner whether the present suit is barred by the Code. Section 37 of the A.P. Mutually Aided Co-operative Societies Act, 1995, deals with settlement of disputes. For better appreciation of the lis involved in this petition, it is apt to extract the same,

'.....(1) If any dispute arises touching the constitution, management or business of a Co-operative Society, and matters connected therewith or incidental thereto;

(a) among members, past members or persons claiming through members, past members and deceased members; or

(b) between a member, past member or a person claiming through a member, past members or deceased member and the Co-operative Society, its Board, Director, office bearer or liquidator, past or present; or

(c)

(d)

(e)

(f)

such disputes may be referred to the Cooperative Tribunal for decision:

Provided that no dispute shall be referred under this section to the Co-operative Tribunal unless the disputing parties exhausted all remedies that may be available in the bye-laws for the settlement of disputes

(2) Any dispute relating to election held to a Co-operative Society may be referred to the Co-operative Tribunal for decision...'

7. As submitted by the learned Counsel for the petitioner, the petitioner has acted as Chairperson from the day of inception in 1999 till she resigned in July, 2000 and during this period, the plaintiff and one Mr. R. Madhava Rao signed postdated cheques and issued to the investors and after November, 2001, the plaintiff has

not continued as Director since she resigned earlier for the post of Chairperson and later on the post of Director and is continuing as a Member and shareholders of the defendant. The suit is filed seeking the relief to declare that the money demanded by the defendant is illegal and the plaintiff is not liable to pay any amount in respect of the postdated cheques signed by the plaintiff as Chairperson at the time of her tenure due to the subsequent resolution of the defendant dated 29.10.2002, which was also communicated to the bank authorities. It is an admitted case that when she was Chairperson of the Society, the defendant society issued postdated cheques signed by her along with one Mr. R. Madhava Rao. Subsequently she resigned and is continuing as a shareholder. Evidently, she is a past Chairperson of the defendant Society. The suit is filed against the Management of the defendant Society. As can be gathered from the averments made in the plaint, when the investors, who are holders of postdated cheques, issued legal notice to the plaintiff, holding her responsible for the payment thereof, but they were not made parties to the suit, except stating that the defendant on 9.6.2003 refused to pay the amounts due and instructed the plaintiff to pay the amount to the above persons i.e., investors. No document is filed and therefore, there is no cause of action to file the suit against the society. That is the issue to be considered in the suit.

8. As seen from the facts and circumstances of the case, the petitioner-plaintiff is an ex-Chairperson of the defendant Society and now continuing only as a shareholder. Thus, the dispute now raised is touching the Management and business of the Defendant Co-operative Society and the lis is incidentally connected therewith. Therefore, the plaintiff comes within the ambit of Section 37(l)(a) of the A.P. Mutually Aided Co-operative Societies Act, 1995, and as a necessary corollary, the disputes has to be referred to the Co-operative Tribunal for decision. An exception is carved out to this Rule that no dispute shall be referred to the Co-operative Tribunal for decision unless the disputed parties exhausted all the remedies available to them in the bye-laws for the settlement of the dispute. Thus by virtue of Section 37 read with Bye-Law 51, the jurisdiction of Civil Court is expressly barred and the civil suit is not maintainable.

9. As can be seen from the office objection, though the plaint was returned stating that the Court has no jurisdiction under Section 23 of the Act, it is nothing but application of wrong provision of laws. The learned Senior Civil Judge, ought to have rejected the plaint under Section 37 of the A.P. Mutually Aided Co-operative Societies Act, read with Bye-Law 51 of the Bye-Laws. Mere application of wrong provision of law in returning the plaint does not entitled the petitioner to file a suit before a Civil Court, when it is expressly barred, as noticed below. Therefore, I hold that the present subject-matter is covered under the provisions of A.P, Mutually Aided Co-operative Societies Act, 1995 and not by the provisions of the A.P. Co-operative Societies Act, 1964.

10. There is no quarrel with regard to the principle laid down by the Apex Court in Illuri Subbayya Chetty's case. Applying the ratio laid down therein to the facts and circumstances of the case on hand, the Apex Court held that without availing the remedies provided under the Madras General Sales Tax Act, assailing the correctness or otherwise of the order passed under Section 18-A, the suit was not maintainable. In the instant case also, when the jurisdiction of the Civil Court is expressly barred under Section 37 and a Forum i.e., Co-operative Tribunal, is prescribed for the settlement of disputes among members, past members or persons claiming through members, past member and the deceased members, the learned Senior Civil Judge is right in rejecting the plaint. Therefore, the decision relied on by the learned Counsel for the petitioner does not improve the case any further.

11. Evidently, the plaintiff and another have signed the postdated cheques jointly, but he was not made a party. Thus the disputes touches the Management and business of the Society. Therefore, I have no hesitation in holding that the petitioner has approached a wrong forum being fully aware of the legal position only with an intention to drag on the proceedings. For this reason also, I am unable to countenance the submission of the learned Counsel for the petitioner that the Court below be directed to register the suit and to frame an; issue as to the maintainability of the suit, and try the same as a preliminary issue. This is nothing but enlarging the scope of litigation in derogation of the statute. Apart from this, prima facie, there is no cause of action for the petitioner to file the suit as

there is no order or direction given by the Board of Directors of the defendant Society to pay any sum under the postdated cheques issued to the investors.

12. Therefore, I do not see any merit in the civil revision petition and is accordingly dismissed. No order as to costs.

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